

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672

5678 HOUSE HEALTH, EDUCATION & SOCIAL SERVICES

Selecting the Sex of a Baby: S

Continued From Page C1

supply of boys. In general, he said one of the strongest preferences for boy babies is found in the Chinese culture.

Today many couples spend as much as \$250 per month on treatments in an attempt to determine the sex of their children. They explain their needs in letters such as these, which were addressed to Gametrics Ltd., a center in Sausalito, Calif., that promotes a procedure to separate sperm in an attempt to insure that male conceptions are more likely to occur.

From a farmer's wife:

"I dearly want another child. But my husband doesn't want another girl. He farms and would love to have a son to farm with him. This would definitely be our last child."

From a woman with five sons:

"My desire to have a daughter is still very much a part of me. I guess it has been my life's dream. I guess if there's any way to have one, I would."

From the mother of three girls:

"We wanted a boy all three pregnancies. As much as I love our girls, I feel something is missing. When I see my husband's eyes when he sees a little boy with a baseball cap on or football shirt, I ache for him. He coaches midget football. He loves to hunt and he collects guns. He always used to say, 'I'll save this one for my boy.'"

From a distraught woman:

"My husband is from the Middle East. I have had three pregnancies and two girls. With the third pregnancy we had an amniocentesis and it was a girl so it was aborted. The pressure from my mother-in-law and my husband's sisters to have a boy is unbearable."

Because a couple's reproductive wishes and choices are usually kept private, it is hard to know how many couples today want to alter the odds in favor of having a child of a particular sex. Nan Chico, a sociologist at California State University at Hayward, says that such a desire seems to be the exception rather than the rule. Professor Chico has catalogued more than 6,000 letters written to Gametrics over the last 10 years. A third of the letters gave specific reasons why the couples wanted to choose the sex of their next baby.

The vast majority of couples, Professor Chico said, have two or three children of the same sex and want one more of the opposite sex. Only 17 couples indicated they wanted to choose the sex of their firstborn (11 elected boys and 6 wanted girls). Many couples had had children by previous marriages and wanted just one more, of a specific sex, in their current marriage.

Professor Chico said many couples "think modern medicine can do anything." There are embryo transfers, test tube babies, genetic engineering

and prenatal diagnostics, she said, "So why not sex preselection?"

Dr. Ferdinand Beerink, an obstetrician-gynecologist at Advanced Reproductive Services in Berkeley, Calif., which also offers the same sperm separation procedure developed at Gametrics, said many of his clients, some of whom come from abroad, face cultural pressure to produce a male heir. This is particularly true, he said, of Asians, East Indians, people from the Middle East and Nigerians.

Worldwide, 106 boys are born for every 100 girls. Despite their slight advantage at birth, however, boys have a higher infant death rate, so girls soon outnumber boys.

The promise of sex-selection techniques is that couples can alter those odds. Two books on the subject have just been revised.

One of the books, "How To Choose the Sex of Your Baby" by Landrum Shettles and David Rorvik is based on a finding made 25 years ago by the Dr. Sophia Kleegman of New York University Medical School. She discovered that, for reasons still unknown, more boy babies are born to women who conceive as a result of artificial insemination given on the day of ovulation or the day before ovulation.

Dr. Shettles, a specialist in reproduction, and Mr. Rorvik say that the same results may be obtained by women who conceive naturally at the

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Still No Method That's Certain

time of ovulation. They advise charting body temperature to know when ovulation occurs and to douche with liquids that are said to create a favorable environment for either male or female sperm. Critics of this method say that Dr. Kleegman's findings are not relevant to natural conception.

The other book, "Boy or Girl?" by Elizabeth Whelan, appears to contradict the advice of the first book. According to the book, written in 1977, girls are more likely to be born when conceived close to ovulation. Boys are favored when sperm are introduced earlier in the cycle, the book says.

A spokesman for the American College of Obstetrics and Gynecology says that such "rhythm" techniques do not provide consistent, predictable results.

Even Dr. Whelan, who has a Ph.D. in public health, has had second thoughts about raising the hopes of couples who want to determine the sex of their baby. "The honest to God truth is that we don't have an answer," she said in a telephone interview. Her research, she said, shows a slight correlation to skewing the 50-50 odds in a way "that could only warm the heart of a statistician." "I try to warn people not to accept false promises from someone wanting to make a quick buck," she said.

Another method aimed at sex selection involves separating sperm, which are produced in two varieties,

X and Y. When an X-bearing sperm fertilizes an egg, a girl is conceived. A Y-bearing sperm produces male embryos. Sperm separation techniques try to collect sperm of one variety over the other and artificially inseminate a woman with the sperm of the desired sex.

Dr. Ronald Ericsson, founder and president of Gametrics, was the first to offer such a service. His semen filtering technique favors the collection of X sperm, which generally swim faster than Y sperm. He has licensed his method to 36 clinics around the world and says that of a total of 198 successful pregnancies, 156 were boys and 42 were girls. He says that the sample size is too small to prove the validity of his technique, but he expects to gain more evidence as his centers expand. Dr. Hirschhorn, of the Mt. Sinai Medical Center in Manhattan, said the technique has "not received a proper scientific trial in man."

No sex selection technique will be accepted by the medical profession until scientific papers present the methods and results in a journal that requires a review by other professionals before publication, Dr. Hirschhorn said.

Nor do genetic counselors advise their patients who may carry defective genes that are only expressed in boy babies (hemophilia is an example) to try techniques designed to favor the birth of a girl. "There are

potential hazards in manipulating sperm," said Dr. Michael Kaback, director of the prenatal diagnosis and genetic counseling center at Harbor-UCLA Hospital in Los Angeles. Sperm could be damaged while being handled outside the body, medical experts say.

Other experts expressed ethical concerns. Dr. John Fletcher, assistant for bioethics at the clinical center of the National Institutes of Health in Bethesda, Md., is an expert on sex selection issues. He said his views are his own and that the Federal agency has no policies on these matters.

"I worry that these techniques could set a precedent for eugenics," he said. "One should use medicine to treat diseases and conditions that are profound. Gender is not a disease. We live in an era when we ought to be careful about drawing lines in human genetics and reproduction."

Second, he said, if everyone could choose the sex of their baby, "it would be bad for girls." "If the preponderance of firstborns are boys," Dr. Fletcher said, "they would get the lion's share of attention."

Finally, he said "it might lead to more abortions for sex choice." "While there is no evidence to support this," he said, "some people committed to predetermination might be interested in making sure of what they got."

References: 1. Silva SE, Griffin J, Hardin R, et al. Final report on the United States multicenter trial comparing ranitidine to cimetidine as maintenance therapy following healing of duodenal ulcer. *J Clin Gastroenterol* 1985;7(6):482-487
 2. Gough KR, Norman MG, Bardhan KD, et al. Ranitidine and cimetidine in prevention of duodenal ulcer relapse: A double blind, randomized, multicentre, comparative trial. *Lancet* 1984;ii:659-662

ZANTAC® 150 Tablets
 (ranitidine hydrochloride)
ZANTAC® 300 Tablets
 (ranitidine hydrochloride)

**BRIEF SUMMARY OF
 PRODUCT INFORMATION**

The following is a brief summary only. Before prescribing, see complete prescribing information in ZANTAC® product labeling.

INDICATIONS AND USAGE: ZANTAC® is indicated in:

1. Short-term treatment of active duodenal ulcer. Most patients heal within four weeks.
2. Maintenance therapy for duodenal ulcer patients → reduced dosage after healing of acute ulcers.
3. The treatment of pathological hypersecretory conditions (eg. Zollinger-Ellison syndrome and systemic mastocytosis).
4. Short-term treatment of active, benign gastric ulcer. Most patients heal within six weeks and the usefulness of further treatment has not been demonstrated.
5. Treatment of gastroesophageal reflux disease (GERD). Symptomatic relief commonly occurs within one or two weeks after starting therapy and is maintained throughout a six-week course of therapy.

In active duodenal ulcer, active, benign gastric ulcer, hypersecretory states, and GERD, concomitant antacids should be given as needed for relief of pain.

CONTRAINDICATIONS: ZANTAC® is contraindicated for patients known to have hypersensitivity to the drug.

PRECAUTIONS: Symptomatic response to ZANTAC® therapy does not preclude the presence of gastric malignancy.

Since ZANTAC is excreted primarily by the kidney, dosage should be adjusted in patients with impaired renal function (see **DOSAGE AND ADMINISTRATION**). Caution should be observed in patients with hepatic dysfunction since ZANTAC is metabolized in the liver.

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Lack of experience to date precludes recommending ZANTAC for use in children or pregnant patients. Since ZANTAC is secreted in human milk, caution should be exercised when administered to a nursing mother.

ADVERSE REACTIONS: Headache, sometimes severe, seems to be related to ZANTAC administration. Constipation, diarrhea, nausea/vomiting, and abdominal discomfort/pain have been reported. There have been rare reports of malaise, dizziness, somnolence, insomnia, vertigo, tachycardia, bradycardia, premature ventricular beats, and arthralgias. Rare cases of reversible mental confusion, agitation, depression, and hallucinations have been reported, predominantly in severely ill elderly patients.

In normal volunteers, SGPT values were increased to at least twice the pretreatment levels in 2 of 12 subjects receiving 100 mg qid IV for seven days, and in 4 of 24 subjects receiving 50 mg qid for five days. With oral administration there have been occasional reports of reversible hepatitis, hepatocellular or hepatocellular or mixed, with or without jaundice.

There have been rare reports of reversible leukopenia, granulocytopenia, thrombocytopenia, and pancytopenia.

Although controlled studies have shown no antiandrogenic activity, occasional cases of gynecomastia, impotence, and loss of libido have been reported in male patients receiving ZANTAC, but the incidence did not differ from that in the general population.

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OVERDOSAGE: Information concerning possible overdosage and its treatment appears in the full prescribing information.

DOSAGE AND ADMINISTRATION: Active Duodenal Ulcer: The current recommended adult oral dosage is 150 mg twice daily. An alternate dosage of 300 mg once daily at bedtime can be used for patients in whom dosing convenience is important. The advantages of one treatment regimen compared to the other in a particular patient population have yet to be demonstrated.

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U.S. policy overdue

Fetal Sexing:

Bar Harbor, Maine—U.S. geneticists need to grapple with the ethics of determining the sex of healthy fetuses at the request of parents who may opt for abortion on the basis of sex, say concerned experts.

A small but growing number of couples ask about their fetus' sex, and 60% of U.S. medical geneticists surveyed in 1985 said they'd do the test or refer the couple to someone who would. Ten years ago, only 1% of medical geneticists approved of testing for sex. Though the geneticists' attitudes haven't translated into practice, pressure is mounting to "start some dialog," notes Dr. Elizabeth Short, chairman of the American Society of Human Genetics public policy committee.

Policy decisions will be needed within the next few years, she said at the annual genetics course held at the Jackson Laboratory here. Though the capability for fetal sexing has been limited to amniocentesis, first-trimester chorionic villus sampling could become readily available at the conclusion of the multisite National Institutes of Health trial comparing the two procedures.

But Dr. Haig Kazazian, commenting from the audience after Dr. Short's



Dr. Fletcher expressed concern that geneticists who agree to fetal sex determination may be swayed by the notion that parents have a right to shape their own perfect child.

Is It Ethical? When?

presentation, called sex predetermination a nonissue. The prenatal diagnosis clinic that he heads at Johns Hopkins has received no overt requests for the procedure during the past 10 years. A single disguised request was unmasked.

Eight other prenatal diagnosis clinics contacted by MWN reported some demand. UCLA gets about 50 overt requests a year, and both Boston University Medical Center and the University of Michigan Hospital in Ann Arbor report rare inquiries. Three of the eight centers, in addition to Hopkins, reported at least one case in which parents had used concern about maternal age or heritable disease to conceal their desire for sex selection. None of the respondents knew whether healthy fetuses had been aborted.

The Genetics & IVF Institute in Fairfax, Va. has performed 1% of its 2,000 CVS procedures because "parents wanted to know the fetal sex and had no medical indication for testing," says its president, Dr. Joseph D. Schulman, a professor of human genetics, pediatrics, and ob-gyn at the Medical College of Virginia.

Son wanted. Even if a clinic gets only two requests a year, "the impact per case is high because they make everyone quite uncomfortable," says Dr. Short, who practiced in California before joining the Association of American Medical Colleges as deputy director for biomedical research policy. Most requests come from couples in which "the husband wants a son."

Ten years ago she would not have performed amniocentesis in such situations. But now that CVS is on the scene and prenatal testing facilities are more widely available, she says, "I

might do sex selection once in a while."

Lacking legislative or professional guidelines, most genetics clinics have elected not to test for sex alone. However, on request they reveal the sex of a fetus tested for a medical reason.

Given the opportunity, about 75% of parents choose to learn their unborn children's sex, says Beth Fine, president of the National Society of Genetics Counselors (NSGC). At Chicago's Michael Reese Hospital, where she counsels patients, tests are refused those who ask outright for determination of sex.

The NSGC has no official position on sex selection, though Fine told MWN that she and many of her colleagues find the practice "abhorrent." She's also concerned that withholding sex information obtained during a test for medical reasons might be as legally problematic as failing to report a tumor discovered during tests for another ailment.

But ethicist John C. Fletcher sees "a very important moral line between using knowledge to diagnose and treat disease, and using it to alter the normal state of affairs." Chief of bioethics at the NIH clinical centers in Bethesda, Md., he urges U.S. medical geneticists to adopt a uniform policy—as their West German and British colleagues have done—of "not informing parents about the sex of the child until 24 weeks," except when sex is diagnostic for a hereditary disease. The policy should be developed by the American Society for Human Genetics, he says.

Dr. Short, who chairs the ASHG public policy committee, agrees, but she says the organization has no official position on sex determination and is not in the process of drafting one.

Neither wants state or federal lawmakers setting the policy, but Dr. Fletcher thinks legislation may prove necessary. For a decade, consensus conferences and major statements on genetic testing have promised that clinical geneticists "intend to use genetic knowledge in an ethically acceptable way," he told MWN. "If they can't keep that promise, then other people are going to have to do it for them."

In a 1985 survey of 1,070 clinical geneticists, Dr. Fletcher posed a hypothetical sex-selection case in which a couple with several daughters requested fetal sex determination but had no maternal age risk or other indication for testing. The couple planned an abortion if the test was refused. Of 295 U.S. geneticists surveyed, 32% said they would perform the test and 28% said they would refer the couple.

In 16 of 19 countries where the survey was conducted, more than 75% of geneticists said they would neither test nor refer. "American geneticists are out of step," observes Dr. Fletcher.

He expressed surprise at the U.S. results and doesn't think they reflect actual practice. In a 1975 survey, 1% of medical geneticists approved of using prenatal testing to determine sex. By 1977, the proportion had risen to 21%.

Eugenics seen. Dr. Fletcher calls sex predetermination "a precedent for eugenics." He's concerned that geneticists are being swayed "by the notion that parents have a right to shape their own perfect child."

Washington attorney Andrew Kimbrell, policy director for the Foundation on Economic Trends, speaks more bluntly. "If children are viewed as a commodity, then sex selection becomes like choosing Pepsi over Coke."

Public policy should be formulated now while demand is low, before people assume that fetal sexing is a right and before the testing becomes an important source of revenue to prenatal diagnosis facilities, he argues. ■

Genetic choice and

By John J. Fried
Knight News Service

The woman, about 15 weeks pregnant, was nervous as she faced the genetics counselor at a large medical center. She and her husband were already the parents of two girls. They didn't want another girl. The mother wanted the center to help determine the sex of her unborn child so that she could decide whether to continue her pregnancy.

The counselor, firmly but politely, refused.

The woman was not the first to come to the center, nor would she be the last. Across the country, university-based medical centers, genetic counselors, and many obstetricians are finding that parents, determined to control the gender of their next child, are trickling in for help.

The trickle, some experts believe, may become a steady stream, especially as techniques to determine the sex of a fetus are simplified. "It (gender selection) may not be a large problem now," said Tabitha Powledge, of the prestigious Hastings Center, Institute of Society, Ethics and the Life Sciences in Hastings-on-Hudson, N.Y. "But, given the way things go in this country, it could be trendy in five years and routine in 10."

Currently, a "diagnosis" of fetal sex is made with the help of amniocentesis. A needle is inserted into the womb and used to withdraw amniotic fluid containing cells sloughed off by the fetus. The cells are then grown (or "cultured") and their hereditary material analyzed.

Amniocentesis was developed not to determine sex but to help diagnose potential hereditary diseases in the fetus. Since there are many congenital defects stemming from the chromosomes that determine sex, analysis of the fetal cells automatically yields information about the child's gender.

If parents then decide the child is of the "wrong" sex, they can turn to abortion to end the pregnancy.

Although physicians in virtually every major medical center speak of gender control with abhorrence, some will admit they have performed amniocentesis to provide information about sex

Some parents seeking to find out the sex of a fetus know that amniocentesis, because it is a complicated and somewhat risky procedure, is made available only to parents who carry hereditary disease, to women over 35 (who run a high risk of bearing a genetically defective child) and to women who have previously had a child born with a hereditary problem.

"There is no hard data because people who are doing it don't want to talk about it," Powledge said. "But you hear from geneticists that they are getting more and more requests (for fetal gender identification)."

Those physicians and geneticists who do overcome their reluctance to discuss the issue insist that moral and ethical considerations — on their part and on the part of parents and other medical professionals — are keeping gender control from becoming anything more than a sometime aberration.

"It is not a serious, untreatable hereditary condition to be a boy or a girl," said Dr. Michael M. Kaback, associate chief of the division of medical genetics at Harbor-UCLA Medical Center. "It goes beyond my limits as a person and a physician to use (amniocentesis) to determine the sex of a child and terminate the pregnancy on that basis."

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"There have been families that have come in naive fashion and have asked for this. And when you sit down and talk you find out that the issue is not gender, but that they may not even want the child and they are using this as a way of rationalizing not continuing with the pregnancy.

"But if you help them think through the moral and social implications of what they want to do, in my own experience, those families elect not to do anything."

Despite the hostility with which the topic of gender control is met, there are indications that opposition to the practice is anything but total — or consistent. Although physicians in virtually every major medical center speak of gender control with abhorrence, some will admit they have performed amniocentesis to provide information about sex.

"Over the last 10 years I have done it in about 12 cases," Dr. Barbara Crandall, an associate professor of pediatrics and psychiatry at UCLA, said. "I have done so because I had a subjective feeling that these were psychiatrically sound, sensible people who had thought things out. And in those cases, none of the parents, as far as I know, chose to go ahead with an abortion."

Those medical center experts who will not participate in gender identification efforts will, nevertheless, refer patients to laboratories or obstetricians in private practice who will.

"I hope to talk them out of it," Kaback said. "But if they insist on pursuing it, I will give them a list of facilities that will do it."

Moreover, some medical centers that until now have refused to involve themselves in gender identification are cautiously changing their policies. Until six months ago, Johns Hopkins University Medical Center genetics counselors would not deal

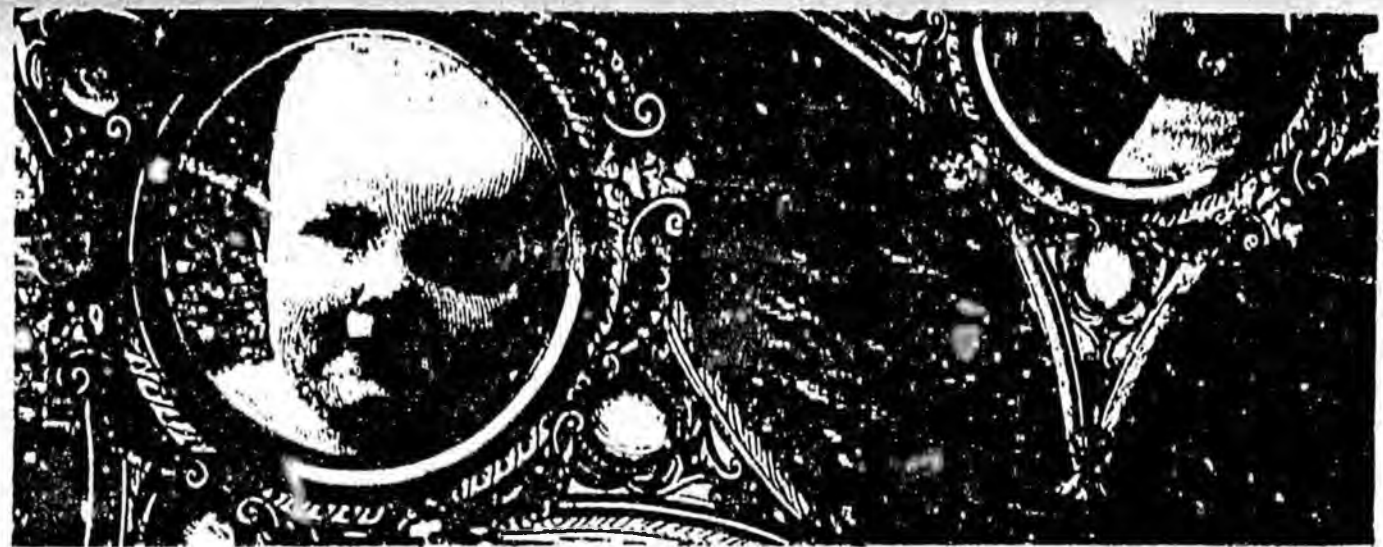


Illustration for The Globe by Karen Watson

with parents who wanted to know the gender of their next child.

But after some soul-searching in-house debates and discussions with John C. Fletcher, a medical ethics expert at the National Institute of Health, Johns Hopkins genetic experts decided to offer counseling and amniocentesis for gender selection on a limited basis.

To a large extent, parental attempts to practice gender control have been limited because amniocentesis has been considered a rigorous procedure best left to the experts at large medical centers.

But an increasing number of medical scientists are coming to believe that amniocentesis, after a decade of use, should now be looked upon as a medical tool ready for widespread use.

Thus, the procedure is already being carried out in small community hospitals. And, more and more obstetricians are not only learning to do amniocentesis, but are performing the technique in their offices.

"As a result, amniocentesis is likely to be used increasingly for gender identification because women who now go to medical centers for that purpose and get turned off will go to private doctors," said Powledge.

Amniocentesis is performed between the 14th and 16th week. And, usually there is a three-week waiting period before the test results are known.

As a result, if parents learn that their unborn child is the "wrong" sex and want to abort it, they are faced with terminating the pregnancy after the 18th or 19th week — a time when the risk of injury or death to the mother is high. This in itself, some experts say, is sufficient to discharge people intent on gender control.

But researchers are passing ahead to find new procedures that will allow physicians to identify fetal characteristics earlier and earlier in the pregnancy and to do so without submitting the mother to the rigors of amniocentesis.

Stanford scientists, for example, have found that cells of the fetus can be found circulating in the mother's blood stream as early as the 15th week of pregnancy. And although they have not yet found a way of "culturing" the fetal cells obtained from the blood stream, researchers have learned that these cells can be used to determine the sex of the child.

Genetics and the future

★ GENDER

Continued from Page 41

A simple blood test, in other words, could yield information now only available through amniocentesis.

"Conceivably, identification of gender will be done earlier and earlier," Powledge said. "And, while their work has not been duplicated here yet, Chinese researchers have reported that they have managed to scrape fetal cells from the (vaginal wall) as early as seven weeks into the pregnancy."

These cells too would yield clues to the child's sex, Powledge points out.

Because the technology for gender control already exists and because it is likely to be vastly simplified within the next five to 10 years, many experts believe that the medical community and the public at large must start facing up to the issue's moral and legal implications.

Thus, doctors who will perform abortion on demand, argued Fletcher, who is special assistant for bioethics to the director of the National Institutes of Health, cannot take a self-righteous view toward the use of abortion and amniocentesis for gender control.

"It is inconsistent for physicians to perform abortion for other reasons and then refuse sex choice cases on the basis that this is a trivialization," Fletcher told the Journal of the American Medical Assn. "If you accept the Supreme Court's decision on abortion, then you must ac-

cept sex choice as a valid reason for the procedure."

(In essence, The Supreme Court has ruled that abortion is a woman's choice and that it is not subject to regulation by the state, the woman's partner or her parents.)

The opportunity to choose the child's gender, population experts point out, could have explosive implications in a society that still seems to prefer male to female children despite strenuous efforts by women, educators and sociologists to dispel sexist attitudes.

The issue, Fletcher concludes, cannot be avoided. "We have to think about the long-range implications of sex selection," he said. "The problems of large-scale use of sex selection techniques are scary."

"The struggle between the sexes is hard enough without exacerbating it with something like this."

Abortion

Signs of trouble ahead

New research and changing public attitudes may have opened a Pandora's box of potential problems—some of them as yet only dimly seen.

by JOAN BECK

A sad irony now confronts the feminists who fought so hard and so long to make abortion on demand legally available: Abortion is increasingly being used to end the life of healthy unborn infants just because they are not of the sex their parents prefer. And almost all of the unborn babies being aborted for no reason except that they are of an unwanted sex are female.

This ultimate discrimination against females is expected to increase rapidly in the next few years. Cheap and highly accurate methods of learning the sex of unborn infants early in pregnancy will become widely available in one to two years. These methods will replace the complex and expensive techniques now required for the purpose. Couples willing to resort to abortion will then find it easy to produce only sons or daughters in the precise order they desire.

Girls Not Wanted

There is every indication already that such prospective parents—from well-educated Americans to Third World peasants—do not want girls, at least not until after one or more boys.

Reprinted, courtesy of the Chicago Tribune

Sex is determined at the instant of conception by whether the ovum (with its female X chromosome) is first penetrated by a sperm with an X or a male Y chromosome. An ejaculation contains millions of each kind of sperm.

Every cell in the body of the newly conceived child will then have the female XX pattern or the male XY blueprint. It is relatively easy to determine whether a cell has XX or XY chromosomes. The difficulty in the past has been to obtain cells from the unborn baby to examine.

Now it's done by amniocentesis, a technique developed to detect and treat Rh disease before birth, and now used to diagnose Down's syndrome and about 70 other genetic disorders. Amniocentesis can't be done until about the thirteenth week of pregnancy and requires inserting a needle into the uterus of the pregnant woman to withdraw fluid surrounding the unborn infant for testing. The fluid contains cells sloughed off from the baby.

Chinese scientists have developed a new method of obtaining fetal cells from the placenta by means of a cervical smear, almost as simple as a Pap test. So far it's only 80% to 90% accurate, compared to 99% for amniocentesis. But it can be done as early as seventh or eighth week of pregnancy, when a first trimester abortion is still a possibility.

Still another new method locates and



tests fetal white blood cells in the mother's blood stream. Both techniques are expected to be easily available here within a few years.

Not much further into the future are improved ways to tilt the odds of conceiving a child of the desired sex by artificially handicapping either the X- or the Y-bearing sperm in the race toward the ovum. Theoretically, this is possible because of the infinitesimally small differences in the weight, mobility, and life span of the X and Y sperm.

Possibilities include diaphragms that permit passage of only Y-bearing sperm, spermicidal creams that would kill either X or

Y sperm, and separating the two types of sperm by electrophoresis and using the desired kind for artificial insemination. Abortion would backstop failures.

Ugly Predictions

So sure are some scientists that sex selection of children will soon be widespread that they are worrying with psychologists and sociologists about how it will affect the world. Almost everyone agrees that most parents will opt for boys, at least at first.

In the most hopeful views of the selected sex world, parents will also choose to have a girl later on then stop with the idealized two-child family, reducing the birth rate. This family pattern, psychologists say, locks males into typical first-child leadership patterns, with females typecast as second place followers from infancy on.

In uglier predictions, couples continue to prefer boys to girls, knocking the male-female balance permanently askew and resulting in a male-dominated world with more violence, wars, and homosexuality and in serious disruption of traditional family life. Women might become little more than queen ants, useful chiefly for sex and reproduction.

It's a Pandora's box of potential trouble—and it was abortion, with the insistence on the legal right to eliminate human beings unwanted for any reason, that opened the lid first. ■

Drug Addict

Continued from Impact/1

to get hold of the drugs they need. For this reason, if you find it necessary to

"made," what a particular doctor prescribed, how "easy" he was, and what drugs they noticed in his office.

Doctors' cars, usually with special insignia, are easy to identify. Some physicians

scussed tooth, he makes full use of it. He goes from dentist to dentist asking for pain medicine and antibiotics, visiting doctor's offices and hospitals as well. Most dentists and physicians will give a narcotic when

A friend of mine has porphyria of the acute intermittent type. I think it is hard to diagnose and that a physician has to send a urine specimen away somewhere to be analyzed, which takes time. Several of my

HEALTH AND BEHAVIOR

REPORTS ON THE SCIENCES, PLUS EDUCATION, RELIGION AND LAW

The debate over uses of prenatal testing

By Christopher Farley
USA TODAY

In a break with past medical attitudes, more geneticists are open to identifying gender for expecting parents early — so they can decide whether to abort.

The change has ethicists debating where a parent's right to information ends and the rights of the unborn begin.

A recent national survey of 202 medical geneticists found 20 percent approved of performing prenatal testing for sex selection. In a 1973 survey, only 1 percent approved.

One reason for the growth: The increased availability of prenatal testing equipment.

Many experts aren't welcoming the shift. "If you're willing to use human genetics to control gender in this generation, we may later misuse the knowledge in other cases to try to control for intelligence or skin color," says John Fletcher, an ethicist at the University of Virginia and one of three experts behind the recent survey.

Aborting because of gender, or "sexing," is still very rare. Fewer than 1 percent of all abortions are because of sexing, estimates Dr. Lawrence D. Platt, a geneticist at the University of Southern California, Los Angeles, who was also on the survey team.

Prenatal diagnosis, through amniocentesis or chorionic villus sampling, is typically used as an early warning for such disorders as Down's syndrome, Tay-Sachs disease and hemophilia.

"Probably 99 percent of non-medical requests for prenatal diagnosis are made because people want a boy," says Dr. Mark Evans, an obstetrician and geneticist at Wayne State University, Detroit, and the survey team's third member. Some experts are concerned about the societal impact.

Another issue in the battle

Fetal sex selection provides yet another battleground in the ongoing struggle between anti-abortion and pro-choice groups.

"One of the interesting aspects to this debate is that it's girl babies being killed," says Dr. John Wilke, president of the National Right to Life Committee. "It's bad enough that abortion violates the human rights of babies, but when it tilts like this, feminists will have to start thinking about their unborn sisters' rights."

However, pro-choice advocates are wary of limiting a woman's right to information about her own body.

"The information about a woman's pregnancy has to be made available to her," says Barbara Radford, executive director of the National Abortion Federation. "We can't legislate what a man or woman will do with medical information. Physicians with problems with the way a patient will use information they give them should let the patient know so they can go elsewhere."

Evans turns down non-medical sex-selection requests. "Being female," he says, "is not a disease."

Prenatal diagnosis "was not designed to identify and destroy healthy fetuses," says Dr. Thomas Murray, director of the center of biomedical ethics at Case Western Reserve University, Cleveland. "I'm very uncomfortable with the quest for a perfect child. We need to be concerned about whether prenatal diagnosis is being used frivolously or seriously."

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Making Baby's Sex Parental Option

By Douglas Colligan

In many ways, the two couples couldn't be more different. One is a long-distance truck driver and his wife from a small town in Oklahoma. The other is a Wall Street lawyer and his wife who live in an affluent suburb of New York. Yet both had one thing in common. Each couple wanted a son desperately. Acting on that wish, each did something once considered science fiction: They decided what the sex of their next child would be.

The Oklahomans visited a California clinic where a unique sperm treatment plus artificial insemination gave them the boy they wanted. The father, who already had eight children—all girls—was amazed, and relieved.

The New Yorkers had three girls but the wife became pregnant again. "We decided this had to be a boy or we wouldn't have it," she determined. Shortly after her fourth month of pregnancy, she found out the sex of the developing fetus by amniocentesis, a genetic screening test. The fetus was female. The woman had an abortion.

Although sex control is now being used on a small scale, it could become more widely practiced in the next few years. And as it becomes more common, experts are debating what it may do to the family and to society.

Probably the most futuristic technique is the one used by the Oklahoma couple. It was developed by reproductive physiologist Dr. Ronald Ericsson as a way to increase a man's natural fertility and boost a couple's chances of having a boy. Scientists have long known that it's the Y chromosome that determines the sex of a child. Theoretically, every male produces equal numbers of two kinds of sperm, the one bearing the X chromosome that will produce a girl and the Y chromosome that's responsible for boys. When it has managed to tilt these sperm in favor of boys.

Using the discovery that female X chromosomes are slightly slower swim-

Choice of a boy or a girl may become feasible—with profound impact on family patterns



This mother's face reflects the joy of holding her new baby. Scientists now are developing techniques of controlling the sex of a child.

swam a much faster, essentially straight line between the two. He drops a specially prepared sperm sample into a solution of albumin, a chemical found in blood plasma. He waits a certain amount of time and then pulls out the sperm that managed to swim from top to the bottom of an albumin-filled glass tube. Most of these are the faster Y sperm, which

can then be administered to a woman by artificial insemination.

The dense albumin solution traps weak or abnormal sperm, says Ericsson, raising the natural fertility of the sperm sample. By racing the sperm through layers of albumin "screens," he can also reduce the Xs and increase the male Ys to 75 percent, giving a couple the odds of four chances of

one center's data, it was available for his method. (A list is available by writing him at Genometrics Ltd., 180 Harbor Dr., Sausalito, Cal. 94965.) Still considered experimental, his sex preselection technique has produced 17 children so far—13 boys and four girls.

One of the centers is the East Bay Fertility Ob-Gyn Medical Group in Berkeley, Cal., where the Oklahoma couple went to have their son. There Dr. Ferdinand Beermink tells parents the process is still considered experimental. "I explain that we're not guaranteeing anything," says Beermink. "And I tell them that, at worst, their chances of having a boy are 50-50 but that we're confident there is some gain over that." So far his score is four boys to two girls.

No one knows what the score is on the other technique of sex control, called selective abortion. Much more controversial and risky than the Ericsson method, this offers 100 percent sex control. By this method, a woman who is already pregnant asks her doctor for amniocentesis. Developed to spot birth defects, the test screens a sample of amniotic fluid drawn out of the mother's womb for inheritable diseases. Since some of these diseases—such as muscular dystrophy or hemophilia—can only be passed on to male babies, it checks for the sex of the child as well. If the fetus turns out to be of the unwanted sex, some women have an abortion.

How many women are doing this is not known. Few doctors will do the test just to discover the sex of the fetus. But some women don't tell their doctor the real reason for requesting the test.

"A woman could come to me and say, 'I want amniocentesis. My first child had Down's syndrome and died,' and I'd cooperate with her," acknowledges Dr. Maurice Mahoney, director of prenatal diagnosis at the Yale University School of Medicine. "I don't have any way to check the veracity of her statement."

Mahoney's belief, shared by other doctors, is that this form of sex selection is not widely used yet. Doctors are reluctant to do it: It is expensive, costing hundreds of dollars, and it can be tricky.

Tabitha Powledge of the Hastings Center, Institute of Society, Ethics and the Life Sciences in Hastings-on-Hudson, N.Y., believes that sex selection by amniocentesis is likely to increase, despite the risks and the cost.

continued

Monday, March 12, 1980

Can airport security devices detect a potentially exploding bag? Page 3

The issue goes way beyond abortion by choice. For many families, it's

CHOICE BY ABORTION

BY JENNIFER BAGGER-FRENCH
Fort Worth Star-Telegram

About 1.5 million fetuses are aborted in the United States each year. Some are aborted because of teen-age pregnancies or economics, others because of anticipated quality of life or risks to the mother. Some are simply unwanted.

And others because they are female. There are no records to show the numbers of gender abortions, but it is occurring.

Dr. Michael Roth, a Detroit obstetrician, estimated it to be a hundred or so annually in the United States. He will do an abortion for the purpose of sex selection.

"By law a woman is entitled to have an abortion on demand,"

Roth said. "You have a million abortions done every year. The majority are healthy. The reason they are terminated is because the woman has a reason and in most cases it is not because of the baby's health."

"So why shouldn't a 16-year-old who comes in with her husband and wants an abortion for fetal sexing have that option?" he said.

"Why is that any less of a good reason than a 19-year-old coming in for her fourth abortion and she's not smart enough to stay on the pill?"

The issue is not about the Roe vs. Wade decision by the Supreme Court legalizing abortion, but about the right to terminate a pregnancy based on a fetus' sex.

In the Texas Legislature, a bill was introduced in January to at-

least one ABORTION on Page 1.

Abortion / From Page 1

tempt to deal with the issue small but influential issue making it a stand-alone item. It is a bill to permit an abortion on the basis of the sex of the fetus.

Illinois is the only state with similar legislation.

The Texas bill would allow abortion on demand on Illinois law which has not been assigned to a committee. It passed in committee, the bill would take effect Sept. 1.

In 1971 only 1 percent of pregnancies had abortions. Today, approximately 20 percent of pregnancies are terminated, according to statistics of the Centers for Disease Control.

Dr. Eugene Ferguson, a professor at the University of Texas at Dallas, said that the Texas bill is a "real ethical dilemma, particularly for those who support abortion. It is a bill that will be seen as a dramatic statement of the issue of the fetus' sex."

"I have never in my seven years here had anybody base an abortion decision on any kind of sex. It's a disgrace."

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Two tests originally developed to detect birth defects, amniocentesis and CVS (chorionic villus sampling), also reveal the sex of the fetus. In some cases, test results are being used to determine sex for the purpose of terminating a pregnancy.

In most cases, doctors said, these tests are used to detect chromosomal abnormalities. Many of these women who abort their fetuses based on sex come from cultures that place a higher value on males.

"I think the emphasis on fetal sexing is a bias for males," Ferguson said. "I've got a few years where there is a cultural aspect. In certain cultures a female is less highly prized than a male. There is an emphasis in certain cultures on having a male, and fetal sexing is used as a means to determine the sex of the fetus."

Several hospitals in Texas perform amniocentesis with additional tests to reveal the sex of the fetus. Some hospitals are performing these tests on a regular basis, while others are performing them only when requested.

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And squats the reality of a handful of cases with a reason many find reprehensible.

The risk is in these abortions being used to outlaw fetal sexing for everyone.

And there are legitimate medical reasons for performing sex before birth. In Detroit, for example, a pregnant woman who is a carrier of the gene for a child with a male fetus but not a female.

People were angry at the legislature because of the abortion issue and the government stepped in, Ferguson said. "And we have our own problems here so that the government could step in and use these examples to prevent an entire population from getting their services," he said.

"The great majority of women are not looking for sex. They are looking for a healthy baby. They are looking for a healthy baby."

The first survey of geneticists published in 1978 by James B. Thompson, a geneticist at the University of Texas at Dallas, showed that the sex of the fetus is a concern of 10 percent of women.

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HB

513

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H HESS	3/6/90
H. HESS	3/10/90
H. HESS	3/22/90
H HESS	3/23/90

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 12, 1990

FURTHER REFERRALS:

JUDICIARY

Date of Committee Action: 3/23/90

The HEALTH, EDUCATION, & SOCIAL SERVICES Committee considered: HB 513

HOUSE BILL NO. 513 POST-MAJORITY CHILD SUPPORT

"An Act relating to child support for certain children who are not minors and representation of their interests during certain proceedings."

RECOMMENDATIONS:

- be replaced with CS HB 513 (HESS) the same title
- a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Date/Dept)

- fiscal impact _____
- zero fiscal note DCR
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

[Signature]

[Signature]

[Signature]

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
<u>[Signature]</u>	<input checked="" type="checkbox"/>		
<u>[Signature]</u>		<input checked="" type="checkbox"/>	
<u>[Signature]</u>		<input checked="" type="checkbox"/>	

[Signature]
Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Child support for certain children who are not minors and representation.
Sponsor: Gruenberg
Requestor: House HESS

Agency Affected: Department of Revenue
BRU: Child Support Enforcement Division

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
OPERATING						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: Attach a separate page for analysis.

Prepared By: Linda Langston
Division: Child Support Enforcement Division

Phone: 263-6270
Date: March 21, 1990

Approved by Commissioner: Hugh Malone
Agency: Department of Revenue

Date: 3/22/90

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Health & Social Services
 Title: An Act relating to child support for BRU: _____
certain children
 Sponsor: Gruenberg Components: _____
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY92	FY93	FY94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)
 FY 90 fiscal impact is "0".

Prepared by: John D. Tichenor Phone: 465-3347
 Division: Public Assistance Date: 3/21/90
 Approved by Commissioner: Myra M. Munson Date: 3/22/90
 Agency: Department of Health and Social Services

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

STEVE COWPER
GOVERNOR



PHONE
(907) 861-4227

STATE OF ALASKA

OFFICE OF THE GOVERNOR

ALASKA WOMEN'S COMMISSION
3601 C STREET - SUITE 742
ANCHORAGE, ALASKA 99503

March 7, 1990

Representative Johnny Ellis
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Dear Representative Ellis and members of House HESS:

I had the opportunity to listen in on the discussion on HB 571, and the clarification regarding the intent of directing this bill towards absent parents who are accruing a debt to AFDC. The Women's Commission supports the speedy notification to absent parents who do not have a child support order in place and who are accruing a debt to AFDC. It is, of course, incumbent upon that parent to respond in a timely manner.

The Women's Commission strongly supports HB513. This legislation is long overdue. Many youth are in school at age 19. Completion of their education is our first concern.

Regarding HB472, the Women's Commission at their meeting on Mar 2 and 3 in Anchorage, made a decision not to support HB472. Last year I observed the court appointed child support guidelines committee. This committee took extensive testimony and carefully addressed all issues. A review of their committee notes would easily persuade you of this. There were good reasons for their decisions and the process was cost effective for the State.

Only the court has the opportunity of actually knowing both sides of the story. The obligors have been very vocal. It is my experience from years of working in the domestic violence field that where there is ongoing harassment in relation to custody and support there is often past or present violence or threats. We are only hearing one side of the story at these hearings. Custodial parents rarely feel able or safe to testify. If guidelines are decided legislatively, I believe that we will not have a fair and balanced process because we will only hear from obligors.

Original sponsor(s): REP. GRUENBERG by Request, Ulmer

1 IN THE HOUSE

BY THE HESS COMMITTEE

2 CS FOR HOUSE BILL NO. 513 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to child support for certain chil-
7 dren who are not minors and representation of their
8 interests during certain proceedings."

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

10 * Section 1. AS 25.24.060(c) is amended to read:

11 (c) Mediation shall be conducted informally as a conference or
12 series of conferences. The parties to the action and a court-ap-
13 pointed representative of any unmarried [MINOR] children of the mar-
14 riage under the age of 19 whose interests may be affected shall at-
15 tend. Counsel for the parties may attend all such conferences.

16 * Sec. 2. AS 25.24.140(a) is amended to read:

17 (a) During the pendency of the action, the court may provide by
18 order

19 (1) that one spouse pay an amount of money as may be neces-
20 sary to enable the other spouse to prosecute or defend the action;

21 (2) for the care, custody, and maintenance of the minor
22 children of the marriage and for the care and maintenance of unmarried
23 18-year-old children of the marriage who are actively pursuing a high
24 school diploma and living as dependents with a parent, guardian, or
25 designee of the parent or guardian, during the pendency of the action;

26 (3) for the freedom of one spouse from the control of the
27 other spouse during the pendency of the action.

28 * Sec. 3. AS 25.24.170(a) is amended to read:

29 (a) Subject to AS 25.20.110, any time after judgment the court,

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

STEVE COWPER
GOVERNOR



PHONE
(907) 561-4227

STATE OF ALASKA
OFFICE OF THE GOVERNOR

ALASKA WOMEN'S COMMISSION
3601 C STREET - SUITE 742
ANCHORAGE, ALASKA 99503

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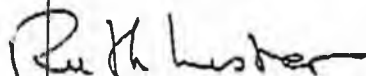
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Only the court has the opportunity of actually knowing both sides of the story. The obligors have been very vocal. It is my experience from years of working in the domestic violence field that where there is ongoing harassment in relation to custody and support there is often past or present violence or threats. We are only hearing one side of the story at these hearings. Custodial parents rarely feel able or safe to testify. If guidelines are decided legislatively, I believe that we will not have a fair and balanced process because we will only hear from obligors.

The present guidelines, with allowance for special case exceptions, provide for adequate support if the non-custodial parent is working. They are not high compared to other states. One of the problems that is most often brought up is second families. Some non-custodial parents who have been paying low support amounts have suddenly, through a modification, had their obligation increased. This problem will decline with time as all new awards are determined by 90.3 and non-custodial parents do not therefore experience large changes in their obligations.

Sincerely

A handwritten signature in cursive script, appearing to read "Ruth Lister".

Ruth Lister
Executive Director

RL/bh

Original sponsor(s): REP. GRUENBERG by Request, Ulmer

1 IN THE HOUSE

BY THE HESS COMMITTEE

2 CS FOR HOUSE BILL NO. 513 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to child support for certain chil-
7 dren who are not minors and representation of their
8 interests during certain proceedings."

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

10 * Section 1. AS 25.24.060(c) is amended to read:

11 (c) Mediation shall be conducted informally as a conference or
12 series of conferences. The parties to the action and a court-ap-
13 pointed representative of any unmarried [MINOR] children of the mar-
14 riage under the age of 19 whose interests may be affected shall at-
15 tend. Counsel for the parties may attend all such conferences.

16 * Sec. 2. AS 25.24.140(a) is amended to read:

17 (a) During the pendency of the action, the court may provide by
18 order

19 (1) that one spouse pay an amount of money as may be neces-
20 sary to enable the other spouse to prosecute or defend the action;

21 (2) for the care, custody, and maintenance of the minor
22 children of the marriage and for the care and maintenance of unmarried
23 18-year-old children of the marriage who are actively pursuing a high
24 school diploma and living as dependents with a parent, guardian, or
25 designee of the parent or guardian, during the pendency of the action;

26 (3) for the freedom of one spouse from the control of the
27 other spouse during the pendency of the action.

28 * Sec. 3. AS 25.24.170(a) is amended to read:

29 (a) Subject to AS 25.20.110, any time after judgment the court,

1 upon the motion of either party, may set aside, alter, or modify so
2 much of the judgment as may provide for alimony, for the appointment
3 of trustees for the care and custody of the minor children or for
4 their nurture and education, for the care, nurture, and education of
5 unmarried 18-year-old children of the marriage while they are actively
6 pursuing a high school diploma and living as dependents with a parent,
7 guardian, or designee of the parent or guardian, or for the mainte-
8 nance of either party to the action.

9 * Sec. 4. AS 25.24.200(a) is amended to read:

10 (a) A husband and wife together may petition the superior court
11 for the dissolution of their marriage under AS 25.24.200 - 25.24.260
12 if the following conditions exist at the time of filing the petition:

13 (1) incompatibility of temperament has caused the irremedi-
14 able breakdown of the marriage;

15 (2) if there are unmarried [MINOR] children of the marriage
16 under the age of 19 or the wife is pregnant, the spouses have agreed
17 on which spouse or third party shall be awarded custody of each minor
18 child of the marriage and the extent of visitation, including visita-
19 tion by grandparents and other persons, and support to be provided on
20 the children's behalf, whether the payments are to be made through the
21 child support enforcement agency and the tax consequences of that
22 agreement;

23 (3) the spouses have agreed as to the distribution of all
24 jointly owned real and personal property and the payment of spousal
25 support, if any, and the tax consequences resulting from these pay-
26 ments; and

27 (4) the spouses have agreed as to the payment of all unpaid
28 obligations incurred by either or both of them, and as to payment of
29 obligations incurred jointly in the future.

1 * Sec. 5. AS 25.24.210(e) is amended to read:

2 (e) If the petition is brought by both spouses under AS 25.-
3 24.200(a), the petition shall state in detail the terms of agreement
4 as between the spouses with regard to the custody of children, child
5 support, visitation, spousal support and tax consequences, if any,
6 division of property, and allocation of debts, and, in addition, shall
7 state

8 (1) the respective occupations of the spouses;

9 (2) the income, assets, and liabilities of the respective
10 spouses at the time of filing the petition;

11 (3) the date and place of the marriage;

12 (4) the name, date of birth, and current marital, educa-
13 tional, and custodial status of each [MINOR] child born of the mar-
14 riage or adopted by the petitioners who is under the age of 19;

15 (5) whether the wife is pregnant;

16 (6) other facts and circumstances which the petitioners
17 believe should be considered; and

18 (7) any other relief sought by the spouses.

19 * Sec. 6. AS 25.24.230(c) is amended to read:

20 (c) The court shall dismiss or continue an action brought under
21 AS 25.24.200 - 25.24.260 before findings are made if

22 (1) a representative of the unmarried [MINOR] children who
23 are under the age of 19 objects to a term of any of the agreements
24 between the spouses;

25 (2) either of the spouses withdraws from any of the agree-
26 ments required under AS 25.24.200(a); or

27 (3) the petition alleges that the conditions in AS 25.24.-
28 200(b) exist, but the whereabouts of the absent spouse becomes known
29 to the other spouse or the court before findings are made.

1 * Sec. 7. AS 25.24.310(a) is amended to read:

2 (a) In an action involving a question of the custody, support,
3 or visitation of a child [MINOR], the court may, upon the motion of a
4 party to the action or upon its own motion, appoint an attorney or the
5 office of public advocac to represent a minor with respect to the
6 custody, support, and visitation of the minor or in any other legal
7 proceeding involving the minor's welfare or to represent an unmarried
8 18-year-old child with respect to post-majority support while the
9 child is actively pursuing a high school diploma and living as a
10 dependent with a parent or guardian or a designee of the parent or
11 guardian. When custody, support, or visitation is at issue in a
12 divorce, it is the responsibility of the parties or their counsel to
13 notify the court that such a matter is at issue. Upon notification,
14 the court shall determine whether the minor or other child should have
15 legal representation or other services and shall make a finding on the
16 record before trial. If the parties are indigent or temporarily
17 without funds, the court shall appoint the office of public advocacy.
18 The court shall notify the office of public advocacy if the office is
19 required to provide legal representation or other services. The court
20 shall enter an order for costs, fees, and disbursements in favor of
21 the state and may further order that other services be provided for
22 the protection of the minor or other child.

23 * Sec. 8. AS 25.24.310(c) is amended to read:

24 (c) Instead of, or in addition to, appointment of an attorney
25 under (a) of this section, the court may, upon the motion of either
26 party or upon its own motion, appoint an attorney or other person or
27 the office of public advocacy to provide guardian ad litem services to
28 a child [MINOR] in any legal proceedings involving the child's [MI-
29 NOR'S] welfare. The court shall require a guardian ad litem when, in

1 the opinion of the court, representation of the child's [MINOR'S] best
2 interests, to be distinguished from preferences, would serve the
3 welfare of the child [MINOR]. The court in its order appointing a
4 guardian ad litem shall limit the duration of the appointment of the
5 guardian ad litem to the pendency of the legal proceedings affecting
6 the child's [MINOR'S] interests, and shall outline the guardian ad
7 litem's responsibilities and limit the authority to those matters
8 related to the guardian's effective representation of the child's
9 [MINOR'S] best interests in the pending legal proceeding. The court
10 shall make every reasonable effort to appoint a guardian ad litem from
11 among persons in the community where the child's [MINOR'S] parents or
12 the person having legal custody or guardianship of the child's [MI-
13 NOR'S] person reside. When custody, support, or visitation is at
14 issue in a divorce, it is the responsibility of the parties or their
15 counsel to notify the court that such a matter is at issue. Upon
16 notification, the court shall determine if a child's [THE MINOR'S]
17 best interests need representation or if a [THE] minor or other child
18 needs other services and shall make a finding on the record before
19 trial. If one or both of the parties is indigent temporarily
20 without funds the court shall appoint the office of public advocacy.
21 The court shall notify the office of public advocacy if the office is
22 required to provide guardian ad litem services. The court shall enter
23 an order for costs, fees, and disbursements in favor of the state and
24 may further order that other services be provided for the protection
25 of a [THE] minor or other child.

26 * Sec. 9. AS 47.23.070(a) is amended to read:

27 (a) In a proceeding in which the court has ordered either or
28 both parents to pay for the support of a [MINOR] child, the court may,
29 on its own motion or motion of a party or the agency on behalf of a

1 party, after notice and an opportunity for hearing, order either
2 parent or both parents to assign to the custodian of the child that
3 portion of salary or wages of either parent due them currently and in
4 the future sufficient to pay the amount ordered by the court for the
5 support, maintenance, nurture and education of the [MINOR] child.

6 * Sec. 10. AS 47.23.130(b) is amended to read:

7 (b) To establish or enforce an order of support, based on the
8 subrogation of the state, the agency is not limited to the amount of
9 assistance being granted to the [MINOR] child.
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STATE OF ALASKA THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

N HESS	5/24/90
H HESS	5/20/90
H HESS	4/1/90
H HESS	4/1/90



**STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS**

DEPARTMENT Commerce & Econ. Dev.	DIVISION Insurance	BILL NUMBER HB 533	SPONSOR Representative Finkelstein
SHORT TITLE OF BILL Use of Permanent Fund Dividends for the Purchase of Group Health Insurance			
DEPARTMENT POSITION Neutral			
PREPARED BY <i>J. M. Miller</i>	DATE	COMMISSIONER'S SIGNATURE <i>J. M. Miller</i>	DATE 3/30/90

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Department of Administration Department of Revenue	CONSTITUENT GROUP(S) AFFECTED BY BILL Unknown
ORGANIZATIONAL SUPPORT FOR BILL Unknown	ORGANIZATIONAL OPPOSITION TO BILL Unknown

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND LEGISLATIVE INTENT

ANALYSIS OF BILL PROGRAM EFFECTS

Would provide that an applicant for the Permanent Fund Dividend could elect to have the Commissioner of Revenue deposit the Permanent Fund Dividend into a group health insurance fund. If sufficient funds are transferred to provide for the purchase of a group health insurance policy, the Commissioner of Administration will place the coverage through the competitive bid process with insurers licensed in Alaska. If insufficient funds exist, the funds will be refunded to the program participants.

Assuming a Permanent Fund Dividend of \$1,000, it is unlikely that sufficient money will be available for a comprehensive group health insurance policy.

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS

Administrative difficulties would include effective dates of coverage varying significantly because of the process dates of the Permanent Fund Dividend program. The process of coverage renewal would be complicated by the fact that program participants must requalify for the Permanent Fund Dividend each year.

Since the Permanent Fund Dividend is taxable income, the state may incur exposure if Permanent Fund Dividend participants do not pay taxes on the Permanent Fund Dividend used to purchase health insurance. At the very least, future dividends may be attached for prior nonpayment of taxes.

March 30, 1990

Suggestion: Substitute the following or similar as a bill or resolution for HB 533 (using permanent fund dividends to purchase group health insurance).

The director of the division of insurance is directed to study the feasibility of offering individuals group health insurance in lieu of permanent fund dividends if they meet standard insurance industry underwriting criteria. The group health insurance will have suitable deductibles and co-payments.

If, by December 31, 1990, it is found to be actuarially feasible to offer such insurance, the commissioner of revenue is directed to prepare the 1991 permanent fund dividend application to allow an individual to elect to take the permanent fund dividend in the form of a group health insurance policy.

The director of the division of insurance shall establish whatever mechanism is necessary for the operation of the group health insurance program and shall submit to the Seventeenth Legislature whatever enabling acts are necessary for this purpose.

Group health insurance will be effective for qualifying individuals no later than January 1, 1992.

6-1830E
Ford
4/3/90

Original sponsor(s): REP. FINKELSTEIN

1 IN THE HOUSE

BY THE HESS COMMITTEE

2 CS FOR HOUSE BILL NO. 533 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the use of permanent fund divi-
7 dends for the purchase of group health insurance; and
8 providing for an effective date."

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

10 * Section 1. AS 44.21 is amended by adding a new section to read:

11 Sec. 44.21.035. GROUP HEALTH INSURANCE FUND; TRANSFER OF DIVI-
12 DENDS. (a) There is established the group health insurance fund.
13 The commissioner of revenue shall prepare the permanent dividend
14 application to allow an individual to elect to take the permanent fund
15 dividend in the form of a group health insurance policy. The commis-
16 sioner of revenue shall annually transfer from the dividend fund
17 established under AS 43.23.045 to the group health insurance fund an
18 amount equal to the value of the permanent fund dividend for the
19 current year times the number of individuals who elect in the current
20 year to take the dividend in the form of group health insurance. An
21 individual may not elect to take the dividend in the form of group
22 health insurance if the dividend has been reduced for the collection
23 of debt.

24 (b) Subject to the transfer of sufficient funds under (a) of
25 this section, the commissioner shall use the group health insurance
26 fund to purchase a group health insurance policy for individuals who
27 elect to take the permanent fund dividend in this form. The costs of
28 administering the group health insurance program shall be paid out of
29 the group health insurance fund.

1 (c) The commissioner shall make available bid specifications for
2 desired group health insurance to all insurance carriers licensed in
3 the state and qualified to provide the desired benefits. The speci-
4 fications shall be made available on or before July 1, 1990, and at
5 least once every succeeding five years. The lowest responsible bid
6 submitted by an insurance carrier with adequate servicing facilities
7 shall govern selection of carrier under this section.

8 (d) If the commissioner determines that the annual amount trans-
9 ferred from the dividend fund to the group health insurance fund is
10 insufficient to provide the desired group health insurance and to pay
11 the costs of administering the group health insurance program, the
12 commissioner shall refund to each individual who elected to partici-
13 pate in the program in that year the value of the permanent fund
14 dividend in that year.

15 (e) In this section, "commissioner" means the commissioner of
16 administration.

17 * Sec. 2. AS 43.23.015 is amended by adding a new subsection to read:

18 (i) If an individual elects to take a permanent fund dividend in
19 the form of a group health insurance policy, the commissioner shall
20 transfer the dividend to the group health insurance fund under AS 44.-
21 21.035.

22 * Sec. 3. This Act applies to permanent fund dividends for 1990 and
23 subsequent years.

24 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).
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STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
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Mary Van Nimwegen

H. NESS	3/7/90
N NESS	3/16/90
H. NESS	3/26/90
H. NESS	4/1/90

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 12, 1990

FURTHER REFERRALS:

JUDICIARY
FINANCE

Date of Committee Action: 4/6/90

The HEALTH, EDUCATION, & SOCIAL SERVICES Committee considered: HB 538

HOUSE BILL NO. 538

CHILD VISITATION MEDIATION PROJECT

"An Act authorizing a child visitation mediation project; and providing for an effective date."

RECOMMENDATIONS:

- [] be replaced with CS HB 538 (HESS) [] the same title
[] a new title
[] have attached amendment(s)
[] do pass
[] do not pass
[] no recommendation
[] individual recommendations
[] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- [] fiscal impact _____ [] fiscal note(s) _____
[] zero fiscal note HESS (COMM) [] zero fiscal note(s) _____
[] zero with analysis _____ [] zero fn/analysis _____

SIGNING DO PASS:

J. Ellis
Cheri Davis
Mark Boyer

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>W. Turnage</u>			
<u>Mark Boyer</u>			

J. Ellis
Chairman's Signature

NATIONAL COUNCIL FOR CHILDREN'S RIGHTS ™

721 2nd Street, N.E., Washington, D.C. 20002

Telephone (202) 547-NCCR (6227)

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1

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 of Greater Washington, D.C.

Honorable John Amari
 State Senate, Alabama

Daphne Bauer
 Divorce Mediator
 Coram, New York

Sheila Braggman, former President
 Mothers Without Custody
 Greenbelt, Maryland

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 American Legislative Exchange Council
 Washington, D.C.

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 Commissioner for the New York State
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 New York, New York

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 College Park, Maryland

Jim Cook, President
 The Joint Custody Association
 Los Angeles, California

Norman Cougan
 UCLA School of Medicine
 Los Angeles, California

"Dear Abby"
 (Abigail Van Buren)
 Los Angeles, California

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 U.S. Senator, Arizona

Karen DeCrew
 former President of N.D.W.
 Jamestown, New York

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 New York State Bar Association Family Law
 Section's Custody Committee
 New York, New York

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 Professional Director, Family Mediation
 of Greater Washington, D.C.

Mark Fieldberg, Ph.D., Author, Professor

Honorable Phil Hoff
 Vermont Governor, 1961-69

Joan Berla Kelly, Ph.D.,
 Executive Director
 Northern California Mediation Center
 Costa Mesa

Dr. Carl H. Mey, Jr.
 General Secretary
 Laibman World Federation
 (1974-83)
 Geneva, Switzerland

Honorable Joe McKeithen
 Secretary of State, Louisiana

Honorable Jack Metcalf

Honorable Yolande Montgomery
 State Senate, New York

Honorable Mac Parsons
 State Senate, Alabama

Mal Wilman, Ph.D., Professor,
 Director, Group and Family Studies
 Department of Psychiatry
 Albert Einstein College of Medicine
 Bronx, New York

Honorable Debbie Robinson, Chair
 Mental Health Committee
 House of Representatives, Michigan

Carol Stack, Ph.D., Director, Center for
 the Study of the Family and the State
 Duke University
 Durham, North Carolina

April 15, 1990

State Representatives Max Gruenberg and Peter Goll,
 co-chairmen, House Judiciary Committee
 Alaska State Legislature
 Juneau, Alaska 99811

Dear Chairmen Gruenberg and Goll,

We have been asked by Sandy Armstrong, the
 coordinator of our Alaska Chapter of the National
 Council for Children's Rights, to provide
 information to you.

1. Interference with access (visitation) is a
 national problem. Various researchers find that
 custodial parents interfere with access (visitation)
 in 25% to 50% of cases nationwide. In Wallerstein
 and Kelly's book entitled "Surviving the Breakup"
 (Basic Books, 1980), the researchers found that some
 custodial parents prevented the access of the child
 with the other parent out of anger or spite, while
 in other cases, custodial parents made excuses, such
 as saying "Johnny has something else to do today,"
 or by deprecating the other parent in front of the
 child. Having sole custody is a tremendous power,
 and it can be used constructively, by respecting the
 active parenting of the other parent, or it can be
 used destructively, to undermine the child's
 relationship with the other parent.

2. Access (visitation) enforcement programs have
 proven very successful in places where they have
 been tried. One example is the Michigan "Friend of
 the Court" (FOC) program. In Michigan, staff
 investigates access as well as child support
 complaints.

(more)

A NON-PROFIT, TAX EXEMPT ORGANIZATION STRENGTHENING FAMILIES & ASSISTING CHILDREN OF DIVORCE

Michigan collects more in child support per administrative dollar than any other state. Michigan collects \$8.33 in support for every dollar spent to collect. Michigan officials such as Debbie Stabenow of the House of Representatives, and Dee Van Horn, administrator of the FOC, credit Michigan's balanced approach with this success.

Our National Council received an award for convincing Prince George's County, Maryland, outside Washington, D.C., to hire access mediators to resolve access (visitation) complaints. When one parent complains, the access mediator phones or meets with the other parent, to find out why the visitation order is not being followed. Either parent may file a complaint. The County reports an 88% success record at resolving these complaints, at an average salary time of 1 hour, 37 minutes, at an average cost of about \$15 per case.

Apparently, just having someone in authority care enough about these issues to contact the other parent, and to help educate parents about their responsibilities, sends a powerful message. Allowing phone OR face-to-face meetings provides flexibility for the program.

3. The benefit of a continuing relationship of children with both parents after separation and divorce is vitally important to children. A divorcing spouse may never want to see the other spouse again, but children do not lose their longing for the "absent" parent even years after the divorce, according to research by John Guidubaldi, Kent State University, Kent, Ohio, who has conducted the largest (699 children) study of children of divorce in the country. Guidubaldi recommends more access to the non-custodial parent than is currently generally provided as one means of helping children of divorce. His findings that divorce is a long-time stressor of children, and that children long for the "absent" parent even years after the divorce is supported by Wallerstein and Kelly, and other researchers.

4. Bill Number CS for House Bill Number 538 is a reasonable approach to helping children of separation and divorce. Section ((B))((2))((f)) of the bill, which lets a child 13 or older refer a person with custody or visitation rights to the project, is good, because visitation is a child's right, as well.

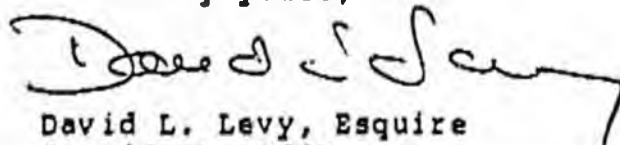
The bill would create an Advisory Council on which two non-custodial and two custodial parents would join with a legislator, person experienced in mediation, and a representative of the judicial branch. Because custodial and non-custodial parents have keen perspective on the problems the Council would examine, the Council would seem to have excellent balance.

In Michigan and Prince George's County, there are open referrals, without having to first screen them by the judiciary. This is important to the speedy resolution of as many complaints as possible.

Thank you both for your support you can give to this bill, which will do so much to help keep Alaska children "out of the middle" of battles between their parents. If you would like additional information, please let me know.

Thank you for helping to strengthen the American family.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "David L. Levy".

David L. Levy, Esquire
President, NCCR

DLL/vdd

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Child Visitation Mediation
Project
 Sponsor: Rep. Ellis
 Requestor: House HESS Committee

Agency Affected: Court System
 BRU: Judicial Council
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

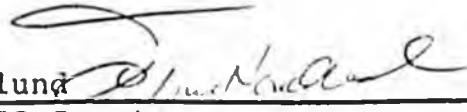
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Costs associated with this project are incorporated
into HB 539.

Prepared by: Jim Nordlund  Phone: 465-3759
 Division: House HESS Committee Date: 4/6/90

Approved by Commissioner: _____ Date: _____
 Agency: _____

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Article IV

The Judiciary

Section 1 - Judicial Power and Jurisdiction.

The judicial power of the State is vested in a supreme court, a superior court, and the courts established by the legislature. The jurisdiction of courts shall be prescribed by law. The courts shall constitute a unified judicial system for operation and administration. Judicial districts shall be established by law.

Section 2 - Supreme Court.

(a) The supreme court shall be the highest court of the State, with final appellate jurisdiction. It shall consist of three justices, one of whom is chief justice. The number of justices may be increased by law upon the request of the supreme court.

(b) The chief justice shall be selected from among the justices of the supreme court by a majority vote of the justices. His term of office as chief justice is three years. A justice may serve more than one term as chief justice but he may not serve consecutive terms in that office. [Amendment approved August 25, 1970 - Effective October 10, 1970]

Section 3 - Superior Court.

The superior court shall be the trial court of general jurisdiction and shall consist of five judges. The number of judges may be changed by law.

Section 4 - Qualifications of Justices and Judges.

Supreme court justices and superior court judges shall be citizens of the United States and of the State, licensed to practice law in the State, and possessing any additional qualifications prescribed by law. Judges of other courts shall be selected in a manner, for terms, and with qualifications prescribed by law.

Section 5 - Nomination and Appointment.

The governor shall fill any vacancy in an office of supreme court justice or superior court judge by appointing one of two or more persons nominated by the judicial council.

Section 6 - Approval or Rejection.

Each supreme court justice and superior court judge shall, in the manner provided by law, be subject to approval or rejection on a nonpartisan ballot at the first general election held more than three years after his appointment. Thereafter, each supreme court justice shall be subject to approval or rejection in a like manner every tenth year, and each superior court judge, every sixth year.

Section 7 - Vacancy.

The office of any supreme court justice or superior court judge becomes vacant ninety days after the election at which he is rejected by a majority of those voting on the question, or for which he fails to file his declaration of candidacy to succeed himself.

Section 8 - Judicial Council.

The judicial council shall consist of seven members. Three attorney members shall be appointed for six-year terms by the governing body of the organized state bar. Three non-attorney members shall be appointed for six-year terms by the governor subject to confirmation by a majority of the members of the legislature in joint session. Vacancies shall be filled for the unexpired term in like manner. Appointments shall be made with due consideration to area representation and without regard to political affiliation. The chief justice of the supreme court shall be ex-officio the seventh member and chairman of the judicial council. No member of the judicial council, except the chief justice, may hold any other office or position of profit under the United States or the State. The judicial council shall act by concurrence of four or more members and according to rules which it adopts.

Section 9 - Additional Duties.

The judicial council shall conduct studies for improvement of the administration of justice, and make reports and recommendations to the supreme court and to the legislature at intervals of not more than two years. The judicial council shall perform other duties assigned by law.

Section 10 - Commission on Judicial Conduct.

The Commission on Judicial Conduct shall consist of nine members, as follows: three persons who are justices or judges of state courts, elected by the justices and judges of state courts; three members who have practiced law in this state for ten years, appointed by the governor from

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF REVENUE

CHILD SUPPORT ENFORCEMENT DIVISION

550 WEST 7TH, 4TH FLOOR
ANCHORAGE, AK 99501-3558
PHONE: (907) 276-3441
TOLL FREE ALASKA: 800-478-3300

March 27, 1990

Representative Johnny Ellis
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Subject: Visitation Mediation
HB 538

Dear Johnny:

You requested clarification of the Child Support Enforcement Division's (CSED) position on referrals to the visitation mediation project. CSED fully supports the goal of increased compliance with court orders for child support and visitation. We are certainly willing to provide information about other public services available to the families we serve. When HB 538 is implemented, we will be happy to add an announcement about the project on our KIDS telephone system; caseworkers on their own volition may also suggest to parents with visitation concerns that one of their options is to avail themselves of any service or project created by HB 538. However, for the following reasons, individual parents have the responsibility of making such contacts directly, by their own choice.

The Child Support Enforcement Division is restricted by the conditions of its Federal funding to activities that are directly connected with the enforcement of child support. We cannot require that parents participate in visitation mediation as a condition of receiving child support services, or contact any public or private agency to refer a case for visitation mediation.

Federally-funded State child support agencies have been advised over the years to avoid the levy of any explicit or implicit cooperation requirements on clients for any purpose other than financial support enforcement. To avoid any dispute with the U.S. Department of Health and Human Services and our Federal auditors on the question of whether the agency is utilizing its resources for purposes that are not directly connected with child support enforcement, we requested that the language of HB 538 not reference this agency. When Kimberly Homme and I spoke on the phone shortly after the bill was introduced, I asked her that we be removed from the bill for these reasons, but I apparently failed to make clear that that included all references to CSED. We stopped tracking HB 538 at that point, and it was only later that I learned indirectly that CSED had been removed only from the advisory council.

Representative Johnny Ellis
Re: Visitation Mediation
March 27, 1990
Page 2 of 2

I certainly apologize to you and to Kimberly for any confusion. With hindsight, I recognize that I should have followed up my conversation with a letter to assure that we each had the same understanding about the position the Division needed to take.

When you and I spoke late last year about your interest in doing something in this area, I remember saying to you that I felt sure our enforcement workers would be lappy to have a service to recommend to people who asked for help on visitation issues. I haven't changed my opinion on that, but I hope this letter clarifies why CSED should not have a formal role in HB 538.

Please let me know of any further questions you or Kimberly have.

Sincerely,



Linda Langston
Director

LL:AAL:akj

FN: 3312I

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 538(HESS)

Page 1, line 27, after "agency.":

Insert "A person who is involved in a dispute concerning child visitation issues may apply to the office of public advocacy for mediation of the dispute without a referral from the agency or a court. The advisory council established under (d) of this section may recommend that the office of public advocacy give greater priority to mediation of disputes referred to it by the agency or a court than to disputes that are not referred to it by the agency or a court."

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 538 (HESS)

Page 2, line 18, after "governor":

Insert "; the governor may not appoint a person under this paragraph who, at the time of appointment, is in arrears on child support payments in any state or is a party in a proceeding that includes child custody or visitation issues"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 538 (HESS)

Page 1, line 21, after "mediation.":

Insert "The demonstration project shall be located in and serve residents of the judicial district of the state determined by the office to have the greatest caseload relating to divorce and dissolution."

March 7 - HESS Discussion Summary of HB 538 - Child Visitation
Mediation Project

Mediation concepts vary between individuals.

Brandt McGee (from Office of Public Advocacy-OPA) supports the bill.

Would like to see it in Anchorage for reduction of administrative costs and easier management of the program since the contract would be managed by OPA.

The project should be mandatory and have a "hammer" or consequence refusal to participate in mediation.

Dads Againsts Discrimination (DADS)

Jim Colver supports bill. He wants to see self-referrals incorporated.

He would like to see a professional counselor on advisory committee.

He believes that just an accusation of domestic violence is not enough evidence for a person to receive a waiver from participation in mediation.

Alaska Family Support Group

Steve Strube supports the bill. He wants an opportunity for people to refer themselves to the mediation project.

Alaska Network on Domestic Violence and Sexual Assault

Cindy Smith wants the participation to be voluntary in all cases.

She would like to see a change in the bill such as "The CSED agency or court may not refer a dispute for mediation if there has been domestic violence as defined in AS 18.66.900."

Alaska Women's Commission

Ruth Lister would like a member from the Council on Domestic Violence or from a shelter program staff to be on the advisory council.

The objective of mediation is to arrive at a post-divorce parenting agreement that will provide

1.) Section 1(a)

Line 21 -> after "mediation," add:

"an open and loving, frequent relationship between the child and both parents."

- HS 25.24.150(c)(6)

The Best Interests of the Child Statute,

2.) Section 1(b)

Line 24 -> after Section., add:

Either parent, adolescent children, or grandparents may request mediation services directly.

AS 25.24.150(a)

"... including an order that provides for visitation by a grandparent... if that is in the best interests of the child."

3.) Section 1(b)

Line 26

delete: [aroused]

add: found guilty of domestic violence in the adjudication of a petition for an extended temporary

Amendments to HB 5138

Restraint order.

(2)

- Maryland project excludes adjudicated DV cases. Contempt of Court as a private remedy is available to the parent. They do instruct the DV perpetrator to their right to "pro se" or with counsel, pursue contempt of Court for denial of Court-ordered visitation.
- Juneau Superior Court often arranges mutually agreeable 3rd party to facilitate visitation, eliminating contact of parties, during transfer of children.
- North Carolina excludes "abuse" cases from mediation.

4.) Section 1. (c)

Line 29:

delete sentence which begins:
[If persons refusal to participate...
add:

Mediation proceedings shall be held in private and shall be confidential, except that there shall be no obligation of confidentiality

made in furtherance of
a crime or fraud, and the
grant of immunity from
criminal conduct.

- 5.) Bar Report of North Carolina
New Section (d) upon receipt of
proof of court ordered visitations
and signed complaint of interference or
denial the parties will be required
to participate in a parent
education orientation session
in which they learn about
the process of mediation.
They may freely choose
thereafter, without penalty,
to forego mediation, arbitration
or pursue litigation of their
dispute.

- In a 2-county North Carolina
Pilot Project about one-half
of those referred to mediation
choose to participate in
continuing mediation.

- Mandatory mediation does
provide satisfaction a new
development in their process.

FROM: NORTH CAROLINA BAR ASSOC. REPORT

Final Report
of the
Advisory Committee on Child Custody
and Visitation Dispute Mediation

March, 1989

INTRODUCTION

Powerful currents of social change have worked a revolution in domestic law during the past decade; during that time, North Carolina adopted the Uniform Child Custody Jurisdiction Act, a "no fault" divorce statute, and an Act providing for the fair distribution of marital assets upon divorce by recognizing the value of a homemaker spouse's contributions to the marriage. Antenuptual agreements are now recognized and regulated by statute.

In the area of child placement and custody decisions, the last vestiges of the "maternal preference" rule were repealed, joint custody was expressly recognized as an option, and the visitation rights of grandparents were addressed. Despite this legislative activity, further changes in the traditional methods of decision-making were demanded, as both the professional and popular literature began to document and publicize the harmful effects of using the adversary system to make placement decisions. There is general agreement that "in the long run a custody battle severely victimizes the children involved, creates lifelong hostilities and distrust between parents and children, as well as between the two adults, and squanders the mental, emotional, and financial resources of the family."¹ "More people are resorting to the courts to settle the question of how to restructure their families. This not only threatens to scar a large number of our children who end up being psychologically battered by the enraged parents and the callous approach of the adversary system, it also puts a tremendous burden on the judge."²

In the traditional adversary system setting, a definite win-lose component makes adversaries and competitors of the parents and draws their attention from the polar star of the child's best interests. In a litigation setting, child custody is only part of a broader set of economic issues, such as child support, alimony, divorce, and a division of marital property. Unless severed from those issues, custody and visitation decisions may become bargaining chips in the overall negotiations.

We have recently begun to realize the continuing damage litigation inflicts on the reorganizing family unit. Unlike non-domestic cases in which the parties normally need have no post-trial contact, the child's caretakers will need to cooperate in matters involving the child's best interests for years. If they are unable to do so, the damage to the child is limitless. Rather than preparing parents for life after court, traditional litigation often leaves festering wounds which lead not only to future turmoil and disruption, but to relitigation.

In an era of high divorce rates and increased custody litigation, practical considerations require that we acknowledge lengthening dockets and resulting trial delays, an increase in non-domestic litigation with increasing demands on court resources, and rising attorney fees. Both public pressures and the efforts of court professionals have led to a movement toward alternatives to traditional methods of dispute resolution. In the area of child custody, all of the above currents met in 1983 when the General Assembly voted to establish and fund a child custody mediation pilot program in Mecklenburg County. Mediation is a method of resolving disputes in which a neutral third party helps parties in conflict define

1 Woolley, The Custody Handbook 213 (1979).

2 Id. at 260

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Final Report
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and Visitation Dispute Mediation

March, 1989

FOREWORD

This report is about children who are hurting.

Consider this typical scene that occurs almost daily in crowded courtrooms across North Carolina...

Many of those present have been in court before and are back because their cases were not reached. The court dockets are crowded.

Two of those present are children of a broken home. We can call them Johnny and Ann. Johnny is twelve years old. His sister Ann is ten.

A man in uniform says: "All 'rise."

A judge enters and takes his place behind the bench. After everyone is seated, he notices Johnny and Ann. He can barely see their small faces above the back of the front row of seats. He wonders about their presence.

The children think about their parents as they watch the judge call the calendar.

They have just spent a great weekend with their father. He asked for assurance from them that they wanted to come and live with him. He had given each a new bicycle. They did want to come and live with him and they had said so. They didn't tell him that they wanted to live with Mom too.

Before they left for the weekend their mother had asked for assurance that the children wanted to remain with her. She had just discussed a beach trip with them for next summer. They did want to live with her and had said so. They didn't tell her that they wanted to live with Dad too.

The judge hears several matters before lunch. As he prepares to leave the courtroom for lunch, he sees a number of grown folks gathering around the two children. The children seem anxious. The grown folks seem determined.

The judge leaves the courtroom because he doesn't feel that it is proper to stay and listen. It occurs to him again that the courtroom is not a good place to determine child custody matters. Perhaps he could talk to the parties and their attorneys after lunch. He thinks about what he can say or do. He thinks about other children who have passed through his courtroom... he thinks about alternatives.

This report is about alternatives.

INTRODUCTION

Powerful currents of social change have worked a revolution in domestic law during the past decade; during that time, North Carolina adopted the Uniform Child Custody Jurisdiction Act, a "no fault" divorce statute, and an Act providing for the fair distribution of marital assets upon divorce by recognizing the value of a homemaker spouse's contributions to the marriage. Antenuptual agreements are now recognized and regulated by statute.

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2 Id. at 260

the issues involved, talk about their differences of opinion, and reach their own agreement. In the context of custody disputes, the goal of mediation is a "parenting agreement," setting out custody and visitation terms and conditions. In the Mecklenburg program, mediators were provided through a contract with United Family Services, a United Way agency. Mecklenburg's program was evaluated by the North Carolina Bar Association Committee on Dispute Resolution in 1986. The committee's January 1987 Study and Evaluation noted the enthusiastic reception by bench and bar, and recommended that the Mecklenburg program continue as a "mandatory prerequisite to child custody litigation," and that mediation "be made available in other judicial districts if they are willing to make a commitment to the training and retention of high quality mediators."³ Senator Helen Marvin of Gastonia introduced legislation during the 1987 General Assembly session to establish custody mediation programs across the state. Despite her efforts, budgetary considerations and the lack of highly trained mediators made it impractical to expand the Mecklenburg-type model statewide at that time. Gaston County (Judicial District 27-A) was added as a pilot district and a program began there in December 1987.⁴

The enabling legislation (1987 N.C. Sess. Laws, C. 830, s. 16(d)) provided in part that:

The Administrative Office of the Courts shall recommend to the 1989 General Assembly a statewide custody mediation program, or it shall recommend that the pilot programs be allowed to expire.

In response to that mandate, Director Franklin Freeman established an advisory committee to consider the role that mediation might fill in the courts. This committee was comprised of eight district court judges from each division across the state -- from urban, semi-urban, and rural areas, from single-county and multi-county districts -- in short, a group representative of our court system. Janet Mason of the Institute of Government served as an ex officio non-voting committee member, with Kathy Shuart of the Administrative Office of the Court's Division of Management Support serving as staff. The committee was charged with considering "the role of mediation as a method of handling custody and visitation issues in domestic cases,"⁵ and advising the director as to courses of action which might be presented to the General Assembly. If the committee consensus favored mediation, it was then to define the issues, make recommendations as to due process and procedural requirements, and suggest mediator qualifications and implementation strategies.

3 Committee on Dispute Resolution, Mandatory Child Custody Mediation Program in Mecklenburg County: A Study and Evaluation (Raleigh: North Carolina Bar Association, 1987), pp. 1 and 8.

4 Divorce Mediation in North Carolina, Vol. 1, No. 1 (North Carolina Bar Association, May 1988), p. 4.

5 Letter dated September 6, 1988, from Franklin Freeman Jr., to members of the Committee.

The Committee met in Salisbury on October 7, 1988, in Gastonia on November 4, 1988, and in Raleigh on December 15-16, 1988, and on January 6, 1989. Oral reports were presented by Chief District Court Judges Jim Lanning and Larry Langson on the pilot programs in Mecklenburg and Gaston Counties. Chief District Court Judge Earl Fowler, Jr., reported on the program he initiated in Buncombe County in which parties are encouraged by the court to attempt mediation, which is made available through a local dispute settlement center using volunteer mediators or through a mental health professional. Ron McCullom, a mediator with the Mecklenburg program, explained the mediation process and its goals. Claire Millar, Executive Director of the Orange County Dispute Resolution Center, and Dee Reid, Coordinator of the Mediation Network of North Carolina, discussed the work of the dispute resolution centers, which presently provide mediation services in fourteen North Carolina counties. Frank Laney of the North Carolina Bar Association provided the association's perspective. In addition to numerous informal conferences and discussions by individual committee members with other judges, members of the bar, and other interested persons, the committee members read extensively in the professional literature and reports from sister states regarding implementation of custody mediation programs. Through the efforts of Kathy Shuart, mediation programs in Connecticut, Florida, Maine, and Michigan were examined in some detail, and outlines of programs in Delaware, Kansas, Michigan, and Nevada considered.

After considering all available information and weighing both advantages and disadvantages, the Committee recommends that mediation of contested custody and visitation issues be institutionalized as a process to be applied routinely in all of our district courts. Complex issues, many requiring hard decision, are raised by that decision. In an effort to satisfy the director's charge, those broad issues are discussed separately below, with the reasoning of the committee summarized, and available alternative solutions noted where appropriate.

ISSUES, FINDINGS AND RECOMMENDATIONS

Issue One: What mediation formats are available and appropriate for North Carolina?

The present movement toward fashioning alternatives to the traditional adversary system of dispute resolution has resulted in a system in North Carolina which includes elements of arbitration, mediation, and conciliation.

The first community dispute settlement center in North Carolina was established in 1978 in Chapel Hill. Additional centers have been established in Chatham County, Guilford County, Wake County, Durham, Winston-Salem, Charlotte, Asheville, Henderson County, Alamance County, Cumberland County, Goldsboro-Wayne County, Orange County, Iredell County, and Polk County. These centers rely on mediation technique, using trained volunteers to promote agreements between the parties to a dispute. Models for delivery of these services vary to some extent from county to county, and funding sources are uncertain and varied; they share, however, a common element of approval and acceptance by both the communities served and the local court systems.

In 1986, following authorization by the 1985 General Assembly, the Supreme Court adopted rules establishing pilot arbitration projects in the 3rd, 14th, and 29th Districts, serving a total of 10 counties. Early indications are that trials are requested in less than 12 percent of cases heard by arbitrators.

In Wake, Buncombe, and Mecklenburg Counties, pilot programs using summary jury trials are being used with great initial success.⁶

In the Raleigh area, the Christian Conciliation Service attempts to settle disputes using a combination of mediation and arbitration. In a number of other North Carolina cities, Family Services, Inc., a United Way Agency, offers family mediation. There are also many private professional counselors and mediators throughout the state.

Although some of our citizens struggling through family difficulties have voluntarily chosen to use mediation-type services to resolve their differences, a large number of domestic disputes enter the court system. The increasing number of filings threatens the ability of the judicial system to deliver quality resolution services and there is no agreement as to a proper remedy. Nor is the wisdom and propriety of the state's mandating pre-trial mediation in filed cases settled by any means. In enacting legislation in this area, lawmakers must first determine the proper degree of participation by the courts in the mediation process.

In "A Guide to Implementing Divorce Mediation Services in the Public Sector," author Elizabeth Comeaux suggests that there is an "involvement" continuum, and a court may be more directly, or less directly, involved with the application of mediation to the court's caseload.⁷

At one end of the continuum is the facilitation model, in which the court may choose to allow mediation to occur, but not make a "substantial public commitment."⁸ Under this model, mediation is left to private professionals or volunteers (e.g., dispute settlement centers); nothing is provided at public expense; but the jurisdiction, by local court rule (or by the state court system, by Supreme Court rule; or the General Assembly, by statute), may define mediation, cite it as an alternative, and clarify issues such as confidentiality. This model (without either rule or legislative definition) exists throughout the state in that parties always have the right to take these disputes to private mediators; that is, no legislation exists forbidding mediation.

The second model is the encouragement model in which the court offers incentives to the parties or suggests mediation when the parties appear before the court, or provides at the clerk's filing desk brochures from a local dispute settlement center.⁹ There may already be a number of judicial districts in North Carolina operating under this model. For example, Orange County Dispute Settlement Center Director Claire Millar's description of the court referral process in Orange County appears to function like this model.

6 Frank C. Lancy, "Alternatives to Trials: North Carolina's Dispute Resolution Program," Popular Government (Fall 1988), p. 12

7 Elizabeth Comeaux, "A Guide to Implementing Divorce Mediation Services in the Public Sector," Conciliation Courts Review, Vol. 21 No. 2, December 1983, at 3.

8 Id. at 3.

9 Id. at 3.

The Buncombe County arrangement, as described by Chief Judge Earl Fowler, also seems to fit this model. The court recommends that mediation be attempted, and parties and counsel are provided with the names of the local dispute settlement center (which is located in the courthouse) and of a local mental health professional who serves as a private mediator.

The third model is one in which the court actually provides mediation services (provision model). Comeaux describes this model as follows:

These jurisdictions are the most effective in generating mediation users and educating the public about the procedure. The routine exposure of large numbers of the divorcing population to the services of publicly employed mediators lends visibility and credibility to the mediation alternative. It also reduces the refusal rate common to many mediation programs as a result of public ignorance and professional skepticism about mediation. Finally, public sector mediation services may stimulate the development and use of private sector organizations. Once educated, many people will doubtlessly prefer to select a private mediator just as they now select a therapist or lawyer. Indeed, once the public is educated and the private sector is developed, it is possible that some government instituted, public sector mediation services could ultimately be phased out (except for services to indigents).¹⁰

Finally, the fourth approach is an enhancement of the encouragement model: the mandatory model. By definition, mediation cannot be forced; under this model, parties are not just encouraged, but are required to attempt mediation before they can litigate. To meet the court's requirement, parties must go through an orientation session in which the process is explained and questions are answered. It is the court's way of ensuring that parties are educated about this option. Comeaux states, "This approach may be viewed alternately as a strong statement of public policy concerning the locus of responsibility for resolving family disputes, and/or as a means of conserving judicial resources."¹¹

The committee unanimously agreed that in the absence of exclusionary circumstances such as abuse, mediation is preferable to litigation as a forum for resolving custody and visitation issues. However, the committee also recognizes that the public and bar are resistant to new procedures, and that a "voluntary" mediation program would likely result in limited usage. Therefore, a mandatory referral model is recommended in which the parties are required to participate in an orientation session in which they learn about the process of mediation. They may thereafter choose, without penalty, to return to litigation, although it is expected that many couples will choose to remain in mediation. In the present pilot programs in Mecklenburg and Gaston Counties, approximately one-half of those referred to mediation choose to continue the mediation process past orientation. Judges in those districts report that many parties who were initially opposed to mediation remain in the program and reach parenting agreements. Even those not reaching agreement are likely to settle their cases prior to trial.

10 [id. at 3.

11 [id. at 3.

which is probably at least partially attributable to the avenues of communication opened up by the mediation process. Attorneys in the pilot districts also report that parties are more likely to settle remaining financial matters where the custody and visitation issues are successfully negotiated. Finally, initial indications suggest that relitigation of custody-related disputes is less likely, confirming the experience of other jurisdictions utilizing mediation services.

On balance, the committee feels that the mildly coercive mandatory referral model is more than justified by benefits to children and their families at the time of initial fragmentation, helps families learn to restructure themselves, and benefits the entire court system in the long term.

Issue Two: How should mediation services be provided and administered?

Comeaux suggests that there are four alternative methods of providing and administering mediation services,¹² and our review of other states' programs and our own experiences in North Carolina support that assessment. In summary, mediation services may be provided:

1. Within the local court system. Mediators are members of the court staff in the local jurisdiction and are hired and supervised by local court officials.

2. By a separate unit administered statewide. Mediators are hired jointly by local court officials and a statewide administrative authority. Policy guidelines are established by the statewide authority, which provides training and coordination; day-to-day supervision falls to local court officials. Our Guardian ad Litem program operates under this kind of arrangement.

3. By contracting for services. The court may contract with individuals or agencies for mediation services. Minimum requirements for those providing services may be established statewide, and local court officials and state officials would enter into contracts with providers. The pilot programs in Mecklenburg and Gaston counties fall within this category.

4. By a current support service group. Groups currently providing support services to domestic court may also have a mediation component which is presently not being used for court cases. For example, there is a close working relationship between local courts and Departments of Social Services in collection of clients' child support. The same departments may have trained domestic mediators on staff who currently mediate domestic disputes between clients. Those mediators may also be available for court referrals.

In determining which method is most appropriate for our court system, the committee recognizes that some combination of alternatives might be appropriate. This decision depends in large part on the resources available within the locale and the demand of local caseloads. In addition, each method has strengths and weaknesses which must be considered. The following factors should be considered in determining how to provide and administer services within our unified statewide court system:

12 Id. at 7.

1. Availability of resources. In our urban jurisdictions, it is likely that any of the service-provider models is a possibility. In more rural jurisdictions, we may not have that flexibility. In fact, we may be introducing a service for which there is no local provider. Under these circumstances, service providers must be recruited to the locale, provided by a state office or neighboring jurisdiction, or developed through training of local personnel. As a by-product of this approach, alternative dispute resolution services may be made available throughout the state. Fortunately, as a result of workshops sponsored by the Mediation Network, over 100 volunteer mediators were trained to mediate custody disputes in North Carolina.¹³ Whether they will be available as a resource depends, of course, on whether the model adopted utilizes volunteer mediators.

2. Caseload demands. The number of custody and visitation disputes in a district requiring referral will determine in part the type program established. In a low-demand district, the court may decide to economize by contracting on an "as-needed" basis. Where there is a large caseload and high demand, a court-staff mediator arrangement may be indicated.

3. Management, supervision, and accountability. Mediation of custody and visitation issues is under consideration because of the growing conviction that the mediation forum is better suited than the litigation forum to focus on the best interests of the child. Referral to mediation does not, however, mean an end of court involvement and control. On the contrary, a heightened degree of management will be necessary to ensure both a continuing focus on the best interests of the child and fair treatment of all adult parties. It is essential, therefore, that where the court refers all such matters to mediation, those providing mediation services be fully accountable to the court. The degree of involvement by the court will depend in part, of course, on the mediation model adopted. Services would be more consistent if provided by a statewide unit, and the need for local supervision would be accordingly lessened. It is more likely, however, that the several districts will fashion individual and unique programs, requiring close supervision.

Although the district bench must of necessity supervise daily progress of individual cases, assistance from the Administrative Office of the Courts will be necessary in terms of policies, guidelines, educational orientations, coordination, and supervisory procedures. This would ensure some uniformity of the quality of mediation services throughout the state.

The committee recommends therefore that the Administrative Office of the Courts develop minimum acceptable standards for delivery of mediation services, and for monitoring delivery of those services by mediators.

Issue Three: What are the procedural issues in a custody and visitation mediation program?

Some of the procedural issues that need to be considered in establishing a custody and visitation mediation program have been discussed earlier; however, we raise them here as a group because each should be addressed in enabling legislation, court rule, and administrative guidelines. They include:

13 The N.C. Mediator, Fall 1988, p. 5.

1. Definition of mediation and its goals. Mediation is defined as a "dispute resolution process utilizing a neutral third-party to facilitate problem solving between parties in conflict" in a report on the pilot program in Mecklenburg County prepared by the North Carolina Bar Association's Committee on Dispute Resolution. The report went on to define the goal of a child custody mediation program as enabling "parents to generate their own resolutions and develop a written agreement, the parenting agreement, that sets out the custody terms and conditions."¹⁴

By definition mediation is voluntary, but in some areas parties are being required to try mediation first before coming to court. The mediator has no coercive power. He or she is not bound by a "win or lose" perception of a problem, but rather can concentrate on the underlying relationship of the parties, and by helping them to identify their needs reach a solution through compromise. Professor Fuller has referred to the central quality of mediation as "its capacity to re-orient the parties toward each other, not by imposing rules on them, but by helping them to achieve a new and shared perception of their relationship, a perception that will redirect their attitudes and dispositions toward each other."¹⁵

In a pamphlet distributed to parents entering the Custody/Visitation Mediation Program in Gaston County, the goal of mediation is well stated as "reorganiz(ation of) the family, not to 'award' custody to one parent and make a 'visitor' of the other."

Although the mediator is often referred to as a "neutral," most mediators consider that they are neutral only as between the adult parties, their task being to focus discussion on ways the family can restructure itself in the best interests of the children involved.

2. Scope. The committee recommends that only custody and visitation issues be referred to mediation by the court, so that the mediation sessions can focus only on the best interests of the child without dealing with the financial matters involved in property settlements, alimony claims, and child support awards. While there is admittedly some correlation between the parenting arrangement and the support award, consideration of that issue in a mediation context could divert the parties from the true purpose of mediation. Where disputes arise after the entry of a court order relative to the modification or enforcement of the custody provisions of that order, those issues would also be routinely referred to mediation under the committee's recommendation.

14 Committee on Dispute Resolution, Mandatory Child Custody Mediation Program in Mecklenburg County: A Study and Evaluation (Raleigh: North Carolina Bar Association, 1987), pp. 1 and 8.

15 Task Force on Dispute Resolution of the North Carolina Bar Foundation, Dispute Resolution (Raleigh: North Carolina Bar Association, 1985), pp. 10-11.

Nor would it seem that cases should be diverted from mediation solely because one of the parties resides outside the county or district. If the parties can litigate their case within a specified area, they can normally mediate the same issues within that area. Obviously, the court could excuse a party from mediation if referral would cause undue hardship, as in the case of an out-of-state party.

Since the purpose of mediation is to benefit the children affected by it, parties would not be excused because of indigency, as either a sliding scale fee arrangement would compensate for their indigency or the court could forgive or reduce fees if necessary.

Since the mechanics of mediation should be left in large part to be shaped by local rule, the committee recommends that details such as the number and duration of mediation sessions be left for the several districts.

3. Timing of mediation referrals. While the committee recommends that all issues of custody and visitation be referred for mediation, the timing and mechanics of referral should be reserved to the individual districts. Individual caseloads, local calendar rules, and expressed preferences of the domestic bar might mandate referral at different points in the litigation continuum. Administrative guidelines should encourage local officials to address these issues in local rules to ensure an effective and efficient procedure.

4. Confidentiality. Unless they are guaranteed confidentiality, parties are not likely to be advised by counsel to freely participate in the mediation experience. The pilot program legislation provided that

(f) Mediation proceedings shall be held in private and shall be confidential. All verbal or written communications from either or both parties to the mediator or between the parties in the presence of the mediator made in a proceeding pursuant to this section are absolutely privileged and inadmissible in court.

Although aware of the relationship between guaranteed confidentiality and successful mediation, the committee was concerned that there be no immunity for crimes committed in the presence of the mediator, such as assault and communicating threats. There was also concern that information about continuing criminal activity, such as child or spouse abuse or neglect, not be protected in a subsequent criminal proceeding. Nor should anyone be excused from statutory reporting requirements which require all citizens to report suspected child abuse or neglect to the Department of Social Services.

The committee recommends, therefore, that any legislation provide that there be no privilege as to communications made in furtherance of a crime or fraud, and no grant of immunity from criminal conduct.

5. Privacy. Persons participating in the actual mediation process will of necessity vary from case to case. Whether to include step-parents and the children themselves must be left to the demands of the individual case and the mediator's sound discretion. The pilot legislation provided that the mediator might "exclude counsel from participation in the proceedings if the court finds that

exclusion is appropriate." The committee recommends the deletion of any exclusionary language, since the mediator may -- with the assistance of the supervising court -- take such drastic action if required in a particular case. Counsel are welcome at the sessions, but experience in the pilot districts has indicated that counsel seldom participate in the mediation sessions.

6. Education of the public, the bar, and the bench. The experience of court officials in the pilot districts and in Buncombe, Orange, and Chatham counties underscores the importance of notification to the general public and education of those who will have direct contact with the procedure, including District Court judges, the domestic bar, and the parties to contested domestic actions. Because parties must communicate in good faith in the mediation hearing in order to resolve their disputes, it is critical that they understand the mediation process and enter into the hearing with an open mind, predisposed toward the process. Counsel's understanding of the mediation process and a mediated agreement is critical, as the attorney will set the tone for the client who is entering into mediation. Even a well-designed mediation program will fail without the support of the bar. The Chief District Judge in each of the mediation districts stresses the importance of continual bar education, despite the demands this places on scarce judicial time. Judicial education is equally important, as the judge assigning cases to mediation may be the first to explain to the parties what is involved in the mediation process and how it should be approached.

The committee recommends that a district applying for approval of a mediation project be willing to make a commitment to educate the general public, along with members of the domestic bar and the bench. Dialogue with community leaders and interested lay persons in the community may lead not only to volunteers for a new program, but to long-term support for the effort.

7. Form of the agreement. In the pilot districts, parents who resolve their disputes draft a parenting agreement which states the resolution in simple terms. In Mecklenburg County, this agreement becomes an order of the court through a simple form order which incorporates the agreement by reference. In Gaston County, the terms of the parenting agreement are incorporated into the usual form of consent agreement by the attorneys, which is then signed by the parties and a judge and filed with the court.

Although the mechanics of recognition of a parenting agreement might best be reserved to the several districts, it is important for the purposes of interstate enforcement that a parenting agreement be accorded the respect due any consent order. Otherwise, serious enforcement difficulties arise if one of the parties to a parenting agreement removes a child from the state in violation of the agreement. It is also important that there be a consistent practice within a judicial district.

8. Mediator qualifications. The committee was concerned that the court protect the parties to a mandatory referral custody/visitation mediation program by ensuring the integrity of the mediation process and the competence of those serving as mediators. Unfortunately no formula exists to ensure integrity and competence. Even among dispute resolution professionals there is considerable

debate concerning mediator qualifications, particularly educational degree requirements. In its October 1988 report, the Society of Professionals in Dispute Resolution Commission on Qualifications stated that "(t)here are no obvious answers to what constitutes a qualified neutral or which of the policy options described is appropriate to ensure that those who practice are qualified to do so."¹⁶ Regarding degree requirements, the commission further stated:

We recognize the knowledge acquired in obtaining various degrees can be useful in the practice of dispute resolution. At this time and for the foreseeable future, however, no such degree in itself ensures competence as a neutral. Furthermore, requiring a degree would foreclose alternative avenues of demonstrating dispute resolution competent.¹⁷

The pilot legislation required that

(d) For a person to qualify to provide mediation services under this section, that person shall show that he:

(1) has a law degree, or at least a master's degree in psychology, social work, family counseling or a comparable human relations discipline, and

(2) has at least 40 hours of training in mediation techniques by a qualified instructor of mediation. A qualified instructor of mediation is a professional who has provided mediation services for at least 30 cases, has publicly and explicitly identified his services to include mediation, and has the educational background stated in subsection (1). A counseling service is not a mediation service unless the derivation of a written statement between disputants is the explicit objective of the service. Marital counseling, psychotherapy, and family therapy are not mediation services.

Preliminary results from Maine, after a decade of practical experience, found "no correlation . . . between the educational or experiential qualifications of mediators and their performance. While the attributes of an effective mediator may be hypothesized they are not known."¹⁸

16 Society of Professionals in Dispute Resolution Commission on Qualifications; Summary of Issues and Preliminary Principles; October 1988, p.1.

17 *Id.* at 4.

18 Lincoln Clark, Mediator Qualifications and Effectiveness, p. 1.

Balancing the court's need to protect the parties and the lack of clearly-defined, objective qualification criteria by which to guarantee competence, the committee recommends that educational degree requirements and specialized training requirements similar to those in the pilot program legislation should be considered by the Administrative Office of the Courts in establishing specific qualification guidelines, certification procedures, and performance evaluation standards and procedures. The committee also suggests that because the field of dispute resolution is rapidly changing, the Administrative Office of the Courts should monitor the issue of qualification criteria and update eligibility requirements as appropriate.

Issue Four: How might a statewide custody and visitation mediation program be funded?

The committee's review of programs across the country indicated a variety of funding alternatives: court system funded; user funded; funding through special tax or filing fee assessments; and some combination of the above.

Due to time constrictions, the committee is not in a position to recommend a funding strategy. How a statewide program is funded will depend in large part on the model that is adopted, qualifications adopted for mediators, and the overall cost of operating that model. Costs will be substantially less, of course, if the dispute settlement centers and similar community resources already in place can furnish an administrative framework for the mediation program. Where trained volunteers are used in mediation, such as in Buncombe County, the per case costs are dramatically less than in the pilot districts.

It appears that the funding arrangement for the pilot programs in which the state's appropriation is partially offset by user fees should be considered on a statewide basis. User fees would be determined by the Administrative Office of the Courts, utilizing a sliding scale approach which would ensure a fair distribution of the costs of the program and further guarantee that no children would be denied the benefits of mediation because of the indigency of their parents.

Issue Five: How might a statewide custody and visitation mediation program be implemented?

The committee remains committed to statewide application of the mediation process to custody and visitation disputes, but recognizes the demands on local and state resources in implementing mediation throughout 100 counties and 34 District Court judicial districts, the need to establish court rules and administrative guidelines, and the need to identify and certify qualified mediators. Therefore, the committee recommends a phased-in approach to statewide implementation, beginning with districts which have programs in place. Implementation could then proceed across the state as funding and certified mediators become available. The Administrative Office of the Courts would be in the best position to accept applications from the several districts, and determine an implementation schedule.

CONCLUSION

Mediation offers an exciting alternative to the traditional adversary system of resolving custody and visitation disputes in North Carolina. The committee recommends its use throughout the state as an effective method of making child-centered placement decisions, anticipating benefits not only to parents and children but to an overcrowded court system. Although significant numbers of cases will be successfully negotiated through mediation, the majority of filings will be dealt with in traditional fashion. Children in cases which are not mediated will still be part of an adversary system which may require their attendance at court proceedings and possibly their testimony there. There is presently no requirement that judges who make placement decisions have specialized training or equivalent experience, nor are impartial expert witnesses usually available to the court. Children do not have party status in custody cases, and thus are not usually represented by an advocate.

As Judge Ed McCormick says in the vignette which serves as a Foreword to this Report, we are searching for alternatives. Mediation will not replace traditional litigation, but will provide a valuable option to the courts. If lasting damage is to be avoided to the children of divorce, other options must be explored, other courses charted. The committee recommends that the legislature consider the entire existing statutory framework regulating child placement decisions, with a view toward an overall revision which would guarantee that such decisions be child-centered.

Courtesy of: DADS



THE PRINCE GEORGE'S COUNTY GOVERNMENT
OFFICE OF CHILD SUPPORT ENFORCEMENT, SUITE 405
14701 Gov. Oden Bowie Drive, Upper Marlboro., MD 20772
952-4822

April 9, 1986

MEMORANDUM

TO: John Wesley White, Chief Administrative Officer
Office of the County Executive

FROM: ^{A.U.S.} Meg Sollenberger, Executive Director
Office of Child Support Enforcement

SUBJECT: Report on Visitation Pilot Project

As you know the Office of Child Support Enforcement is currently conducting a Visitation Pilot Project at the recommendation of the Visitation Task Force with the support and approval of the County executive, legislative and judicial branches of government.

On January 23, 1986, Ms. Rita Gunn, an experienced counselor and social work administrator accepted a temporary (700 hour) Counselor Coordinator I position with this agency to carry out this project.

VISITATION PROJECT STATISTICS

At the end of the first quarter of calendar year 1986 the results of Ms. Gunn's efforts are as follows:

Number of Hours Worked	:	203
Number of Visitation Complaints Received	:	92
Number of Visitation Complaints Resolved	:	75
Number of Visitation Complaints Reopened	:	5
Number of Visitation Complaints Carried Over:	:	17
Average Number of Complaints Received Per Week	:	9.2
Average Number of Complaints Resolved Per Week	:	7.5
Average Number of Telephone Contacts Per Complaint	:	2.33
Average Time Spent Per Case	:	2 hours 15 minutes

VISITATION PROJECT OPERATION

Ms. Gunn's primary method of operation is to call the custodial or non-custodial parent who has requested her services by contacting our office or the courts. From this call she determines the nature of the complaint, confirms the status of child support payments in the case, researches the case file to determine the nature of court-ordered visitation and explains that she will contact the other party to the case.

The other party is then contacted. In this call she explains the nature of the complaint, listens to the "other side of the story", explains legal requirements and remedies and attempts to resolve the complaint.

Further calls continue to be made to either party until resolution is reached. Her goal is to establish compliance to the court order by both parties, to initiate dialog between the parties regarding the child(ren)'s best interests and to remove herself from the process allowing the parties to work together to assure continued regular visitation and support.

VISITATION PROJECT ADMINISTRATION

Ms. Gunn works eight hours on Thursdays and Fridays and four hours on Saturdays.

She has designed and completes a bi-weekly Visitation Activity Report which is provided to the Executive Director of the Office of Child Support Enforcement. She has also drafted a statement of Prince George's County's Visitation Policy which will be developed into a brochure and mailed to all the Office of Child Support Enforcement clients and obligors. This draft is now being reviewed by the courts and the county administration.

Completed case notes, included on a Visitation Counselor's Report also designed by Ms. Gunn, are filed in case files. These notes will also be filed in corresponding court jackets and are available to all parties should visitation issues eventually require litigation.

VISITATION PROJECT ANALYSIS

To date, one part-time visitation counselor has been able to handle the workload. However, we expect that publication and mailing of the brochure will generate sufficient numbers of new complaints to require increased staffing. Therefore, the Office of Child Support Enforcement has included a request for a full-time Counselor Coordinator I position in the FY-86 budget request.

If this request is approved, further analysis will be conducted at the end of the second quarter of calendar year 1986 prior to submission of a request to fill this position. Should data not indicate increased need, the position will be filled at 50% until workload necessitates greater staff time for this function.

John Wesley White
Page Number 3
April 9, 1986

Should you have any further questions or require further information regarding this project, please don't hesitate to contact me.

MS/mjfh

cc: Visitation Task Force



THE PRINCE GEORGE'S COUNTY GOVERNMENT

OFFICE OF CHILD SUPPORT ENFORCEMENT
14701 Governor Oden Bowie Drive, Suite 405
Upper Marlboro, Maryland 20772 952-4822

July 15, 1986

MEMORANDUM

TO: John Wesley White, Chief Administrative Officer
Office of the County Executive

FROM: ^{J.W.S.} Meg Sollenberger, Executive Director
Office of Child Support Enforcement

SUBJECT: Report on Visitation Pilot Project

Visitation project statistics for the period from April 1, 1986 through June 30, 1986 are as follows:

Number of Hours Worked:	282
Number of Visitation Complaints Received:	138
Number of Visitation Complaints Resolved:	125
Number of Visitation Complaints Reopened:	10
Number of Visitation Complaints Carried Over:	23
Average Number of Complaints Received Per Week:	11.5
Average Number of Complaints Resolved Per Week:	10.4
Average Number of Telephone Contacts Per Complaint:	2.2
Average Time Spent Per Case:	1 hour, 17 minutes

We have created a permanent Visitation Counselor position with a county classification of Community Developer I/II. Recruitment will begin as soon as a personnel register is available. Ms. Gunn will continue in her temporary (700 hour) position until the permanent position is filled.

Although her efficiency in handling these complaints has increased as illustrated by the drop in time spent per case from 2 hours 15 minutes in the first quarter of operation to one hour 13 minutes in the second quarter, she has been unable to complete additional work such as development of a brochure and compilation of collection data on visitation cases. Therefore the permanent position will be filled as a full-time rather than half time position.

Should you have any further questions or require further information regarding this project, please don't hesitate to contact me.

MS/mjfh

cc: Visitation Task Force
County Administration Building — Upper Marlboro, Maryland 20772



THE PRINCE GEORGE'S COUNTY GOVERNMENT

OFFICE OF CHILD SUPPORT ENFORCEMENT
14701 Governor Odan Bowie Drive, Suite 403
Upper Marlboro, Maryland 20772 952-4822

January 21, 1987

MEMORANDUM

TO: John Wesley White, Chief Administrative Officer
Office of the County Executive

FROM: ^{M.S.} Meg Sollenberger, Executive Director
Office of Child Support Enforcement

SUBJECT: Visitation Report

Visitation Statistics for the period from
October 1, 1986 through December 31, 1986 are as follows:

NUMBER OF HOURS WORKED	:	480
NUMBER OF VISITATION COMPLAINTS RECEIVED:		273
NUMBER OF VISITATION COMPLAINTS RESOLVED:		227
NUMBER OF VISITATION COMPLAINTS REOPENED:		18
NUMBER OF VISITATION COMPLAINTS CARRIED OVER:		75
AVERAGE NUMBER OF COMPLAINTS RECEIVED PER WEEK:		23
AVERAGE NUMBER OF COMPLAINTS RESOLVED PER WEEK:		19
AVERAGE NUMBER OF TELEPHONE CONTACTS PER COMPLAINT:		2.90
AVERAGE TIME SPENT PER CASE:		1 hour, 37 minutes

MS/mjeh

IMPORTANT

Note:

The above data means an 80% "resolution" rate at an average settlement time of 1 hour, 37 minutes per case. In a telephone conversation with county officials, we learned the average salary cost per case is about \$15.00

- National Council for Children's Rights

TUESDAY 3-20-90

HB 538

For an Act entitled: "An Act authorizing a child visitation mediation project; and providing for an effective date."

Sec.1 CHILD VISITATION MEDIATION PROJECT. (a) The Alaska Court System may

(1) create a child visitation mediation demonstration project, using a court mediator in Anchorage and Fairbanks to mediate child visitation disputes.

(2) evaluate the project created under (1) of this subsection for its ability to promote and serve the best interests of the child as well as for efficiency and economy.

(b) The purpose of the mediation project shall be to help the parties reach voluntary agreements regarding child visitation that are in the best interests of the child.

(c) In establishing the demonstration project created under (a) of this section the court system shall:

(1) exclude from the scope of the project cases involving domestic violence on any family members.

(2) inform all parties of their rights and the scope and purpose of the demonstration project before mediation begins.

(d) Participation in mediation under this section is voluntary for all parties. A person's refusal to participate may not be used against the person in another proceeding.

(e) Mediation shall be conducted informally as a conference or series of conferences. Counsel for the parties may attend all such conferences.

(f) The confidentiality of the mediation sessions shall be protected and the mediator shall be prohibited from making recommendations to the court about the disposition of the controversy.

(g) The court shall report to the legislature by January 30, 1992 concerning the operation of the demonstration project authorized under this section.

Sec. 2 This act takes effect July 1, 1990

Sec. 3 Sec.1 of this act is repealed Jan 30, 1992.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Admin.
 Title: Child Visitation Mediation BRU: Office of Public Advocacy
 Project
 Sponsor: Rep. Ellis Components: _____
 Requestor: House HESS Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: *BTW* Brant McGee, Director Phone: 274-1684
 Division: Office of Public Advocacy Date: 3/6/90

Approved by Commissioner: _____ Date: _____
 Agency: _____

Distribution (by preparer):

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

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act ... to establish a child visitation mediation project ...
Sponsor: Representative Ellis
Requestor: _____

Agency Affected: Public Safety
BRU: Council on Domestic Violence and Sexual Assault
Component: _____

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

CAPITAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
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REVENUE	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Passage of this bill is expected to have no fiscal impact on the Department of Public Safety.

Prepared by: Barbara Miklos, Executive Director
Division: Council on Domestic Violence and Sexual Assault
Approved by Commissioner: Arthur English
Agency: Department of Public Safety

Phone: 465-4356
Date: 3/15/90

Date: 3-15-90
Page 1 of 1

BILL NO: CS/HB 538

DATE: March 15, 1990

TITLE: An Act directing the Office of Public Advocacy to establish a child visitation mediation project, and providing for an effective date

CONTACT: Barbara Miklos
465-4356

DEPARTMENT OF
PUBLIC SAFETY

CS for HB 538 (HESS) directs the Office of Public Advocacy to establish a child visitation mediation project. The Council has some concerns about some of the provisions in this bill.

Mediation can be very harmful to victims of domestic violence or sexual assault. Violence distorts the balance of power in a relationship. Violent men physically and psychologically coerce women, by domination and intimidation. Women who are severely intimidated and frightened of violence are not able to make independent decisions in their own best interests or the best interests of their children. Domestic violence and sexual assault occur much more frequently than may be suspected. A study by Stockholm and Helms, which surveyed women in Alaska on the extent of abuse of women by their spouses or live-in partners, found that 26% of the women had been abused as adults. It is important to note that studies show domestic violence occurs at least at the same rate after a separation as before a separation. In fact, violence is often escalated following a separation and, therefore, the danger to the victim is increased.

We recommend that subsection (b), Section 1, lines 25 - 26, page 1, be changed to delete the requirement that a report of domestic violence must be made to a public agency before a domestic violence case can be excluded from mediation. There are several problems with this requirement. Many victims of domestic violence will not have made a report to a public agency. It is only recently that arrests or prosecutions of domestic violence assaults have been vigorously pursued, thus there was previously little advantage to the victims in reporting domestic violence assaults. Reports to DFYS are confidential. If a victim sought services from a non-profit domestic violence program, that would not be a public agency, and those records are also required to be confidential. In most rural areas, services are simply unavailable, and so this provision is of particular concern for people who have lived in rural areas. We recommend that the wording be changed as follows: "The Agency or court may not refer a dispute for mediation if there has been an indication (A PARTY TO A DISPUTE HAS BEEN ACCUSED) of domestic violence, as defined in AS 18.66.900. [IN A REPORT TO OR BY A PUBLIC AGENCY]." The Council on Domestic Violence and Sexual Assault also feels it is important to have someone who has expertise in the field of family violence on the Child Visitation Mediation Council.

The Council on Domestic Violence and Sexual Assault agrees that participation in mediation should be voluntary, as provided for in subsection (c), and that a person's refusal to participate may not be used against the



Alaska State Legislature

Please enter into the record my testimony to the House H.E.S.S.
committee name

committee on 538/539, dated 3-7-90
bill/subject

I am in support of this bill because not all cases of denied visitation are because of D.V. and because of the cost of going to court to get visitation restarted. I have been denied visitation on many holidays and birthdays, if you call the police, there is nothing that can be done to help. In court each parent is made out to be a bad person by each others lawyers. My hope is that someday parents woldn't be bad guys who do not have custody of their children, but just moms or dads who can freely be a part of their childrens life. This bill is a step in the right direction. Don't let the hope of of a better way to solve

Signed: Mabel H Ransay *visitation die!*
Testifier

Representing (Optional)

POB 874691 wasilla AK 99687

Address

892-7163

Phone No.