ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5815 HOUSE JUDICIARY

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HB 472: POLICY ISSUES AND BACKGROUND

Introduction

Alaska currently has a child support guideline that is used to compute child support levels in judicial and administrative cases. The guideline was adopted and made applicable to judicial child support cases by the Alaska Supreme Court in 1987, as Civil Rule 90.3.

HB 472 would enact a legislative child support guideline. The guideline in the bill as introduced is identical to Civil Rule 90.3, with the single exception of child care expenses. (Under the bill, the judge is to consider both parents' child care expenses; the rule provides that only the non-custodial parent's expenses are a factor.) In addition, HB 472 creates a Child Support Commission to review the guideline, as is required by federal law, every four years. The bill also calls for an economic study of the costs of raising children in Alaska.

I. History of Alaska's Guideline

A. Development and Adoption of Civil Rule 90.3

The adoption of a child support guideline by the Alaska Supreme Court was prompted by federal legislation. The Child Support Enforcement Amendments of 1984 required each state to adopt, prior to October 1, 1987, a child support guideline to be used in setting child support awards. The law stated that the guideline could be established "by law or by judicial or administrative action"; it required that the guideline "be made available to all judges and other officials who have the power to determine child support awards..., but need not be binding...".

The 1984 Amendments also required each state to form a commission to study the state's child support system. Governor Sheffield appointed a 13-member Alaska Commission on Child Support Enforcement [the Sheffield Commission], chaired by the commissioner of revenue. The Commission included representatives of a broad spectrum of interested parties,

among them legislators, attorneys, a judge, custodial and non-custodial parents, and several state officials.

The Sheffield Commission issued its report to the governor in October, 1985. The Commission made a number of recommendations for improving the child support system. Among other things, it recommended the adoption of a presumptive formula for child support awards, and made several specific suggestions regarding the content of such a guideline. The Commission also recommended that, in order to ensure uniformity, "administrative and judicial standards for establishing support levels be standardized within the Alaska statutes." (Recommendation #9)

The administration did not introduce legislation to implement this recommendation in the 1986 legislative session, however. Instead, on March 4, 1986, the commissioner of revenue wrote to the administrative director of the Alaska Court System, asking that the court system adopt a guideline through judicial action. In response, the Chief Justice appointed a three person committee composed of a judge, a standing master and the court system's deputy administrative director, "to make recommendations in the form of proposed rules embodying guidelines which would implement the [Sheffield] Commission's recommendations."

The court system's subcommittee proposed a draft rule to the Supreme Court in December, 1986. The draft rule, which was largely based on the Sheffield Commission recommendations, was widely circulated. Five members of the House of Representatives, all of them attorneys, wrote to the court system objecting to the adoption of a court rule on the ground that as substantive law, such a matter fell within the legislature's constitutional authority under the Alaska Constitution. The members asked that the court submit any proposal it was considering to the chair of the Judiciary Committee for introduction by request.

The Chief Justice wrote back, noting that the court had been advised by its counsel that promulgation of a court rule was within its constitutional authority, but that it had no objection to legislative action. Subsequently, two members of the Senate Finance Committee wrote to the court system, in support of expeditious action by the judiciary to adopt a guideline in time to meet the federal deadline.

Once again, in the 1987 session, no legislation was introduced to implement a child support guideline. By the time the legislature adjourned, however, the court system's Civil Rules Committee had reviewed the draft proposed guideline and had submitted a revised proposed rule to the Supreme Court for its consideration. Following further review and revision by the Supreme Court, Civil Rule 90.3 was adopted effective August 15, 1987. The Division of Child Support Enforcement adopted an administrative regulation, effective September 30, 1987, based on the court rule, for use in administrative cases.

B. Events Since Promulgation of Civil Rule 90.3

1. Family Support Act of 1988

The federal Family Support Act of 1988 mandated that a single, uniform state child support guideline be presumptively applied in all judicial and administrative proceedings, and that the guideline be reviewed at least once every four years.

The new federal law raised a question as to whether Alaska law was in conformity with the new federal requirements. Although Civil Rule 90.3 was already presumptively applicable in all judicial proceedings, Alaska law at that time did not provide for use of a single, uniform guideline in both judicial and administrative support proceedings. (Although CSED, acting independently, had adopted a guideline similar to Civil Rule 90.3) Furthermore, there is no provision in Alaska law for the periodic review of the guideline used.

2. SB 54

The first Alaska legislation specifically addressing the issue of child support guidelines was introduced by Senator Uehling at the beginning of the 1989 session. SB 54 would have assured compliance with federal law by giving the Alaska Supreme Court specific statutory authority to promulgate a child support guideline by court rule which was presumptively applicable in all judicial and administrative child support proceedings, and by requiring the court to undertake a review of the rule at least once every four years. However, the bill remains in the first committee of referral, and no further hearings on it are planned.

3. Revisions to Civil Rule 90.3

In the meantime, after a year of experience with Civil Rule 90.3, the Chief Justice in late 1988 appointed a five member committee to review the rule. The committee was chaired by a family law attorney in private practice, and included a superior court judge, a family law master, and representatives of the Division of Child Support Enforcement and the Department of Law. The committee solicited written testimony regarding Civil Rule 90.3 and held two well publicized public oral comment sessions, teleconferenced statewide. The committee forwarded its recommendations for amendments to Civil Rule 90.3 to the Supreme Court on August 15, 1989, along with a proposed commentary to the rule.

On October 5, the Supreme Court adopted revisions to Civil Rule 90.3 effective January 15, 1990. The commentary to the rule was not approved or adopted by the court, but was published as an aid to users of the rule. Subsequently, the Division of Child Support Enforcement has by regulation adopted Civil Rule 90.3 as the child support guideline for administrative cases.

4. Family Support Task Force

While the court system process for amending Civil Rule 90.3 was in progress, the Child Support Subcommittee of the Family Support Task Force established by SCR 2 (1989) was meeting to review state law in the area of child support. The subcommittee was co-chaired by Rep. Max Gruenberg and CSED Director Linda Langston. It included legislators, representatives of the judicial branch, representatives of the administration, and both custodial and non-custodial parents. The subcommittee heard substantial public testimony in a series of meetings during the interim. One of the recommendations adopted by the subcommittee, and later by the Task Force, was that the legislature enact a child support guideline, and that Civil Rule 90.3 be used as the starting point for legislative consideration. Representative Gruenberg, as chair of the subcommittee, has introduced HB 472 to implement that recommendation.

II. Other States' Experience

A. Federal Recommendations

The federal Advisory Panel on Child Support Guidelines has recommended "that guidelines be implemented by means of [a] court rule of statewide applicability, where feasible," and that the process of developing guidelines include "active participation by a broadly comprised group, preferably including representatives of the courts, executive branch, the legislature, and relevant professional and advocate groups." (Advisory Panel Recommendation #9) The advisory panel stated, "Involvement of all groups with a stake in collections helps assure that the guidelines will gain maximum possible acceptance." The panel suggested that the "technical issues and detailed content" of a guideline could be dealt with better in a court rule than in a statute, and that a court rule could be more easily modified in the light of experience than a statute. It noted, however, that constitutional considerations might preclude this approach, particularly if there were no legislative authorization.

In Alaska, as described above, a "broadly comprised group" (the Sheffield Commission) worked to develop the initial general recommendations for implementation of a guideline, but the actual drafting of the proposal was carried out by representatives of the court system, with technical assistance from representatives of the administration. The recent amendments to the rule were drafted by a similar body, without "active participation" in the drafting process by a "broadly comprised group". In both cases the final language was the product of private deliberations by the supreme court.

B. Method of Adoption in Other States

The experience of other states has varied considerably. In 44 states and in the District of Columbia, legislation has addressed the guidelines issue. Legislatively enacted child support guidelines are in force in 19 states plus the District of Columbia. (In five of these jurisdictions, there had previously been a child support guideline promulgated by the courts.) In another 25 states, the legislature has enacted laws directing some other body to develop a guideline, or ratifying a guideline already developed. In 12 of these states the legislature has chosen to act through the court system, either by authorizing the courts to develop a rule on their own, or by specifying a process to be followed by the courts; in 10 states the legislature has selected an executive branch administrative agency to develop a guideline; in three states guidelines were developed by advisory commissions established by law.

Only six states, including Alaska, have a child support guideline that was promulgated by the courts and has not been specifically authorized or ratified by the legislature. (The supreme court of one of these states, Ohio, has repealed its court rule, although the repeal is not yet effective.) The Alaska Supreme Court in 1987 promulgated a guideline when the legislature failed to do so. However, the court has expressed support for legislative enactment of a child support guideline, and there is no assurance that in the future the court will on its own initiative undertake the federally-required reviews of the guideline.

III. Policy Alternatives

A. Legal Status of Civil Rule 90.3

The legal status of the Alaska guideline remains open to debate. The Supreme Court adopted Civil Rule 90.3 based on the opinion of its counsel that it had the constitutional authority to do so. However, the court has never expressed a formal opinion on that issue, although one justice dissented from the court's amendment of Civil Rule 90.3 in 1989 on the ground that adoption of the rule was outside the court's constitutional authority.

The fact that the court has undertaken to promulgate the rule does not mean that it has made any final decision on the constitutional issue involved. The court has not yet been presented with a case in which its constitutional authority has been challenged, nor has it had the benefit of adversarial briefing and argument on that issue. Until a definitive ruling is made, the question of the court's authority to promulgate a child support guideline remains open.

While the adoption of legislation authorizing the court to adopt a child support guideline, as proposed in SB 54, would

strengthen the argument that the court has the constitutional authority to do so, the issue would remain. In Maine, for example, the supreme court was specifically authorized by law to issue a child support guideline, but a majority of the court has stated that it believed such an action was outside the scope of its constitutional authority.

In addition to possible a constitutional challenge, promulgation of a child support guideline through the supreme court's rule making process is subject to challenge under the Open Meetings Act. By a 3-2 vote, the court denied a request that its deliberations on amendments to Civil Rule 90.3 be opened to the public. However, as with respect to the constitutional issue, the court has not had the benefit of legal argument on that issue, and the outcome of a court challenge to Civil Rule 90.3 based on the Open Meetings Act remains uncertain.

In view of the fact that a majority of the court has already indicated that either the court did not have the constitutional authority to adopt a child support guideline, or that it should have opened its deliberations to the public under the Open Meetings Act, there is reason for serious concern over the legal status of Civil Rule 90.3.

B. Policy Considerations

Three primary arguments have been made for legislative action in Alaska at this time. First, federal law requires that the guideline be reviewed every four years, and there is no provision for such review in current Alaska law. Second, there is a significant risk that Civil Rule 90.3 will be invalidated in a future court challenge. Third, the rule was initially developed and subsequently amended without the "active participation" of a "broadly comprised group" in drafting and decision-making process itself. Legislative action would provide a means for structured public participation in the policy making process.

The primary argument made against legislative adoption of a guideline at this time is that legislative action could result in substantive amendments to the guideline that will bring further disruption to an area of law that has already undergone significant change in recent years.

Advocates from both sides of the debate agree that stability in the area is desirable. The question that remains is whether the risk of invalidation of the current guideline outweighs the risk that the legislative debate will result in a substantially altered guideline. The answer to that question should become clearer as the debate on HB 472 proceeds.

Notwithstanding the fact that, as described above, there are legitimate policy issues to be addressed with respect to the appropriate manner to go about adopting a guideline, the controversy over this issue has largely been fueled by concerns related to the substance of the current guideline. Custodial parents' interest groups have spearheaded the drive for legislative action, believing that the legislature would ultimately enact changes to the rule which they desire. Noncustodial parents' interest groups fear that the legislative outcome will result in lower levels of child support than under the current rule.

The experience in other states, however, suggests that neither of these groups is right. The shift from a court rule to a legislative guideline did not result in substantial changes to the guideline in states where such a change has occurred. Furthermore, there is no indication that as a group the legislatively enacted guidelines are significantly different from the guidelines adopted by the courts.

To the extent that the legislative debate over HB 472 is fueled by considerations related to the content of the rule, the important question of who should bear the responsibility for making the public policy choices inherent in the rule will not be addressed. But the issue of allocating responsibility for promulgation of a guideline is the reason HB 472 is before the legislature today. Legislative action to resolve that issue, whatever means are chosen, will be a significant step forward.

SUMMARY OF AUTHORITY FOR PROMULGATION OF AND CITATION TO CHILD SUPPORT GUIDELINES

States with statutory guideline: 20
[CA CO DC FL GA IL LA MD MN MS NV NH NM NY OK SD TX UT VA WY]

States with statutory authority for adoption of guideline: 25

Guideline in court rule: 12
[AZ AR DE HA ID IA ME MO NE NC PA RI]

Guideline in regulation: 10
[CT KY MT ND OR SC TN VT WV WI]

Guideline in other source: 3
[MA MI WA]

States without stat. authority for adoption of guideline: 6

Guideline in court rule: 6
[AL AK IN KS NJ OH]

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

MEMORANDUM March 30, 1990

SUBJECT: Possible constitutional and statutory problems with Civil Rule 90.3 (Work Order No. 6-2395)

TO: Representative Max Gruenberg, Jr.

FROM: John B. Gaguine JBG
Legislative Counsel

You have asked for my opinion regarding the validity of Civil Rule 90.3, the court rule that establishes a schedule for determining child support payments. Specifically you have asked whether the supreme court's adoption of the rule was an unconstitutional intrusion into the powers of the legislature, and whether the rule was adopted in violation of the Open Meetings Act, AS 44.62.310, and therefore void under 44.62.310(f).

As to your first question, I think that Civil Rule 90.3 does constitute an invalid exercise of legislative power by the judiciary. However, based on certain letters concerning the adoption of the rule, it appears to me that the supreme court may have concluded, albeit not formally and not in a binding way, that it did have the power to adopt the rule. As to your second question, I believe that the court's adoption of the rule in a closed meeting did violate the Open Meetings Act.

The doctrine of separation of powers is a vital part of Alaska jurisprudence, and has been frequently invoked by the Alaska Supreme Court. While the issue most frequently arises in clashes between the executive and legislative branches, the court has recognized its applicability to the judiciary as well. Thus, for instance, Public Defender Agency v. Superior Court, 534 P.2d 947 (Alaska 1975), held that the superior court could not order the Department of Law to prosecute contempt charges against a support obligor, because the decision whether or not to prosecute is committed to the executive branch. Since Article II, Section 1 of the Alaska constitution vests the legislative power of the state in the legislature, it seems clear that

the judiciary does not have the general power to legislate.

There are some exceptions to this prohibition. Article IV, Section 15 specifically grants the judiciary the "legislative" power to make rules governing court practice and procedure. Such rules may be constitutionally adopted even if they affect substantive rights. See, e.g., State v. Williams, 681 P.2d 313 (Alaska 1984),(upholding supreme court's authority to adopt Criminal Rule 45, which requires trial of defendant within 120 days of arrest or other commencement of proceedings). The judiciary also has the inherent power to "legislate" in matters concerning the regulation and discipline of attorneys, In re Stephenson, 511 P.2d 136, 140-41 (Alaska 1973,)(upholding attorney admission requirement in bar rule adopted by supreme court that was inconsistent with statute on attorney admission), and appellate jurisdiction, Wharton v. State, 590 P.2d 427 (Alaska 1979),(upholding court rule allowing appeal of sentences of 45 days or more, even though statute provided for appeals of sentences in excess of one year). However, Rule 90.3 does not deal even arguably with any of these subjects. Hence the source of the court's power to adopt the rule, if it exists, must be elsewhere.

In a memorandum to the supreme court that the court apparently relied on in adopting Rule 90.3, Court Rules Attorney Bill Cotton argued that the "most basic inherent authority of a court is to apply and interpret statutory law," and that this "inherent authority" is conferred on the court by Article IV, Section 1. However, I think that Mr. Cotton overlooked one extremely important corollary of this rule - that this interpretation is to done in connection with a case before the court, and not just when the court chooses to do so. For instance, while the court can clearly review the consistency of administrative regulations with the statute under which they are adopted, see, e.g., AS 44.62.300; Kelly v. Zamarello, 486 P.2d 906 (Alaska 1971), it seems equally clear that the court could not adopt those regulations even if, as is frequently the case with regulations, they were interpreting statutory provisions.

There is no explicit constitutional command to the courts that they confine their statutory interpretation powers to actual cases; the Alaska constitution has no language equivalent to the "case or controversy" language of Article III, Section 2 of the federal constitution. In Moore v. State, 553 P.2d 8, 23 n.25 (Alaska 1976), the court therefore ruled

that the doctrine of standing in Alaska was "a judicial rule of self-restraint"; the court declined to find the doctrine constitutionally based, as the United States Supreme Court had. The Moore court nevertheless observed that "the very nature of our judicial system renders it incapable of resolving abstract questions or of issuing advisory opinions which can be of any genuine value." I believe that this "very nature" to which the court referred could well be the limitation on the court's powers to judicial powers. It seems to me that the "very nature" of the judicial system would also render it incapable of "legislating", as was done with the adoption of Rule 90.3.

Of course, it is entirely possible that the supreme court has already formed an opinion that Rule 90.3 was within the court's authority to adopt. In Supreme Court Order No. 1008, which on October 5, 1989, adopted major modifications to the rule, Justice Burke, dissenting, noted his opinion that the rule was beyond the court's authority. The fact that no other justice joined his dissent may indicate that the other justices do not agree. In addition, an October 1989 memorandum from Bill Cotton to Chief Justice Matthews summarizing the history of Rule 90.3 refers to "the court's determination" that it had the necessary authority. On the other hand, there is no decision or order of the court holding that the rule was constitutionally adopted, and the court may have simply decided to rely on Mr. Cotton's advice, and to reserve the constitutional issue until a case was before it raising the issue. On at least one prior occasion the supreme court has held unconstitutional a rule it had earlier adopted. See Sheley v. Alaska Bar Association, 620 P.2d 640 (Alaska 1980),(rule requiring 30 days residency to take bar examination violates federal constitution).

As to your open meetings question, I believe that the Open Meetings Act, AS 44.62.310, was applicable to the administrative conference of the supreme court at which Rule 90.3 was adopted, and therefore that the adoption of the rule "is void" under subsection (f). It is true that the language of subsection (a), with its specific references to legislative bodies, boards of regents and administrative entities, does not specifically refer to judicial bodies. However, the second clause of the first sentence of (a), "and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations . . . of the state or local government" certainly would encompass the court. Further, the provision in subsection (d) that the Open Meetings

Act does not apply to "judicial or quasi-judicial bodies when holding a meeting solely to make a decision in an adjudicatory proceeding" clearly implies that the act applies to judicial meetings for other reasons, such as the adoption of Rule 90.3. While subsection (c) allows entities subject to the act to close meetings to the public in certain circumstances, the adoption of the rule clearly does not fall under (c).

In a letter to Sandra Armstrong, the person requesting to attend the close meeting, Mr. Cotton noted that two justices had dissented from the decision to close the meeting. According to Mr. Cotton, the three-justice majority "felt that the supreme court's traditional practice of holding supreme court conferences confidentially should be continued." The letter noted that the U.S. Supreme Court and other state supreme courts follow the same practice. The letter did not address the open meetings issue, although the court obviously considered it (since Ms. Armstrong's request had cited the Open Meetings Act). I do not see how long-standing practice can overrule that act.

If I may be of further assistance, please advise.

JBG:lmb
L10/040

State of Alaska

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Representative Max F. Gruenberg, Jr.
District 11
Spenard, Upper Midtown Anchorage

MEMORANDUM

TO: Rep. Johnny Ellis
Chair, House HESS Committee

FROM: Rep. Max F. Gruenberg, Jr.

SUBJECT: Sectiona. Analysis of HB 472

DATE: March 6, 195?

House Bill 472 implements Recommendations 44 through 47 of the Family Support Task Force. These recommendations, and the bill, include legislative enactment of a child support guideline (Rec. #44; HB 472 Sec. 2-10, 13), creation of a child support guidelines commission to advise the legislature on changes to the guideline (Rec. #45; HB 472 Sec. 1, 11), an economic study of the costs of raising children in Alaska (Rec. #46; HB 472 Sec. 12), and providing for the consideration of both parents' child care expenses in establishing the amount of child support (Rec. #47; HB 472 Sec. 3, at page 3, line 7).

The bill is the centerpiece of the legislative recommendations of the Child Support Subcommittee of the Family Support Task Force. HB 472 provides:

Section 1 [AS 24.20.085]

This bill section enacts AS 24.20.085. It creates, and prescribes the membership and duties of, the Child Support Guideline Commission.

AS 24.20.085(a): The Commission is reconstituted every four years, with eleven members: two legislators, a representative of the executive branch and of the judicial branch, three persons with expertise in relevant subject areas, and four public members.

AS 24.20.085(b): Each Commission's term runs from May 1 through December 31; membership is at the pleasure of the appointing authority.

AS 24.20.085(c): Members of the Commission are entitled to per diem and travel funds; they elect a chair and vice-chair. The Commission is staffed by the Legislative Affairs Agency.

AS 24.20.085(d): The Commission is funded by the Legislative Council.

AS 24.20.085(e): The Commission reviews state and federal law dealing with child support and makes annual recommendations to the legislature for changes to state law.

Section 2 [uncodified]

Civil Rule 90.3, and the legislative commentary to the rule, may be amended only be the legislature.

Section 3 [Civil Rule 90.3]

A legislative child support guideline is established, through the adoption and amendment of Civil Rule 90.3. Civil Rule 90.3 was initially adopted as an "interpretive rule" by the Alaska Supreme Court in 1987. The Supreme Court has specifically stated that the rule subject to amendment by the legislature by a majority vote, without the two-thirds majority needed for amendment to procedural rules of court. With one exception, the version of Civil Rule 90.3 currently in force is the one adopted by Section 3 of HB 472.

Rule 90.3 (a): Child support awards in sole custody cases is calculated as a percentage of the adjusted annual income of the non-custodial parent. "Adjusted annual income" includes income from all sources, minus mandatory deductions such as taxes and union dues, and child support and alimony payments arising from prior relationships. (Child care expenses are no longer a deduction; this is the only change from current law.) The percentage of adjusted income to be paid as child support is 20% for one child, 27% for two children, 33% for three children, and an additional 3% for each additional child. Payments may be reduced by up to 50% for periods of visitation over 27 consecutive days.

Rule 90.3 (b): In shared custody cases, the amount of child support is determined by calculating the amount of support each parent would pay, assuming the other parent had primary custody, multiplying that amount by the percentage of time that the parent has custody, and having the person with the larger obligation pay the other the parent the difference between the two figures, multiplied by 1.5. Equal monthly payments must be made unless the obligor has custody for lengthy periods.

Rule 90.3 (c): The court must order payment of the calculated amount unless there is clear and convincing evidence of manifest injustice. The court must specify in writing the reason for and amount of any variation. Reasons for varying from the calculated amount may include: unusual circumstances, such as especially large family size, significant income of a child, or extraordinary expense levels; or a finding that the paying parent has a gross income below the federal poverty level. A minimum payment of $50 per month per child must be made, except in cases of shared custody or extended visitation; the calculations do not apply to income over $60,000 per year.

Rule 90.3 (d): The court must require acquisition of health insurance if it is available at a reasonable cost. Health insurance and mandated educational payments are deducted from the amount of child support.

Rule 90.3 (e): Each parent must file a sworn affidavit of income, with supporting documentation.

Rule 90.3 (f): "Shared custody" is defined as actual residence with a parent for at least 30% of the year.

Rule 90.3 (g): Travel expenses for visitation may be allocated by the court as it seems just and proper.

Rule 90.3 (h): Child support awards may be modified if allowed by federal law or upon a showing of a material change in circumstances under state law. A material change of circumstances is presumed if support as calculated under the rule varies from the outstanding support order by more than 15%. A child support order may not be modified retroactively, however.

Rule 90.3 (i): The reasonable work-related child care expenses of both parents for children under 12 must be considered.

Section 4 [AS 25.24.140 (a)]

Temporary support orders must comply with Civil Rule 90.3.

Section 5 [AS 25.24.160 (a)]

Judgments in divorce cases must comply with Civil Rule 90.3.

Section 6 [AS 25.24.170 (b)]

Post-judgment orders in divorce cases must comply with Civil Rule 90.3.

Section 7 [AS 25.24.200 (a)]

Agreements in actions for dissolution of a marriage must comply with Civil Rule 90.3.

Section 8 [AS 47.23.060 (e)]

Child support in judicial cases pursued by the Division of Child Support Enforcement orders must comply with Civil Rule 90.3.

Section 9 [AS 47.23.170 (d)]

Child support levels determined administratively in cases in which the right to support has been assigned to the State must comply with Civil Rule 90.3.

Section 10 [AS 47.23.200]

Child support levels determined administratively under AS 47.23.160, -.180, and -.190 must comply with Civil Rule 90.3.

Section 11 [uncodified]

The first Child Support Commission must be established May 1, 1992.

Section 12 [uncodified]

By May 1, 1992, the Alaska Judicial Council is to complete a comprehensive economic study of the costs of raising children in Alaska.

Section 13 [repealer]

AS 46.23.020(a)(2)(A), which authorized the Division of Child Support Enforcement to develop its own child support schedule, is repealed.

Sections 14 and 15 [effective dates]

The child support guideline established by Section 3 of the bill is effective January 15, 1991. All other bill sections are effective immediately.

Alaska Court System
State of Alaska
OFFICE OF ADMINISTRATIVE DIRECTOR

JANALEE R. STRANDBERG
Staff Counsel

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March 23, 1990

Rep. Johnny Ellis
Chair, House Health, Education
and Social Services Commiittee
PO BOX V (MS 3100)
Juneau, Alaska 99811

Re: HB 472--An Act relating to the Child Suppport Guideline Commission...

Dear Representative Ellis:

After discussing this bill with Mr. Snowden, it is the Alaska Supreme Court's position that the enactment of child support guidelines is a proper legislative function. Thus, the court supports this legislative effort to implement clear and consistent child support guidelines.

Thank you for the opportunity to comment on this bill.

Sincerely,

Janalee R. Strandberg
Staff Counsel

ccs. Rep. Mark Boyer
Peter Goll
Max F. Gruenberg, Jr.
George G. Jacko, Jr.
Cheri Davis
Walt Furnace

NATIONAL LEGAL SUPPORT BUREAU
In conjunction with
ALASKA FAMILY SUPPORT GROUP

Legislative Affairs Teleconference
March 6th, 1990

Subject: HB 472
Child Support Guidelines
Guideline Review Commission

Presentation by:
F. David Bertrand
NLSB Alaska Coordinator

My name is David Bertrand, Alaska Representative for the National Legal Support Bureau and the Alaska Family Support Group Coordinator for Girdwood and the four valleys.

I wish to commend the Child Support Enforcement Sub-Committee for a job well done, and especially Representative Max Gruenberg for introducing House Bill 472. This Bill will pave the road for many other states to follow while removing public contempt for sensitive issues affecting our families.

Two important areas within the House Bill 472 infrastructure involves selection of Review Commission members and the study for 'Cost of Raising Children in AK.'

The 11 members of which two ObTigor and two Obligee parents would participate, the families of this organization feel the Review Commission will benefit wholeheartedly, while addressing the needs of present and future families of divorce. Although, the children caught in this web of decision making will not benefit until <u>all</u> children, both subsequent and primary are considered equal. The present system ignores the subsequent child.

Contract services selected for the study of 'Cost of Raising Children' is probably one of the most important considerations in making guidelines and an equitable awards system for Alaska. The University of Alaska or equivalent should do the study. As a foot note: We highly recommend an Income Shares method since the main concern is how much does it actually cost to raise a child and not how much a parent should be penalized.

In closing, the Family Support Groups in this state have spent alot of time in helping concerned parents achieve a fair and equitable child support system. The Alaska Family Support Group, Directed by Steve Strube, will continue to be a viable source of help to parents bereaved by the current system.

We encourage our elected and appointed officials to consider House Bill 472 as a break-through for a system that has affected approximately 26,000 parents statewide.

Better respect for C.S.E.D. and the agencie's sometimes over-looked noble efforts will increase proportionately as we <u>all</u> work together in building the ground floor necessary in achieving this goal. It's the future of our children we're concerned about, subsequent <u>and</u> primary. House Bill 472 is a good choice for all children in Alaska.

Thank you,

F. David Bertrand

F. David Bertrand
P.O. Box 583
Girdwood, Ak. 99587

STEVE COWPER
GOVERNOR

PHONE
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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.

ATTENTION: HOUSE H.E.S.S.

H.B. 472 I strongly support this bill. This Bill will put the child support award system in to the democratic process.

In my opinion it is good policy for parents and elected officals to be directly involved in formulating child support laws.

H.B. 571 I strongly support this bill so that obligors will be notified when a duty of support begins accruing.

H.B. 538 and 539 I strongly support these bills. I believe that children have the right to have access to both parents and both parents have the right to access their children. This visitation project will benefit familys and children by providing mediation for visitation problems.

I am a member of the Alaska ^ Support Group.
FAMILY

Paul A. L. Nelson

Paul A. L. Nelson
March 6, 1990

Rhona L. Miels

Rhona L. Miels Non-member

OPINION

Anchorage Daily News

Winner Pulitzer Prize Gold Medal for Public Service 1976, 1989

Gerald E. Grilly
Publisher

Howard Weaver
Managing Editor

Michael Carey
Editorial Page Editor

Katherine Fanning, Editor and Publisher 1971 to 1983
Lawrence Fanning, Editor and Publisher 1967 to 1971

Founded in 1946 by Norman C. Brown

The court erred — on secrecy's side

Search for an issue to stir Alaskans' passions, and it'd be hard to top child-support laws. For several months, the state has been reviewing rules on how much divorced parents must pay to support their kids. Friday, the new rules finally came out. Despite the heavy public interest, though, the final decision was made behind closed doors.

No, the legislature didn't sneak back into session while you weren't looking. And this wasn't a decision made deep in the bowels of the state bureaucracy. It was made in a place that's no stranger to secrecy: the state Supreme Court.

The decision wasn't the result of a typical Supreme Court case, where somebody was suing someone else. The court always decides those cases in secret, and few object to that practice.

But the court's work on child-support rules was different. The court was acting, in effect, as a legislative body. It's within the court's power to write broad rules in some special circumstances, such as this one — but the justices should have let the public watch as they made their decisions.

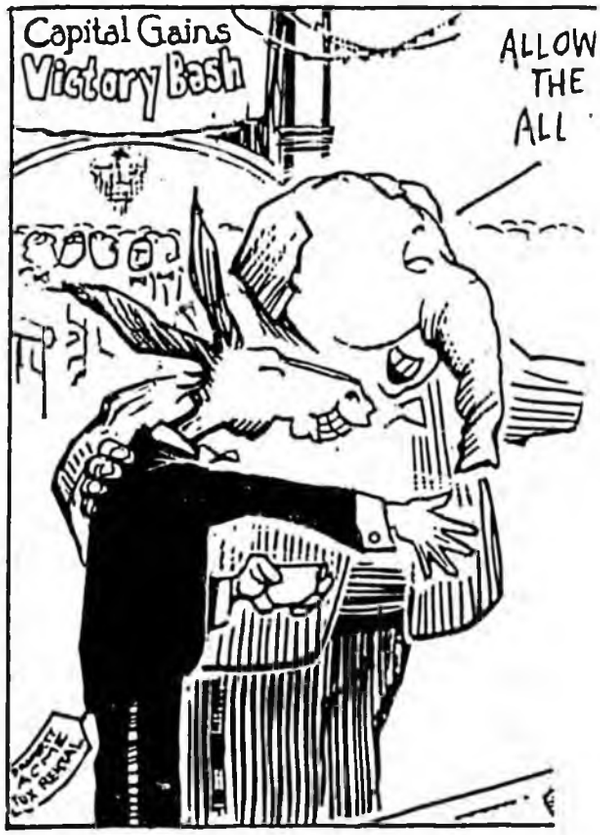
Indeed, at least one concerned parent asked the court to open its doors. But by a 3-2 vote, the justices refused. They gave no reason for that decision.

Shutting out the public can only hamper confidence in the court's child-support rules. The justices' decisions were effectively political, not legal. The public has right to know what factors influenced the outcome.

In deciding whether to open its proceedings, the court is the first and final authority. There's no avenue of appeal. The justices have the power to write rules in secret if they choose. Disgruntled parties may ask the legislature to overturn the child-support rules. But unless lawmakers act, what the court has written is law.

In past rule-makings, the court has usually honored public requests to attend committee meetings and to speak out on the proposals. The justices are considering a rule that would formalize that practice.

That's a good step, but it would still leave Alaskans in the dark at the crucial moment of decision. Whenever the justices sit as a policy-making body, they should let the public watch their decisions.



Immigrants could

howard weaver

Half a globe away, one of the world's great commercial and mercantile centers is crumbling. An engine that has powered growth and productivity for a hundred years is beginning to splutter, choked on anticipation of inevitable changes looming in the near future.

All the energy that has vaulted Hong Kong to the top ranks of economic productivity is now available to be tapped. If ours is truly a creative, energetic society, there ought to be a way to take advantage of that.

Alaskans have chased the dream of economic diversification through the decades like a holy grail. After the departure of the Russian fur traders, after the bust of the gold era, after the crash of the wartime boom, after the oil-price recession, Alaskans looked for energy and ideas to lift the state's economy back up. Each time it has come from some new natural resource exploitation, and each time it has generated

Alaska's oil, gold, timber or fish. Blessed with a splendid natural harbor but almost nothing else, they were able to harness their energy, intelligence and creativity to fashion a financial empire based on commerce and transportation. They have built prosperity out of sweat and smarts.

And now, with the 1996 transfer of the old Crown Colony to the Peoples Republic of China looming over them, the industrious citizens of Hong Kong are

D.C. Child Support Guideline Overturned

The Washington, D.C. Court of Appeals has overturned the Child Support Guideline in the District of Columbia. In Fitzgerald v. Fitzgerald, the Court held on October 13, 1989 that the Child Support Guideline conflicts with the existing law of the District of Columbia and is unauthorized.

The litigation involved calculation of child support for the daughter of Lorenzo C. Fitzgerald and Alice McKnight Fitzgerald. The father had custody of the daughter. The mother was ordered to pay child support as calculated under the Guideline. The father calculated the costs of raising the child at $724 per month, to be shared by the two parents.

Instead, the Superior Court had ordered child support of $1,316 per month (to be paid wholly by the mother) following calculations under the Guideline.

The National Council for Children's Rights and the Washington, D.C. chapter of the Women's Division of the National Bar Association ("GWAC") supported Alice McKnight Fitzgerald in arguing that the Guideline violated D.C. law.

The brief arguing that the Guideline was unfair was written and orally argued before the Appeals Court by Ron Henry, on behalf of NCCR and GWAC.

Needs of the Child

D.C. law requires that child support is to be based upon the needs of the child, the parents' ability to pay, and the particular facts and circumstances of the parties in litigation.

In contrast, the Guideline adopted a mathematical formula which was based principally upon the non-custodian's gross income and which was purposely calculated to provide compensation to the custodian in excess of the costs of raising the child.

NCCR and GWAC argued that child support should be related to the needs of the child and should not be seen as a reward for winning a custody fight or as a salary for the custodian.

Judge Judith Rogers

> "...child support should be related to the needs of the child and should not be seen as a reward for winning a custody fight or as a salary for the custodian."

Chief Judge Judith Rogers and Associate Judge John Terry agreed in their opinion, saying that under the Guideline, "the trial court has failed to determine either net income or the child's needs."

NCCR and GWAC also argued that the Guideline contained hidden assumptions which worked unfairly in many cases but which could not be rebutted because the assumptions were undisclosed. For example, the Guideline claimed that it had given consideration to tax obligations and child care expenses in establishing the basic support obligation as a percentage of gross income.

The Guideline did not explain, however, how these factors had been taken into account and parties in litigation were unable to measure the extent to which their own circumstances differed from the assumptions in the Guideline.

The court agreed, citing the "rigidity" of the Guideline and the lack of economic data used to draw up the Guideline.

Up to 38% of Gross Income

Under the Guideline, a non-custodian earning $25,000 or more would be ordered to pay 25 percent of gross income for one young child. Higher percentages applied for older children and where more than one child was present (up to 38 percent of gross income, which is about 75 percent of net income).

NCCR and GWAC argued that these support levels were unrelated to the needs of the child and were grossly out of line with child support awards in other jurisdictions including neighboring Maryland and Virginia.

Guidelines are necessary and important, but NCCR and GWAC argued that they believe fairness is

Continued on next page

Child Support Guideline Continued from page 5

the best way to assure that child support is actually paid.

When a child support award is punitive or unrelated to the needs of the child, NCCR and GWAC argued that noncompliance with court orders increases and parent-child relationships are damaged.

The unfairness of the Guideline had also become an issue of considerable conflict inside of the District of Columbia Superior Court. In an article June 12, 1989 the *Legal Times* of Washington, D.C. reported that "Hearing commissioners who determine child support awards have in many recent cases refused to follow the Guideline claiming that they are unfair."

In rejecting the Guideline, the Court of Appeals also criticized the procedure by which the Guideline was adopted. The Committee which created the Guideline did not hold public hearings or seek public comments prior to the implementation of the Guideline. NCCR and GWAC also noted that the Guideline Committee contained several representatives of the Women's Legal Defense Fund and other groups that did not contain representatives of non-custodial parents or second families.

NCCR and GWAC also argued that the Guideline Committee had ignored a mandate from Congress, as a part of the 1984 child support amendments, to study visitation and custody issues.

The subject of a Guideline shifted to the City Council, the 13-member legislature of the District of Columbia. On December 19, the Council passed a variation of the repudiated guideline as a temporary measure. It will be effective for about six months after which the district will have to pass a permanent guideline.

D.C. judges estimated that about 10,000 child support orders were issued during the two year period that the rejected Guideline was in effect. The losing side has appealed to the full nine-member D.C. Court of Appeals, and it is not clear what effect these actions will have on those cases.

The brief filed by NCCR and GWAC is available as NCCR Report L104 in the NCCR Catalogue. For a copy of the court decision, NCCR members send $1.00 postage; non-members, send $5.00.

Family Support Task Force
Subcommittee on Child Support

ADDITIONAL RECOMMENDATIONS TO THE TASK FORCE
November 28,1989

Periodic Review of Child Support Guidelines

1. The subcommittee recommends that the legislature enact a child support guideline complying with federal law, and that it use the text of Civil Rule 90.3, as amended by Supreme Court Order 1008, effective January 15, 1990, as the starting point for legislative consideration.

2. The subcommittee recommends that the legislature create a Child Support Guideline Review Commission. The Commission should be charged with the quadrennial review of the Alaska child support guideline, for the purpose of recommending to the legislature specific amendments to the child support guideline and to rules of court affecting the determination of child support. The Commission should be first appointed no later than the close of the second session of the 17th legislature (1992) and issue its first report to the legislature no later than the beginning of the first session of the 18th legislature (1993), with subsequent appointments and reports to follow at four year intervals. Adequate funding for the Commission should be appropriated.

The subcommittee recommends that the Commission be composed of eleven members, including representatives of the executive branch and the judiciary to be appointed by the presiding officer of each branch, and, to be appointed by the presiding officers of the legislature, legislators, appropriate experts in the fields of family law, economics, and family issues, and as public members, two persons who are paying child support and two who are receiving child support. There should be equal numbers of persons who are paying and receiving child support on the Commission.

3. The subcommittee recommends that the legislature appropriate funds for the preparation of a comprehensive economic study of the costs of raising children in Alaska. The study should include costs in intact families, in single parent households, and in households in which a parent has remarried, and should also include the impact of visitation and shared custody on the costs to both parents.

4. The subcommittee recommends that the reasonable work related child care expenses of both parents for children up to the age of 12 who are the subject of a child support order be considered in calculating the amount of their child support.

FAMILY SUPPORT TASK FORCE MEMBERS

Sen. Rick Uehling	CO-CHAIR
Rep. Johnny Ellis	CO-CHAIR
Sen. Drue Pearce	
Rep. Max R. Gruenberg, Jr.	
Rep. Mike Miller	
Sen. Jim Duncan	
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STAFF

Janet Kowalski	Senator Uehling's office
Deborah Bonito	Representative Ellis' office
Gretchen Mannix	Welfare Reform Coordinator, Dept. of Health & Social Services
Mary Ellen Murphy	Dept. of Health & Social Services

RECOMMENDATION 44:

THE LEGISLATURE SHOULD ENACT A CHILD SUPPORT GUIDELINE COMPLYING WITH FEDERAL LAW, AND IT SHOULD USE THE TEXT OF CIVIL RULE 90.3, AS AMENDED BY SUPREME COURT ORDER 1008, EFFECTIVE JANUARY 15, 1990, AS THE STARTING POINT FOR LEGISLATIVE CONSIDERATION.

RECOMMENDATION 45:

THE LEGISLATURE SHOULD CREATE A CHILD SUPPORT GUIDELINE REVIEW COMMISSION.

- The Commission should be charged with the quadrennial review of the Alaska Child Support Guideline, for the purpose of recommending to the legislature specific amendments to the Child Support Guideline and to rules of court affecting the determination of child support.

- The Commission should be first appointed no later than the close of the second session of the 17th legislature (1992) and issue its first report to the legislature no later than the beginning of the first session of the 18th legislature (1993), with subsequent appointments and reports to follow at four year intervals.

- Adequate funding for the commission should be appropriated.

THE SUBCOMMITTEE RECOMMENDS THAT THE COMMISSION BE COMPOSED OF ELEVEN MEMBERS, INCLUDING:

- Representatives of the executive branch and the judiciary to be appointed by the presiding officer of each branch, and,

- To be appointed by the presiding officers of the legislature:
  - legislators
  - appropriate experts in the fields of family law, economics, and family issues, and
  - public members, including:
    - two persons who are paying child support, and,
    - two who are receiving child support.

- There should be equal numbers of persons who are paying and receiving child support on the commission.

THE LEGISLATURE SHOULD APPROPRIATE FUNDS FOR THE PREPARATION OF A COMPREHENSIVE ECONOMIC STUDY OF THE COSTS OF RAISING CHILDREN IN ALASKA. The study should include costs in intact families, in single parent households and in households in which a parent has remarried, and should also include the impact of visitation and shared custody on the costs to both parents.

RECOMMENDATION 47:

REASONABLE WORK RELATED CHILD CARE EXPENSES OF BOTH PARENTS FOR CHILDREN UP TO THE AGE OF 12 WHO ARE THE SUBJECT OF A CHILD SUPPORT ORDER SHOULD BE CONSIDERED IN CALCULATING THE AMOUNT OF THE CHILD SUPPORT.

RECOMMENDATION 48:

THE LEGISLATURE SHOULD PROVIDE FOR THE EXTENSION OF CHILD SUPPORT TO INDIVIDUALS UP TO THE AGE OF 19, IF THEY:
(1) ARE UNMARRIED AND LIVING WITH A PARENT, THEIR LEGAL GUARDIAN, OR THE DESIGNEE OF A PARENT OR LEGAL GUARDIAN;
(2) HAVE NOT GRADUATED FROM HIGH SCHOOL; AND
(3) ARE ACTIVELY PURSUING A HIGH SCHOOL DEGREE.

Issue

How should Alaska provide for the promulgation and periodic review of child support guidelines of child support awards by the courts and administrative agencies of the state?

FSA Provisions

Section 103 (a) of the Family Support Act requires that state child support guidelines be established for use in all judicial and administrative proceedings. There must be a rebuttable presumption that the guideline amount is the appropriate amount of support, subject to a written finding that the result is inappropriate under such criteria as may be established by the state.

Section 103 (c) of the Family Support Act requires that the guidelines must be reviewed at least once every four years in order to determine whether their application results in appropriate levels of support.

Cost

The proposed commission will need funding for members' travel costs and part time support staff.

The estimates for a comprehensive economic study of the cost of raising children range up to $1 million.

REPORT OF THE

CHILD SUPPORT ENFORCEMENT COMMISSION

TO THE

HONORABLE GOVERNOR WILLIAM J. SHEFFIELD

October 1, 1985

I. INTRODUCTION

In 1974, Congress passed Title IV-D of the Social Security Act, establishing the Child Support Program. The purpose of the program was to provide that all children receive support from absent parents by providing effective enforcement of child support laws.

In the ten years following passage of the Act, significant improvements have occurred in child support collections, but the problem remains a major one. Census information indicates that only 59% of families entitled to receive child support actually have support orders. Furthermore, only 49% of custodial parents with support orders receive full payment, while 28% receive nothing. Additionally, it is estimated that in at least 80% of cases, the reason for eligibility for Aid to Families with Dependent Children (AFDC) has been insufficient child support from absent parents.

A decade after passage of the Act, Congress reviewed the program and passed Public Law 98-378, the Child Support Amendments of 1984. The amendments mandate that states adopt specific procedures to strengthen their state enforcement programs. Additionally, they seek to assure that AFDC and non-AFDC families receive equal treatment under the program.

Feeling that many of the issues about child support warranted further study, Congress included a requirement that each state form a commission on child support to study the state child support program, and report to their Governor with a discussion of the commission's findings and recommendations.

This report represents the findings and recommendations of the Alaska Commission on Child Support Enforcement.

Public Law 98-378 closely followed comprehensive amendments to Alaska's child support laws sponsored by Governor Bill Sheffield. In presenting this report, the Commission wishes to acknowledge his active support of this commission and its efforts.

9. Recommendation: Codify Standards within Alaska Statutes

The Commission recommends that administrative and judicial standards for establishing support levels be standardized within the Alaska Statutes.

Statement

The Commission recognized that the various states have used either court rule or statute to establish bases for child support awards. Because Alaska has done neither, but through statute has established administrative rulemaking to fix levels of support, the Commission recommends that this practice be continued so that both judicially and administratively established support orders will be uniformly based.

DEVELOPMENT OF GUIDELINES FOR CHILD SUPPORT ORDERS: ADVISORY PANEL RECOMMENDATIONS AND FINAL REPORT

Part I: Advisory Panel Recommendations
Part II: Final Project Report
Part III: Implementation Materials

September 1987

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The Advisory Panel recommendations and project report were developed with support from the Office of Child Support Enforcement, U.S. Department of Health and Human Services under Grant No. 18-P-20003. Any opinions expressed herein are those of the Advisory Panel on Child Support Guidelines or the author of the report and do not necessarily represent the views of the Office of Child Support Enforcement.

RECOMMENDATION #9
DEVELOPMENTAL PROCESS
AND IMPLEMENTING AUTHORITY

The Advisory Panel recommends that guidelines be implemented by means of court rule of statewide applicability, where feasible. A state's development of guidelines should include active participation by a broadly comprised group, preferably including representatives of the courts, executive branch, the legislature, and relevant professional and advocate groups.

Under federal regulations, guidelines can be implemented "...by law or by judicial or administrative action..." (45 CFR 302.56) The Advisory Panel considers a court rule to be the preferable means of implementation. Compared with a statute, development of a court rule lends itself more readily to the technical issues and detailed content encountered in a guideline's provisions. A court rule is more flexible than a statute and can be more easily modified in light of new economic data or legal findings, or adjusted to reflect experience gained from application of guidelines. In some states, a broad statutory mandate for development of a court rule may be required to legitimize the promulgation of guidelines under this mechanism. Even with a broad statutory authorization, however, the technical substance of a guideline is reserved for the contents of the court rule.

Constitutional provisions in some states may preclude implementation of guidelines under court rule, even if there is specific legislative authorization. In such cases, legislative enactment of guidelines can be a viable approach. Alternatively, in states where most child support awards are established through administrative process in the executive branch, implementation of guidelines through administrative regulation may be necessary. If possible, however, implementation of guidelines through administrative regulation limited to IV-D cases should be supplemented by a comparable court rule for cases heard outside the administrative process.

Guidelines should be developed with the advice and participation of broadly constituted groups. Ideally, such groups should include representatives of the courts, executive branch, and the legislature. They should also obtain active involvement by relevant professional and advocate groups such as the bar, child support enforcement administrators, and representatives of custodial and non-custodial parents and children's advocates. Since state child support commissions generally have a balanced composition and were mandated under P.L. 98-378 to establish "...appropriate objective standards for support...", their recommendations should be given due weight. Involvement of all groups with a stake in collections helps assure that the guidelines will gain maximum possible acceptance. It will also help avoid unanticipated adverse consequences in the application of guidelines.

that any deviation from the guideline be accompanied by written or oral findings.[14]

Implementing Authority

As noted above, federal regulations provide that states can implement guidelines "...by law or by judicial or administrative action." To date, states have used all of these options by implementing guidelines variously under authority of statute, court rule, and administrative regulation.

Statute. Colorado, Illinois, and Minnesota have enacted statutes mandating use of specified guidelines as rebuttable presumptions.[15] This mode of implementation has the advantage of providing universal authority to guidelines. In all three states, the guidelines are applied to IV-D and non-IV-D cases alike. They are binding upon the judiciary unless findings of fact are made to justify exceptions.

There are two disadvantages of incorporating guidelines into statute. The first is that the technical nature of guidelines does not readily lend itself to the legislative process of development. The Illinois and Minnesota guidelines are among the simplest guidelines in design. The Colorado guideline is more comprehensive, but it was developed initially by the Child Support Commission and modified only slightly by the Legislature. The second disadvantage is that statutes are less flexible and more difficult to change than judicial or administrative rules. Guidelines need to be revised periodically in light of experience gained in their use and in light of new economic findings. It is usually more difficult to revise a statute than non-statutory rules.

Court Rule. New Jersey adopted guidelines by means of a Supreme Court Rule (Rule 5:6A, 5/9/86). Delaware implemented the Melson formula by means of a Family Court Rule. The court rule approach has several advantages. First, the courts are unusually well situated to develop guidelines because they are neutral parties and are therefore in a better position to balance the competing interests involved in designing guidelines. Second, court rules normally have as much force with the judiciary as a statute. Third, a court rule is more easily changed than a statute. The most significant disadvantage of court rules is that some courts lack the legal authority to use that mechanism for child support guidelines. The Supreme Courts of Colorado and Vermont, for example, indicated that the

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[14] Colorado House Bill 1275, 1986, to be codified as Colorado Revised Statutes, Sec. 14-10-115 (3)(b).

[15] Colorado House Bill 1275, 1986; 23 Illinois Revised Statutes 1983, Sec. 10-10; Minnesota Statutes 1983, Sec. 518.551.

substantive nature of guidelines exceeded their procedural rule-making authority.

Administrative Regulation. Many states have implemented guidelines by administrative rule emanating from the child support enforcement agency. Missouri and Utah are two examples of states using this approach. In states using administrative process to establish child support orders for IV-D cases (including Missouri and Utah), administrative rule is the most expeditious method of implementing a guideline. An administrative rule issued by an executive agency cannot bind courts in their determination of child support awards, however, unless there is specific statutory authorization. Consequently, application of an administrative rule does not normally extend to non IV-D cases. This limits the usefulness of an administrative rule, especially in the large majority of states lacking administrative processes for establishing child support awards.

Other states have used hybrids of these three basic approaches in their implementation of child support guidelines. Nebraska has enacted legislation requiring the Supreme Court to develop child support guidelines for use as a rebuttable presumption (L.B. 7, 1985). California implemented the "Agnos guideline" by statute which establishes a minimum standard for child support awards. However, the statute delegates authority to establish guidelines for higher income households to individual counties, or to the state Judicial Council for those counties lacking a guideline (Ca. Civ. Code Secs. 4720-4732 (West Supp. 1985)). Vermont enacted the basic principles of a guideline, but delegated responsibility to the Agency for Human Services to specify the numerical formula (15 V.S.A. Secs. 653-662).

It can be seen from these examples that states have followed divergent paths in their determination of the most appropriate authority for implementing guidelines. Implementation by court rule is preferable in many ways because it provides applicability to all child support cases, but preserves the flexibility to modify the guideline based on experience and changing economic data. But courts in many states lack the authority to establish guidelines by this method. Moreover, in states with broad administrative processes for establishing child support awards on behalf of IV-D cases, issuance by administrative rule is generally the fastest means of implementation. As with a court rule, implementation by administrative rule also preserves the flexibility to change the guideline more readily than by altering a statute.

Summary of Report

In the remainder of this report, we review and analyze the available economic data concerning expenditures on children, discuss the factors that should be considered in developing guidelines, describe five approaches to

CIVIL RULE 90.3 COMMENTARY

I. INTRODUCTION

A. Commentary

This commentary to Civil Rule 90.3 was adopted by the Alaska Legislature as a statement of legislative intent regarding the proper interpretation and application of the rule. As a statement of legislative intent, the commentary does not have the force of law, but is conclusive evidence of the express intent of the legislature in adopting the stature. It is published with the rule as an aid to users of the rule.

B. Purpose

The primary purpose of Rule 90.3 is to ensure that child support orders are adequate to meet the needs of children, subject to the ability of parent to pay. The level of support under the rule is comparable to the national average, but it is significantly above what had been a usual support award in Alaska. The increase was necessary to avoid the impoverishment of custodial parents and to minimize the public's burden of supporting children through the Aid to Families with Dependent Children program. However, the primary focus of the increase in support awards was to promote the welfare of the children who benefit from the support.

The second purpose of 90.3 is to promote consistent child support awards among families with similar circumstances. Third, the rule is intended to simplify and make more predictable the process of determining child support, both for the courts and the parties. Predictable and consistent child support awards will encourage the parties to settle disputes amicably and, if resolution by the court is required, will make this process simpler and less expensive.

The final purpose of 90.3 is to ensure that Alaska courts comply with state and federal law. AS 25.24.160(2) requires that child support be set in an amount which is "just and proper..." The Child Support Enforcement Amendments of 1984 (P.L. 98-378) and its implementing regulations (45 CFR 302.56) require states to adopt statewide guidelines for establishing child support. The Family Support Act of 1988 (P.L. 100-485) requires that the guidelines presumptively apply to all child support awards and that the guidelines be reviewed every four years.

C. Scope of Application

Rule 90.3 applies to all proceedings involving child support, whether temporary or permanent, contested or non-contested, including without limitation actions involving separation, divorce, dissolution, support modification, domestic violence, paternity, Child in Need of Aid, and Delinquency. The support guidelines in the rule may be varied only as provided by paragraph (c) of the rule. Rule 90.3 does not apply to set any support which may be required for adult children.

II. PERCENTAGE OF INCOME APPROACH

Rule 90.3 employs the percentage of income approach. This approach is based on economic analyses which show t e proportion of income parents devote to their children in intact families is relatively constant across income levels up to a certain upper limit. Applications of the rule should result in a non-custodial parent paying approximately what the parent would have spent on the children if the family was intact.

Integral to the rule is the expectation that the custodial parent will contribute at least the same percentage of income to support the children. The rule operates on the principle that as the income available to both parents increases, the amount available to support the children also will increase. Thus, at least in the sole or primary custodial situation, the contribution of one parent does not affect the obligation of the other parent.

III. DEFINING INCOME

A. Generally

The first step in determination of child support is calculating a parent's "total income from all sources". Rule 90.3(a)(1). This phrase should be interpreted broadly to include benefits which would have been available for support if the family had remained intact. Income includes, but is not limited to:

1. salaries and wages (including overtime and tips);
2. commissions;
3. severance pay;
4. royalties;
5. bonuses and profit sharing;

6. interest and dividends, including permanent fund dividends;

7. income derived from self-employment and from businesses or partnerships;

8. social security;

9. veterans benefits;

10. insurance benefits in place of earned income such as workers' compensation or periodic disability payments;

11. workers' compensation;

12. unemployment compensation;

13. pensions;

14. annuities;

15. income from trusts;

16. capital gains in real and personal property transactions to the extent that they represent a regular source of income;

17. spousal support received from a person not a party to the order;

18. contractual agreements;

19. perquisites or in-kind compensation to the extent that they are significant and reduce living expenses, including but not limited to employer provided housing and transportation benefits (but excluding employer provided health insurance benefits);

20. income from life insurance or endowment contracts;

21. income from interest in an estate (direct or through a trust);

22. lottery or gambling winnings received either in a lump sum or an annuity;

23. prizes and awards;

24. net rental income;

25. disability benefits;

26. Veteran Administration benefits;

27. G.I. benefits (excluding education allotments);

28. National Guard and Reserves drill pay; and

29. Armed Service Members base pay plus the obligor's allowances for quarters, rations, COLA, and specialty pay.

Means based sources of income such as Aid to Families with Dependent Children (AFDC), Food Stamps and Supplemental Security Income (SSI) should not be considered as income. The principal amount of one-time gifts and inheritances should not be considered as income, but interest from the principle amount should be considered as income and the principle amount may be considered as to whether unusual circumstances exist as provided by 90.3(c).

B. Self Employment Income

Income from self-employment, rent, royalties, or joint ownership of a partnership or closely held corporation includes the gross receipts minus the ordinary and necessary expenses required to produce the income. Ordinary and necessary expenses do not include amounts allowable by the IRS for the accelerated component of depreciation expenses, depreciation of real estate, investment tax credits, or any business expenses determined by the court to be inappropriate. Expense reimbursements and in-kind payments such as use of a company car, free housing or reimbursed meals should be included as income if the amount is significant and reduces living expenses.

C. Potential Income

The court may calculate child support based on a determination of the potential income of a parent who voluntarily is unemployed or underemployed. A determination of potential income may not be made for a parent who is physically or mentally incapacitated, or who is caring for a child under two years of age to whom the parents owe a joint legal responsibility. Potential income will be based upon the parent's work history, qualifications and job opportunities. The court also may impute potential income for non-income or low income producing assets.

D. Deductions

A very limited number of expenses may be deducted from income. Mandatory deductions such as taxes and mandatory union dues are allowable.

Child support and alimony payments arising out of different cases are deductible if three conditions are met. First, the

child support or alimony actually must be paid. Second, it must be required by a court or administrative order. (Support which is paid voluntarily without a court or administrative order may be considered under Rule 90.3(c).) Third, it must relate to a prior relationship. A child support order for children of a second marriage should take into account an order to pay support to children of a first marriage, but not vice-versa. But see commentary IV (B) (2).

E. Time Period for Calculating Income

Child support is calculated as a certain percentage of the income which will be earned when the support is to be paid. This determination will necessarily be somewhat speculative because the relevant income figure is expected future income. The court must examine all available evidence to make the best possible calculation.

The determination of future income may be especially difficult when the obligor has had very erratic income in the past. In such a situation, the court may choose to average the obligor's past income over several years.

Despite the difficulty in estimating future income, a child support order should award a specific amount of support, rather than a percentage of whatever future income might be. The latter approach has been rejected because of enforcement and oversight difficulties.

IV. SOLE OR PRIMARY CUSTODY

A. Generally

"Sole or primary custody" as this term is used in Rule 90.3 covers the usual custodial situation in which one parent will have physical custody of the child -- in other words, the child will be living with that parent -- for over seventy percent of the year. The shared custody calculations in paragraph (b) apply only if the other parent will have physical custody of the child at least thirty percent of the year (110 overnights per year). The visitation schedule must be specified in the decree or in the agreement of the parties which has been ratified by the court. See also commentary V (A).

The calculation of child support for the sole or primary custodial case under 90.3(a) simply involves multiplying the obligor's adjusted income times the relevant percentage given in subparagraph (a)(2). (Normally, the portion of an adjusted annual income over $60,000 pe year will not be counted. See

Commentary VI (D).) As discussed above, the rule assumes that the custodial parent also will support the children with at least the same percentage of his or her income.

B. Visitation Credit

An obligor who exercises extended visitation, even if the visitation does not reach the thirty percent level of shared custody, probably will spend significant funds directly for the children during visitation. The spouse with primary custody conversely will have somewhat lower expenses during the extended visitation even though that parent's fixed costs such as housing will not decrease. Consequently, 90.3(a)(3) authorizes the trial court, in its discretion, to allow a partial credit (up to 50% of total support for that month) against a child support obligation. In considering a visitation credit, the court shall ensure that support for the child, including contributions from both parents, is adequate to meet the child's needs while the child resides with the custodial parent. A visitation credit may be taken only if the extended visitation actually exercised exceeds 27 consecutive days and the court has authorized the specific amount of the credit.

V. SHARED CUSTODY

A. Generally

"Shared custody" as this term is used in Rule 90.3 means that each parent has physical custody of the child at least thirty percent of the year according to a specified visitation schedule in the decree (110 overnights). "Shared custody" as used in 90.3 has no relation to whether a court has awarded sole or joint legal custody. "Shared custody" is solely dependent on the time that the decree or agreement of the parties which has been ratified by the courts specifies the children will spend with each parent.

In order for a day of visitation to count towards the required thirty percent, the children normally must remain overnight with that parent. Thus, a day or evening of visitation by itself will not count towards the total of time necessary for shared custody. Visitation from Saturday morning until Sunday evening would count as one overnight.

B. Calculation of Shared Custody Support

The calculation of support in shared custody cases is based on two premises. First, the fact that the obligor is spending a substantial amount of the time with the children probably

means the obligor also is paying directly for a substantial amount of the expenses of the children. Thus, the first step in calculating shared custody support is to calculate reciprocal support amounts for the time each parent will have custody based on the income of the other parent. The support amounts then are offset.

This calculation assumes that the parents are sharing expenses in roughly the same proportion as they are sharing custody. If this assumption is not true, the court should make an appropriate adjustment in the calculation.

The second premise is that the total funds necessary to support children will be substantially greater when custody is shared. For example, each parent will have to provide housing for the children. Thus, the amount calculated in the first step is increased by 50% to reflect these increased shared custody costs. However, the obligator's support obligation never will exceed the amount which would be calculated for sole or primary custody under 90.3(a). The amount which would be calculated under 90.3(a) should include any appropriate visitation credit as provided by (a)(3).

C. Divided Custody

The formula for shared custody described above was developed primarily for the situations in which the parents share custody of their only child, or the parents share custody of several children, but the children stay together. Custody of several children also can be divided so that at any one time one parent may have physical custody of one child and the other may have physical custody of the other children. Such an arrangement, depending on the circumstances, may require greater expenditures to support the children because it is somewhat less expensive to support children living together than in two households at the same time.

The first step in determining support in such a divided custody arrangement is to apply the usual shared custody formula by averaging the time all children will spend with each parent. For example, if one child will live with the father all of the time and two with the mother, support as calculated as if all the children spent one-third of the time with the father. The appropriate percentage figure for all the children (in the example, 3 or 33%) then is applied.

The second step in determining divided custody support is for the court to carefully consider whether the support amount should be varied under paragraph (c)(1)(A). A divided custody case should be treated as an unusual circumstance under which support will be varied if such a variation is "just and proper..." See commentary VI (B).

D. Failure to Exercise Shared Custody

One difficulty with tying the amount of support in shared custody cases to the amount of time each parent is expected to spend with the children is that parents often fail to exercise visitation. If this regularly occurs, the custodial parent may be forced to seek a modification based on the failure to exercise visitation. However, when a large block of visitation is not exercised by the obligor, 90.3(b)(4) provides a remedy without returning to court.

The principle employed in this provision is that annual shared child support will be paid over those months when the obligor parent does not have custody for a monthly which he or she was supposed to exercise custody, the obligor must make an additional support payment equal to his or her other payments for other months.

VI. EXCEPTIONS

A. Generally

Child support in the great majority of cases should be awarded under 90.3(a) or (b) in order to promote consistency and to avoid a tendency to underestimate the needs of the children. Nevertheless, the circumstances in which support issues arise may authorize courts to vary support awards for good cause.

The court may apply this good cause exception only upon proof by the parent requesting support be varied that this is clear and convincing evidence that manifest injustice would result if the support aware were not varied. In addition, a prerequisite of any variation under 90.3(c) is that the reasons for it must be specified in writing by the court.

When constitutes "good cause" will depend on the circumstances of each cause. Three situations constituting "good cause" are discussed below in sections VI (B)-(D). These three specific exceptions are not exclusive; however, the general exception for good cause may not be interpreted to replace the specific exceptions. Absent unusual circumstances, 90.3(c)(1)(A), or the exceptions for low or high incomes, 90.3(c)(1)(B) and (c)(2), the rule presumes that support calculated under 90.3(a) or (b) does not result in manifest injustice.

B. Unusual Circumstances

90.3(c)(1) provides that a court shall vary support if it finds, first, that unusual circumstances exist and, second, that these unusual circumstances make application of the usual

formula unjust. The paragraph specifies several possible factors that the court may consider when deciding whether unusual circumstances exist. This determination should be made considering the custodial parent's income because the percentage of income approach used in Alaska tends to slightly ubnderstate support relative to the national average for cases in which the custodial spouse does not earn a significant income. This understatement relative to the national average becomes substantial if the custodial parent has child care expenses. the application of the unusual circumstances exception to particuar types of factual situations is considered below:

1. Agreement of the Parents. The fact that the parties, whether or not represented by counsel, agree on an amount of support is not reason in itself to vary the guidelines. The children have an interest in adequate support independent of either parent's interest. Thus, approval of any agreement which varies the guidelines, whether in a dissolution, by stipulation or otherwise, must be based upon an explanation of the parties of what unusual factual circumstances justify the variation.

2. Subsequent Children. A parent with a support obligation may have other children living with him or her who were born or adopted after the support obligation arose. The existence of such "subsequent" children, even if the obligor has a legal obligation to support these children, will not generally constitute good cause to vary the guidelines. However, the circumstances of a particular case involving subsequent children might constitute unusual circumstances justifying variation of support. This would occur if payment of support calculated under the guidelines would cause substantial hardship to the "subsequent" children. In considering whether substantial hardship exists, a court should consider the income, including potential income, of both parents of the "subsequent" children.

In addition, the court should consider whether the "subsequent" children were born or adopted before Civil Rule 90.3 went into effect in August 1987. A parent who had "subsequent" children before this date may have had a reasonable expectation of supporting the "prior" children with substantially less support than required by Civil Rule 90.3. Thus, the increase in support under Rule 90.3 at least initially may be lessened to allow the parent to reorient his or her financial affairs. However, this reduction of the 90.3 guidelines only may occur when substantial hardship to the children (not the parent) otherwise would occur.

3. Prior Children. Rule 90.3(a) provides for a deduction from income for an obligor's payment of child support to support children of a prior relationship. However, no explicit deduction is allowed when the "prior" children

live with the obligor and thus the obligor furnishes support directly to the children. In such a situations, the court should reduce the support of the obligor when necessary to avoid substantial hardship to the "prior" children.

4. Relocation of Custodial Parent. The relocation of the custodial parent to a state with a lower cost of living normally will not justify a reduction in support. The level of Alaska's guidelines is comparable to the national average. The fact that the obligor parent's income has in effect marginally increased relative to the children's living expenses simply enables the children to be supported at a slightly higher level.

5. Prior and Subsequent Debts. Prior or subsequent debts of the obligor, even if substantial, normally will not justify a reduction in support. The obligation to provide child support is more important than the obligation to fulfill most other obligations. However an obligor parent may attempt to present evidence which shows the existence of exceptional circumstances in an individual case.

6. Income of New Spouse. The income of a new spouse of either the custodial or obligor parent normally will not justify a variation in support. Either party may attempt to show that exceptional circumstances exist in a particular case.

7. Age of Children. While the costs of raising children who are very young or who are over about ten years old are generally greater than raising other children, this in itself does not justify an increase in support. However, it should be considered in concert with other circumstances, and a parent always may seek to establish exceptional circumstances in a particular case.

8. Denial of Visitation. A denial of visitation may not be countered with a reduction in support. However, courts should use their powers to strictly enforce the visitation and custody rights of obligor parents.

9. Property Settlement. A parent may justify variation of the guidelines by proving that a property settlement in a divorce or dissolution between the parents provided one of the parents with substantially more assets than the parent would otherwise would have been entitled to, that this inequity was intended to justify increasing or decreasing child support, and that this intent specifically was stated on the record. Any such change in monthly child support may not exceed the actual excess of the property settlement apportioned over the minority of the child.

However, courts should not approve in the first instance unequal property settlements which are meant to increase or

decrease child support payments. "Property divisions are final judgments which can be modified only under limited circumstances, whereas child support always can be changed periodically under much more liberal standards. One should not be a trade-off for the other. Arndt v. Arndt 777 P.2d 668 (Alaska 1989).

C. Low Income of Obligor

90.3(c)(1)(B) provides that the guidelines do not apply if the obligor has a gross income below the federal poverty level. The applicable figure from the Federal Register is for the obligor alone, without regard to any subsequent family of the obligor. Subsequent children, and any income of the subsequent spouse, are relevant, if at all, only under 90.3(c)(1)(A) concerning the unusual circumstances exception.

Even if the obligor has an income of less than the poverty level, or no income at all, a minimum support of $50.00 per month applies. This $50.00 minimum support applies for all children, not to each child separately. The minimum level may be reduced under 90.3(a)(3) based on a visitation credit, or reduced under 90.3(b) based on the offset of the other parent's support obligation.

D. High Incomes of a Parent

Rule 90.3 provides that the percentages for child support will not be applied to a parent's adjusted annual income of over $60,000, unless the other parent is able to present evidence which justifies departure from this general rule. The factors which the court should consider in such a determination are specified in the rule.

VII. MEDICAL, EDUCATIONAL AND INSURANCE PAYMENTS

Rule 90.3(d) requires that the court address coverage of the children's health care needs. The court must require health insurance if the insurance is available to either party at a reasonable cost. The rule also provides that the obligor will receive credit against the child support obligation for any such payment if the payment is required by the court. Only actual cost to the obligor for the children may be credited.

VIII. CHILD SUPPORT AFFIDAVIT AND DOCUMENTATION

Each parent in a proceeding involving a determination of child support must provide the court with an income statement under oath. The rule also requires that the income statement of a parent be verified with documentation of current and past income. Suitable documentation of earnings might include paystubs, employer statements, or copies of federal tax returns.

IX. TRAVEL EXPENSES

The court may review the circumstances of each case, including the award of support, to determine how to allocate any travel expenses that are necessary to exercise visitation. This allocation should generally be done on a percentage basis because the actual costs may not be known or may change. The court should take care that its allocation of these expenses does no interfere with the custodial parent's ability to provide the basic necessities for the children. Such a basic level of support must be placed above visitation if sufficient funds are not available for both.

X. MODIFICATION

Alaska law allows the modification of support orders upon a material change in circumstances. A significant amendment to Rule 90.3 constitutes a material change in circumstances pursuant to AS 25.24.170(b). 90.3 presumptively defines a material change in circumstances, whether based on a change in the parties' income or a significant amendment to the rule, as whenever the change would result in an increase or decrease of support under the rule of at least 15%.

Federal law will require periodic review of certain support orders even in the absence of a significant change in circumstances beginning in October 1990 and to a greater extent in October 1993. See Family Support Act of 1988, P.L. 100-485, Section 103(c).

The Omnibus Budget Reconciliation Act of 1986, P.L. 99-509, Section 9103(a) (the Bradley Amendment), prohibits retroactive modification of child support arrearages. Rule 90.3(g)(2) is intended to restate this prohibition, including the exception allowed by federal law for modification during the pendency of a modification motion.

The prohibition against retroactive modification limits both requested decreases and increases in child support. See Prohibition of Retroactive Modification of Child Support

Arrearages, 54 Fed. Reg. 15,763 (1989). Thus, either the custodial or the obligor parent should promptly apply for a modification of child support when a material change in circumstances occurs.

XI. CHILD CARE EXPENSES

90.3(i) provides that in exercising its discretion under the rule, the court must consider the reasonable work-related child care expenses for children under 12 of both parents. Child care expenses may be an unusual factor justifying deviation from the calculated amount of support.

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

HOUSE HESS

MARCH 6, 1990 8:30 AM

HB 472

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 472

Page 1, line 27:

Section 2 is amended to read:

* Section 2. INTENT. Rule 90.3, Alaska Rules of Civil Procedure, and the commentary accompanying the rule cover an area of substantive law and are subject to amendment [ONLY] by legislation adopted by a majority vote of both houses of the legislature. Deliberative and other official meetings of a body within any branch of government concerning amendments to Civil Rule 90.3 should be open to the public in conformity with the Open Meetings Act, AS 44.62.310(a). Nothing in this Act shall be construed as acquiescence in, ratification or recognition of, or authorization for the authority of another branch of government to adopt or amend Civil Rule 90.3.

HB

488

BILL NO: SSHB 488

DATE: March 13, 1990

TITLE: An Act relating to suspended imposition of sentence

CONTACT: Barbara Miklos 465-4356

DEPARTMENT OF PUBLIC SAFETY

The Council on Domestic Violence and Sexual Assault supports the provisions in SSHB 488, which will prohibit suspended impositions of sentence for assaults if the person has had a conviction of a crime with substantially similar elements. Most domestic violence assaults are charged as misdemeanors, yet they are serious crimes which often escalate in number and severity and can lead to serious injury or death. When a person has had a suspended imposition of sentence, the conviction can be removed from the record. Given the often increasing severity of domestic violence assaults, it is not appropriate that these crimes be subject to suspended imposition of sentence.

Arthur English
Commissioner

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SSHB 488
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to suspended imposition of sentence
Sponsor: Rep. Donley, et al
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 -
REVENUE	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

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)

This bill will 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: March 13, 1990
Date: 3-13-90

3/13/90

Page 1 of 1

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN • SPENARD
SEAT A

3111 "C" STREET, SUITE 450
ANCHORAGE, ALASKA 99503
(907) 561-7629 (FAX) 562-4376

CHAIRMAN
LABOR AND COMMERCE COMMITTEE

VICE CHAIRMAN
ANCHORAGE CAUCUS

MEMBER
RULES COMMITTEE
STATE AFFAIRS COMMITTEE

March 13, 1990

M E M O R A N D U M

TO: Members of the House Judiciary Committee

FROM: Representative Dave Donley

RE: SSHB 488, Suspended Imposition of Sentence

SSHB 488 would limit the courts discretion to order suspension of imposition of sentence (SIS) in criminal cases. SIS is a sentence whereby persons convicted of crimes, either felonies or misdemeanors, can avoid having the conviction permanently on their records if they successfully complete a probationary period.

Currently, SIS is not allowed for convictions of DWI, sexual assault, and the most serious felonies. Under SS2HB 488, SIS would also be prohibited in all case where the offense involves a firearm, and in second offenses of crimes "against a person", such as assault, reckless endangerment, extortion, coercion or unarmed robbery.

I feel that barring these three additional crimes from the suspension of imposition of sentence supports the public's right to know of such serious convictions and sends a strong message that these are especially serious crimes.

I would appreciate your support of this legislation. If you have any questions, please don't hesitate to contact me or my aide, Michael Ward at 3892.

JUNEAU OFFICE
(During Legislative Session January through May)
P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3892 (FAX) 463-5661

STATE OF ALASKA
THE LEGISLATURE

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
(907) 465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM February 15, 1990

SUBJECT: Suspended imposition of sentence

TO: Representative Dave Donley

FROM: John B. Gaguine
Legislative Counsel

Under AS 12.55.015(a)(8), a judge may suspend imposition of sentence on the person following the person's conviction unless another statute precludes suspending imposition. You have asked for a brief synopsis of the statutes that preclude a judge from suspending imposition.

AS 12.55.125(f)(2) forbids suspended imposition of sentence for a person convicted of any of five unclassified felonies - first-degree murder, second-degree murder, attempted first-degree murder, kidnapping, and misconduct involving a controlled substance in the first degree (the most serious drug offenses, such as giving heroin to a minor). AS 12.55.125(g)(2) forbids suspended imposition of sentence for a person convicted of sexual assault in the first degree or sexual abuse of a minor in the first degree (both unclassified felonies) or convicted of any class A felony. Subsection (g)(2) also forbids suspending imposition of sentence for a person convicted of a class B or a class C felony if the person has a prior felony conviction. Note, however, that if the person, following the prior felony conviction, had imposition of sentence suspended, and the person subsequently had that prior conviction set aside under AS 12.55.085(e), the person would still be eligible for suspended imposition of sentence following the second class B or class C felony.

Elsewhere, AS 12.55.085(f) forbids the suspended imposition of sentence for a person convicted of sexual assault or sexual abuse of a minor in any degree, incest, or unlawful exploitation of a minor (the child pornography statute). In addition, several statutes found outside of Titles 11 and 12

forbid the suspended imposition of sentence following conviction of certain misdemeanors: driving while intoxicated (AS 28.35.030(c)), refusing a chemical breath test (AS 28.-35.032(g)), driving with a suspended or revoked license (AS 28.15.291(a) and (c)), commercial guiding offenses (AS 08.54.520(f)), and wanton waste of big game (AS 16.-30.010(c)).

Other than these, there are no restrictions on a judge's ability to suspend imposition of sentence following a conviction, although a couple of statutes provide that some jail time must be imposed as a condition of a suspended imposition of sentence. Please let me know if I can assist you further on this matter.

JBG:gc
G13/094

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: HB 488
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Relating to suspended imposition of a sentence
Sponsor: Representative Donley, etc.
Requestor: House Judiciary

Agency Affected: Public Safety
BRU: Alaska State Troopers
Component: Detachments

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
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)

No fiscal impact anticipated.

Prepared by: Francis C. Allan
Division: Alaska State Troopers
Approved by Commissioner: D. Arthur English
Agency: Department of Public Safety

Phone: 269-5691
Date: 02/14/90
Date: 2-20-90

2/16/90

STATE OF ALASKA
1990 LEGISLATIVE SESSION

Bill Version: HB 488
Publish Date: 2/20/90

FISCAL NOTE

REQUEST:

Revision Date:
Agency Affected: Alaska Court System
Title: An Act relating to suspended imposition of sentence
BRU: Trial Courts
Sponsor: Donley, Larson, Ulmer...
Components:
Requestor: Judiciary

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact. See attached analysis.

Prepared by: Jan Strandberg, General Counsel
Phone: 264-8228
Division: Alaska Court System
Date: 03/12/90

Approved by: Arthur H. Snowden, II, Administrative Director
Date: 03/12/90
Agency: Alaska Court System

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

Fiscal Analysis--HB 488

This proposed legislation may impact the Alaska Court System if a significant number of cases that would have resulted in suspended impositions of sentences will now proceed to trial. If the courts find that an appreciable number of pre-trial hearings and trials result from this proposed legislation, a supplemental appropriation will be requested. Because this number cannot be determined with any accuracy at this time, no present fiscal impact is indicated.

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SSHB 488
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date:
Title: "An Act relating to suspended imposition of sentence."
Sponsor: Rep. Donley
Requestor: House Judiciary

Agency Affected: Department of Law
BRU: Prosecution
Components: All

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	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Please see the attached analysis.

Richard L. Pegues

Prepared by: Richard L. Pegues, Director
Phone: 465-3672
Division: Administrative Services
Date: March 12, 1990

Richard L. Pegues /FOR/

Approved by Commissioner: Douglas B. Baily, Attorney General
Date: March 12, 1990
Agency: Department of Law

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SSHB 488

The sponsor substitute for HB 488 amends AS 12.55.085(f), which specifies those crimes where a court may not suspend imposition of sentence, to include assault, robbery, extortion, and coercion. This is a sentencing provision and, therefore, it will not have a fiscal impact on the Department of Law.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907 465-3800

MEMORANDUM June 23, 1989

SUBJECT: Suspended imposition of sentence and criminal records (Work Order No. 6-1347)

TO: Representative Dave Donley

FROM: John B. Gaguine
Legislative Counsel

You have asked several questions about suspended imposition of sentence (SIS) and how it works. This memorandum will try to answer those questions.

Suspended imposition of sentence, statutorily authorized by AS 12.55.085, is a device whereby persons convicted of crimes - either felonies or misdemeanors - can avoid having the convictions permanently on their records if they successfully complete a probationary period. Most states and the federal government have similar sentencing provisions; they go under a variety of names.

After a person is convicted of an offense, either through a plea or after a trial, the court refrains from imposing a sentence for a period of time, set at the court's discretion. AS 12.55.085(a) limits the period of time that the sentence can be withheld to the maximum period of imprisonment that could be imposed for the crime (but not more than five years), and requires the court to place the person on probation for this period. The conditions of probation are generally the same as if a suspended sentence were imposed - regular contact with a probation officer, no further criminal violations, no drug or alcohol use (in appropriate cases), community work service, restitution to the victim. In addition, under AS 12.55.086, the court can require the defendant to serve jail time as a condition of the SIS.

If the person successfully completes the period of probation, the court may set aside the conviction, so that it

no longer appears on the person's record. The court has the discretion not to set it aside, but must, before it makes that decision, explain to the defendant why the court believes a set-aside is not appropriate, and then hold a hearing at which the defendant can present the case for the set-aside. Generally convictions are routinely set aside if the probationary period is successfully completed.

At any time during the probationary period, the court may vacate the SIS and sentence the defendant if the defendant violates the conditions of probation. Alleged violations are generally brought to the court's attention by a petition by the district attorney; the alleged violations may be reported to the district attorney or the court by the defendant's probation officer, or may arise as a result of the defendant's arrest on some new charge. The defendant is entitled to a hearing - less formal than a trial - on the probation violation charges. If the court finds the charges proven, it has two options. If the violations are minor, the court may continue the SIS, often lengthening the probationary period or adding new conditions of probation, including jail time. If the court considers the violations serious, it may sentence the defendant to whatever he could have been sentenced to originally. When imposing such a sentence the court may consider the defendant's conduct during the probationary period.

SIS is probably used more frequently in felony cases than in misdemeanors, because the consequences of a felony conviction are so much greater. They are rarely used in violent crimes - more typically they will be used in connection with property crimes such as theft or burglary, and small drug offenses (simple possession, or transfer of small amounts). Generally only a first offender will get an SIS, although a record of non-serious misdemeanors might not preclude an SIS for a first-time felony defendant.

However, by statute imposition of sentence may not be suspended in connection with certain offenses. These are offenses where society's interest in maintaining a record of convictions outweighs the individual's interest in having a clean record if his behavior is good. Thus, AS 12.55.125(f) and (g) prohibits SIS's following convictions for unclassified and Class A felonies (the most serious offenses), and for all other felonies when the person convicted has a prior felony conviction. On the misdemeanor level, the court may not order an SIS after a drunk driving conviction,

AS 28.35.030(c), because of the need to identify repeat offenders and keep them off the roads. Most pertinent to your inquiry, the SIS statute was amended in 1988 to provide that no one could receive an SIS following a conviction for violating AS 11.41.410 - 11.41.455 (all degrees of sexual assault, all degrees of sexual abuse of a minor, incest and unlawful exploitation of a minor).

Laurie Otto in the Criminal Division of the Department of Law says that even when an SIS is set aside, the Department of Public Safety's printout of the person's criminal record still reflects the conviction. In other words, the record is not purged. Thus, while the state cannot use the earlier conviction to support a presumptive sentence as a multiple felon, the state can still use it to argue for a greater sentence than would otherwise be the case. And the record of the set aside conviction will be available to those persons entitled to see criminal records under AS 12.62.035. Currently under that statute a person's employer (or would-be employer, if the person is applying for a job) is entitled to see the person's conviction records for sex crimes and contributing to the delinquency of a minor, if the person has or would have a position, paid or unpaid, giving him supervisory or disciplinary power over minors.

Two bills currently pending in the legislature, HB 52 and SB 225, would significantly expand AS 12.62.035. These bills would expand the statute to cover all felonies, not just those relating to sex crimes. (Misdemeanor conviction records would still be limited to sex crimes and contributing to the delinquency of a minor.) The bills also would authorize the Department of Education to obtain access to these records for any person seeking certification as a teacher or a school administrator.

If I may be of further assistance, please advise.

JBG:gc
G10/125

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SSHB 488
PUBLISH DATE: 03/13/90

FISCAL NOTE

REQUEST:

Revision Date:
Title: "An Act relating to suspended imposition of sentence."
Sponsor: Rep. Donley, et al
Requestor:

Agency Affected: Department of Corrections
BRU:
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	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

The Department of Corrections predicts minimal impact due to proposed passage of this legislation.

Susan E. Knighton

Prepared by: Susan E. Knighton, Director
Phone: 465-3376
Division: Administrative Services
Date: 03/13/90

Approved by Commissioner: Humphrey-Barnett
Date: 03/13/90
Agency: Department of Corrections

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

HOUSE COMMITTEE REPORT

(7)
Date Referred: February 20, 1990 FURTHER REFERRALS:

Date of Committee Action: 4-19-90

The JUDICIARY Committee considered: SSHB 488

SS HOUSE BILL NO. 488 SUSPENDED IMPOSITION OF SENTENCE

"An Act relating to suspended imposition of sentence."

RECOMMENDATIONS:
[X] be replaced with CS HB 488 (JUD) [ ] the same title [X] a new title
[ ] have attached amendment(s)
[X] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept.)
[ ] fiscal impact _____
[ ] zero fiscal note _____
[ ] zero with analysis _____

APPROVES PREVIOUS: (Date/Dept)
3/13/90 Dept. of Corr.
2/14/90 Public Safety-troopers
2/20/90 Alc Court System
3/12/90 Dept of Law- Pros.
[X] fiscal note(s)
[ ] zero fiscal note(s) _____
[ ] zero fn/analysis _____

SIGNING DO PASS:

Peter Goll
Johnny Ellis
Max Gruenberg

SIGNING:
(Check approp. column)

	Do Not Pass	No Rec	Amend
Mike Miller		✓	
Mike Dunn		✓	

Max Gruenberg Peter Goll
Chairman's Signature
Gruenberg / Goll

Original sponsor(s): REP. DONLEY, Larson, Ulmer, Swackhammer, Barnes, Boucher, Collins, Foster, Hudson, Menard, Miller, Zawacki, Sharp, Phillips

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 488 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act prohibiting the suspended imposition of sentence for a person convicted of using a firearm in the commission of a crime."

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

* Section 1. AS 12.55.085(f) is amended to read:

(f) The court may not suspend the imposition of sentence of a person who

(1) is convicted of a violation of AS 11.41.410 - 11.41.455; or

(2) uses a firearm in the commission of the offense for which the person is convicted.

HB

491

(7)

Date Referred: February 7, 1990 FURTHER REFERRALS:

FINANCE

Date of Committee Action: 2/28/90

The JUDICIARY Committee considered: HB 491

HOUSE BILL NO. 491 ALASKA SENTENCING COMMISSION

"An Act creating a sentencing commission; and providing for an effective date."

RECOMMENDATIONS:

[ ] be replaced with CS HB 491 (JUD) [X] the same title [ ] a new title

[ ] have attached amendment(s)

[X] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal impact_____

[ ] zero fiscal note_____

[ ] zero with analysis_____

APPROVES PREVIOUS: (Date/Dept)

[X] fiscal note(s) Governor

[ ] zero fiscal note(s)_____

[ ] zero fn/analysis _____

SIGNING DO PASS:

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
Terry Martin		✓	

Chairman's Signature

Alaska State Legislature

House of Representatives
House Judiciary Committee

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990
(907) 465-4712

MEMORANDUM

TO: Representative Lyman Hoffman, Co-Chair
Representative Ron Larson, Co-Chair
House Finance Committee

FROM: House Judiciary Committee

RE: HB 491, An Act creating a sentencing commission.

DATE: March 2, 1990

The House Judiciary Committee has heard and passed from committee HB 491, An Act creating a sentencing commission.

We would urge you to scrutinize the staffing pattern set out in the bill and the attached fiscal note.

Representative Peter Goll

Representative Max Gruenberg

2/28/90

1.

A M E N D M E N T

IN THE HOUSE

TO: HB 491

Page 1, lines 15 - 17, after "governor,":

Delete all material and insert

"with due consideration to geographic representation and the interests of victims, local law enforcement officers, rehabilitation specialists, and other groups closely concerned with sentencing policies;"

MS - MU. —

MM - Obj. Discuss

Rem. Obj.

Adopted —

#2

A M E N D M E N T

IN THE HOUSE

TO: HB 491

Page 1, line 29, after "supreme court":

Insert "or judge of the court of appeals"

Page 2, line 1:

Delete "(8) a judge of the court of appeals" and insert "(9) a district court judge"

Page 2, line 3:

Delete "(9)" and insert "(8)"

MG MJ -

adopted

3.

AMENDMENT

IN THE HOUSE

TO: HB 491

Page 2, line 17, after "Members of the commission":

Insert "who are not public employees"

MG

MV

tech, no reas. pay travel per diem

~~adopted~~

MG - MV to withdraw

#4

A M E N D M E N T

IN THE HOUSE

TO: HB 491

Page 3, line 27, after "commission's function":

Insert

", or place the commission staff under the executive director of the Alaska Judicial Council"

Only - Staff of Judicial Council shall be staff of the Commission

#5

A M E N D M E N T

IN THE HOUSE

TO: HB 491

Page 4, line 3, and Page 4, line 5:

Delete "laws" and insert "practices"

MC

MJ

Adopted

#6

A M E N D M E N T

IN THE HOUSE

TO: HB 419

Page 4, lines 11 - 12, after "no later than":

Delete all material and insert

"January 1 of each year, beginning in 1991.

Sec. 44.19.577. DEFINITION. In AS 44.19.561 - 44.19.577, "commission" means the Alaska Sentencing Commission established in AS 44.19.561."

MG
Mu -
Adopt -

A M E N D M E N T

#7

IN THE HOUSE

TO: HB 491

Page 4, line 15:

Delete "1994" and insert "1993"

Mr. Mc Adopted

#8

A M E N D M E N T

IN THE HOUSE

TO: HB 491

Page 4, line 16:

Insert a new bill section to read:

Section 3. The first Alaska Sentencing Commission, created in sec. 1 of this act, shall be established by July 1, 1990.

MC
MV.
adopt

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

MEMORANDUM March 1, 1990

SUBJECT: Changes to CSHB 491(Jud)

TO: Representative Peter Goll
Attn: Hayden Kaden

FROM: David R. Dierdorff
Revisor of Statutes

Enclosed is the final for CSHB 491(Jud). I made two changes in the bill, one of which I discussed with Hayden.

You will see that the deadline for the initial report is now in temporary law (sec. 3) rather than the codified provision. That change was the one discussed with Hayden. The other change I made was to clarify the intent of the requirement that the first commission "be established" by July 1. That requirement added nothing to the law, as the commission is "established" the moment this bill becomes law (see the language of AS 44.19.561 in sec. 1). I assumed that you intended that the commission be constituted and have a meeting by that date. Consequently, I rewrote the portion of the transitional provision that imposes the deadline for that action.

John Gaguine was attending a committee meeting, so I was unable to discuss these changes with him. As you know, we normally ask the drafter to work out matters of this type, but I did not want to delay delivery of the final to you.

If you have any questions or comments, please feel free to give me a call.

DRD:pl
WKP2/108

Enclosure

go0340hE
Gaguine
2/23/90

Original sponsor(s): Rules/Governor

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 491 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act creating a sentencing commission; and providing for an effective date."

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

* Section 1. AS 44.19 is amended by adding new sections to read:

ARTICLE 16. SENTENCING COMMISSION.

Sec. 44.19.561. CREATION OF COMMISSION. The Alaska Sentencing Commission is established in the Office of the Governor.

Sec. 44.19.563. COMPOSITION. (a) The commission consists of 13 members as follows:

(1) three persons appointed by the governor, with due consideration to geographic representation and the interests of victims, local law enforcement officers, rehabilitation specialists, and other groups closely concerned with sentencing policies;

(2) the commissioner of corrections or a deputy commissioner of corrections designated by the commissioner;

(3) the commissioner of public safety or a deputy commissioner of public safety designated by the commissioner;

(4) the attorney general or the designee of the attorney general;

(5) the public defender or the designee of the public defender;

(6) the presiding officer of the Board of Parole or a member of the Board of Parole designated by the presiding officer;

(7) the chief justice of the supreme court or another

justice of the supreme court designated by the chief justice;

(8) a judge of the court of appeals designated by the chief justice;

(9) a superior court judge designated by the chief justice;

(10) the senate president or another senator designated by the senate president; and

(11) the speaker of the house of representatives or another member of the house designated by the speaker of the house of representatives.

(b) The commission, by majority vote of the membership, shall elect a chair and other officers it considers necessary from among its membership to serve on a yearly basis.

(c) The term of office of a member appointed under (a)(1) of this section is three years. Terms shall be staggered, and a member may not serve more than two consecutive terms. A vacancy shall be filled for the balance of the unexpired term in the same manner as original appointments.

Sec. 44.19.565. COMPENSATION. Members of the commission serve without compensation, but are entitled to per diem and travel expenses authorized for boards and commissions under AS 39.20.180.

Sec. 44.19.567. MEETINGS. A majority of the members constitutes a quorum for conducting business and exercising the powers of the commission. The commission shall meet at the call of the chair, at the request of the majority of the members, or at a regularly scheduled time as determined by a majority of the members.

Sec. 44.19.569. PURPOSE. The purpose of the commission is to evaluate the effect of crime rates and sentencing laws on the criminal justice system, and to make recommendations for improving criminal sentencing practices.

Sec. 44.19.571. METHODOLOGY. In making recommendations, the commission shall

(1) solicit and consider information and views from a variety of constituencies in order to represent the broad spectrum of diversity that exists with respect to possible approaches for sentencing criminals in the state; and

(2) base recommendations on the following factors:

(A) the seriousness of each offense in relation to other offenses;

(B) the effect of an offender's prior criminal history on sentencing;

(C) the need to rehabilitate criminal offenders;

(D) the need to confine offenders to prevent harm to the public;

(E) the extent to which criminal offenses harm victims and endanger the public safety and order;

(F) the effect of sentencing in deterring an offender or other members of society from future criminal conduct;

(G) the effect of sentencing as a community condemnation of criminal acts and as a reaffirmation of societal norms;

(H) the elimination of unjustified disparity in sentences; and

(I) the resources available to criminal justice system agencies.

Sec. 44.19.573. POWERS AND DUTIES. To accomplish its purpose, the commission may

(1) hire an executive director and additional administrative staff as may be necessary to the commission's function, or place the commission staff under the executive director of the Alaska