

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672

6288 SENATE HEALTH, EDUCATION AND SOCIAL SERVICES

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1 application impairs constitutionally vested rights or extends the  
2 duration of custodianships in existence on January 1, 1990.

3 (c) AS 13.46.190, 13.46.195, and 13.46.995, with respect to the  
4 age of a minor for whom custodial property is held under this chapter,  
5 do not apply to custodial property held in a custodianship that ter-  
6 minated because of the minor's attainment of the age of

7 (1) 19 after June 12, 1967, and before September 17, 1980;

8 or

9 (2) 18 after September 16, 1980, and before January 1,  
10 1990.

11 (d) To the extent that this chapter, by virtue of (b) of this  
12 section, does not apply to transfers made in a manner prescribed under  
13 former AS 45.60 (Alaska Uniform Gifts to Minors Act) or to the powers,  
14 duties, and immunities conferred by transfers in that manner upon  
15 custodians and persons dealing with custodians, the repeal of AS 45.60  
16 (Alaska Uniform Gifts to Minors Act) does not affect those transfers  
17 or those powers, duties, and immunities.

18 Sec. 13.46.220. UNIFORMITY OF APPLICATION AND CONSTRUCTION.  
19 This chapter shall be applied and construed to effectuate its general  
20 purpose to make uniform the law with respect to the subject of this  
21 chapter among states enacting it.

22 Sec. 13.46.990. DEFINITIONS. In this chapter

23 (1) "adult" means an individual who has attained the age of  
24 18 years;

25 (2) "benefit plan" means an employer's plan for the benefit  
26 of an employee or partner;

27 (3) "broker" means a person lawfully engaged in the busi-  
28 ness of effecting transactions in securities or commodities for the  
29 person's own account or for the account of others;

1 (4) "conservator" means a person appointed or qualified by  
2 a court to act as general, limited, or temporary guardian of a minor's  
3 property or a person legally authorized to perform substantially the  
4 same functions;

5 (5) "court" means the superior court;

6 (6) "custodial property" means

7 (A) an interest in property transferred to a custodian  
8 under this chapter; and

9 (B) the income from and proceeds of that interest in  
10 property;

11 (7) "custodian" means a person designated under AS 13.-  
12 46.080 or a successor or substitute custodian designated under AS 13.-  
13 46.170;

14 (8) "financial institution" means a bank, trust company,  
15 savings institution, or credit union, chartered and supervised under  
16 state or federal law;

17 (9) "legal representative" means an individual's personal  
18 representative or conservator;

19 (10) "member of the minor's family" means the minor's par-  
20 ent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt,  
21 whether of the whole or half blood or by adoption;

22 (11) "minor" means an individual who has not attained the  
23 age of 18 years, except that when used in reference to the beneficiary  
24 for whose benefit custodial property is held or to be held, "minor"  
25 means an individual who has not attained the age at which the custo-  
26 dian is required under AS 13.46.190 and 13.46.195 to transfer the  
27 custodial property to the beneficiary;

28 (12) "personal representative" means an executor, adminis-  
29 trator, successor personal representative, or special administrator of

1 a decedent's estate or a person legally authorized to perform substan-  
2 tially the same functions;

3 (13) "state" includes a state of the United States, the  
4 District of Columbia, the Commonwealth of Puerto Rico, and any terri-  
5 tory or possession subject to the legislative authority of the United  
6 States;

7 (14) "transfer" means a transaction that creates custodial  
8 property under AS 13.46.080;

9 (15) "transferor" means a person who makes a transfer under  
10 this chapter;

11 (16) "trust company" means a financial institution, corpora-  
12 tion, or other legal entity, authorized to exercise general trust  
13 powers.

14 Sec. 13.46.999. SHORT TITLE. This chapter may be cited as the  
15 Alaska Uniform Transfers to Minors Act.

16 \* Sec. 3. AS 13.06.050(45) is amended to read:

17 (45) "trust" includes any express trust, private or charit-  
18 able, with additions to it, wherever and however created; it also  
19 includes a trust created or determined by judgment or decree under  
20 which the trust is to be administered in the manner of an express  
21 trust; "trust" excludes other constructive trusts, and it excludes  
22 resulting trusts, conservatorships, personal representatives, trust  
23 accounts as defined in AS 13.31, custodial arrangements under AS 13.46  
24 [AS 45.60], business trusts providing for certificates to be issued to  
25 beneficiaries, common trust funds, voting trusts, security arrange-  
26 ments, liquidation trusts, and trusts for the primary purpose of  
27 paying debts, dividends, interest, salaries, wages, profits, pensions,  
28 or employee benefits of any kind, and any arrangement under which a  
29 person is nominee or escrowee for another;

1 \* Sec. 4. AS 13.50.014 is amended by adding a new subsection to read:

2 (d) A hospital may not request the gift of a fetus that was  
3 aborted under AS 18.16.010.

4 \* Sec. 5. AS 13.50.030(b) is amended to read:

5 (b) A gift of all or a part of the body under AS 13.50.010(a)  
6 may be made by a document other than a will. The gift takes effect  
7 upon the death of the donor. The document, which may be a card de-  
8 signed to be carried on the person, shall be signed by the donor [IN  
9 THE PRESENCE OF TWO WITNESSES WHO SHALL SIGN THE DOCUMENT IN THE  
10 DONOR'S PRESENCE]. If the donor cannot sign, the document may be  
11 signed for the donor at the donor's direction and in the donor's  
12 presence in the presence of two witnesses who must sign the document  
13 in the donor's presence. Delivery of the document of gift during the  
14 donor's lifetime is not necessary to make the gift valid.

15 \* Sec. 6. AS 18.65.311(a) is amended to read:

16 (a) The department shall provide, at the time that an identi-  
17 fication card is issued, a form for a document by which the card  
18 holder may make an anatomical gift under AS 13.50 (Uniform Anatomical  
19 Gifts Act). The document (1) may not be larger than an identification  
20 card, (2) must contain sufficient space for the signature of two  
21 witnesses to the donor's act if the donor cannot sign [OF EXECUTION OF  
22 THE DOCUMENT], and (3) must provide a means by which the donor may  
23 cancel the gift. If the document making an anatomical gift is executed  
24 by the applicant, it shall be sealed in plastic and attached to the  
25 identification card. A symbol indicating the existence of the anatom-  
26 ical gift document must be displayed in the lower right-hand corner on  
27 the face of the identification card.

28 \* Sec. 7. AS 45.60.011, 45.60.016, 45.60.021, 45.60.031, 45.60.041,  
29 45.60.051, 45.60.061, 45.60.071, 45.60.081, 45.60.091, and 45.60.101 are

1 repealed.

2 \* Sec. 8. This Act takes effect January 1, 1990.  
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# State of Alaska

## Committees

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

April 25, 1989

## MEMORANDUM

TO: Senator Paul Fisher  
Chair, Senate HESS Committee

FROM: Representative Max Gruenberg *Max*

RE: CS HB 165 (Judiciary), "An Act relating to the disposition of property including anatomical parts of the body; and providing for an effective date."  
(Uniform Transfers to Minors Act [UTMA])

I would appreciate it if you would schedule CSHB 165 (Judiciary) for the floor as soon as possible.

This bill updates the Uniform Gifts to Minors Act (UGMA) and makes several changes. The UGMA presently requires that property given to minors terminate at age 18. The UTMA will extend the date to 21, unless the donor specifies otherwise. The donor can specify any age between 18 and 25.

The UGMA is presently limited to securities, life insurance policies, life insurance annuity contracts and money. The UTMA covers all types of property.

THE UGMA covers only outright gifts made during a donor's lifetime. The UTMA will cover a number of transfers, including trusts, estates, guardianships and debtors.

The bill will also add a technical amendment to the Uniform Anatomical Gifts Act, easing restrictions on organ donations. At the Governor's request I also added Section 1 in the HESS Committee which amends the felonious killing statute in order to provide a judge some discretion in the disposition of a victim's estate.

Similar legislation, HB 468, passed the House last year, but died when session adjourned.

There is no known opposition to the bill. At least 28 states have already adopted the UTMA. Alaska will be the 29th.

Thank you.

# STATE OF ALASKA THE LEGISLATURE

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

## LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

January 31, 1989

SUBJECT: Summary of W.O. 6-0510A  
TO: Representative Max Gruenberg  
FROM: Theresa L. Bannister *TB*  
Legislative Counsel

You have requested a brief summary of bill draft 6-0510A (1-23-89). As a preliminary matter, note that this summary should not be considered an authoritative interpretation of the bill draft. The bill draft itself is the best statement of its contents.

### 1. SUMMARY OF CONTENTS.

Section 1 enacts the Alaska Uniform Transfers to Minors Act ("proposed act") as AS 13.46.

Section 2 makes a technical change.

Sections 3 and 4. Section 3 amends the Uniform Anatomical Gift Act (AS 13.50) by deleting the requirement that two persons must sign the document as witnesses to the donor's signature. Section 4 conforms another section to this change.

Section 5 repeals the sections of the present Alaska Uniform Gifts to Minors Act ("present act") (AS 45.60).

Section 6 makes the Act effective January 1, 1990.

### 2. MAJOR DIFFERENCES BETWEEN THE PROPOSED ACT AND THE PRESENT ACT.

The proposed Uniform Transfers to Minors Act is an expanded and more comprehensive version of the present Uniform Gifts to Minors Act (AS 45.60). The major differences are discussed below.

Representative Max Gruenberg  
Page 2  
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Property coverage. The proposed act expands the type of property that can be transferred to a minor. The present act only covers securities, life insurance policies, life insurance annuity contracts, and money. The proposed act covers all types of property.

Types of transfers. The proposed act expands the type of transfers that can be made. The present act covers only outright gifts made during the donor's lifetime. In addition to such outright gifts, the proposed act covers transfers from trusts, estates, and guardianships, and from persons who are indebted to the minor.

Extension beyond minority. The proposed act allows the custodial property to be held for the minor beyond the age of 18 to a maximum age of 25. The present act does not provide for this.

If I may be of further assistance, please advise.

TLB:gc  
WKG6/062

6-0510H

COMMENTARY TO CSHB 165(Judiciary)  
CONTAINING THE PROPOSED  
Alaska Uniform Transfers to Minors Act  
and other items

April 1989

Division of Legal Services  
Legislative Affairs Agency  
P.O. Box Y - State Capitol  
Juneau, Alaska 99811

## Preface

The Uniform Transfers to Minors Act (UTMA) revises and restates the Uniform Gifts to Minors Act (UGMA), one of the National Conference of Commissioners on Uniform State Laws most successful products, some version of which has been enacted in every American jurisdiction.

The original version of UGMA was adopted by the Conference in 1956 and closely followed a model "Act concerning Gifts of Securities to Minors" which was sponsored by the New York Stock Exchange and the Association of Stock Exchange Firms and which had been adopted in 14 states. The 1956 version of the UGMA broadened the model act to cover gifts of money as well as securities but made few other changes.

In 1956 and 1966 the Conference revised the UGMA to expand the types of financial institutions which could serve as depositories of custodial funds, to facilitate the designation of successor custodians, and to add life insurance policies and annuity contracts to the types of property (cash and securities) that could be made the subject of a gift under the UGMA.

Alaska adopted the 1966 version of the UGMA in 1967 (AS 45.-60). Many states which adopted the 1956 or 1966 version of the UGMA, have substantially revised their versions of the UGMA to expand the kinds of property that may be made the subject of a gift under the UGMA. A few states permit transfers to custodians from other sources, such as trusts and estates, as well as from lifetime gifts. Some states also permit the transferor to have an option to extend the date the custodial property may be distributed to the minor. As a result, a great deal of non-uniformity has arisen among the states. Uniformity in this area is important, for the Conference has cited the UGMA as an example of an act designed to avoid conflicts of law when the laws of more than one state may apply to a transaction or a series of transactions.

The Alaska Uniform Transfers to Minors act (AkUTMA) follows the expansive approach taken by several states and allows any kind of property, real or personal, tangible or intangible, to be made the subject of a transfer to a custodian for the benefit of a minor (sec. 13.46.990(6)). In addition, it permits such transfers not only by lifetime outright gifts

(sec. 13.46.030), but also from trusts, estates, and guardianships, whether or not specifically authorized in the governing instrument (secs. 13.46.040 and 13.46.050), and from other third parties indebted to a minor who does not have a conservator, such as parties against whom a minor has a tort claim or judgment, and depository institutions holding deposits or insurance companies issuing policies payable on death to a minor (sec. 13.46.060). For this reason, and to distinguish the enactment of this statute from the 1956 and 1966 versions of the UGMA, the title of this Act has been changed to refer to "Transfers" rather than to "Gifts," a much narrower term. Moreover, the AkUTMA permits the transferor or the minor to have an option to extend beyond the age of minority the date the custodial property may be distributed to the minor (sec. 13.46.195).

As so expanded, the AkUTMA might be considered a statutory form of trust or guardianship that may terminate between the ages of 18 and 25. Note, however, that unlike a trust, a custodianship is not a separate legal entity or taxpayer. Under sec. 13.46.100(b), the custodial property is indefeasibly vested in the minor, not the custodian, and thus any income received is attributable to and reportable by the minor, whether or not actually distributed to the minor.

The expansion of the AkUTMA to permit transfers of any kind of property to a custodian creates a significant problem of potential personal liability for the minor or the custodian arising from the ownership of property such as real estate, automobiles, general partnership interests, and business proprietorships. This problem did not exist under the UGMA under which custodial property was limited to bank deposits, securities, and insurance. In response, sec. 13.46.160 generally limits the claims of third parties to recourse against the custodial property, with the minor insulated against personal liability unless the minor is personally at fault. The custodian is similarly insulated unless the custodian is personally at fault or fails to disclose the custodian's custodial capacity upon entering into a contract.

Nevertheless, the AkUTMA should be used with caution with respect to property such as real estate or general partnership interests from which liabilities as well as benefits may arise. Many of the possible risks can and should be insured against, and the custodian has the power under sec. 13.46.120(a) to purchase such insurance, at least when other custodial assets are sufficient to do so. If the assets are

not sufficient, there is doubt that a custodian will act, or there are significant uninsurable risks, a transferor should consider a trust with spendthrift provisions, such as a minority trust under 26 U.S.C. 2503(c), (Internal Revenue Code) rather than a custodianship, to make a gift of such property to a minor.

Finally, the AkUTMA restates and rearranges rather than amends, the 1966 version of the UGMA. The addition of other forms of property and other forms of dispositions made adherence to the format and language of the prior act very unwieldy. In addition, the 1966 version of the UGMA closely followed the language of the earlier model act, which had already been adopted in several states, even though it did not conform to Conference style. It is hoped that this re-writing and revision of the UGMA will improve its clarity while also expanding its coverage.

Section 1 allows a court to set aside (a), (b), (c), or (d) of AS 13.11.305 relating to the transfer of property after a felonious killing if the felonious killing was unintentional and if the court makes certain findings and conclusions that the provision would result in manifest injustice and should not be applied.

Section 2. Enacts the Alaska Uniform Transfers to Minors Act as AS 13.46.

Sec. 13.46.010. SCOPE AND JURISDICTION.

This section has no counterpart in the 1966 version of the UGMA. It attempts to resolve uncertainties and conflicts-of-law questions that have frequently arisen because of the present nonuniformity of the UGMA in the various states and which may continue to arise during the transition from the UGMA to the UTMA.

The creation of a custodianship must invoke the law of a particular state because of the form of the transfer required under sec. 13.46.080(a). Subsection (a) provides that a choice of the AkUTMA is appropriate and effective if any of the nexus factors specified in subsection (a) exists at the time of the transfer. Subsection (b) makes the custodian accountable and subject to personal jurisdiction in the courts of Alaska for the duration of the custodianship, despite subsequent relocation of the parties or the property.

Subsection (c) declares that a transfer that purports to be made and is valid under a similar act of another state is governed by the law of the designated state.

Sec. 13.46.020. NOMINATION OF CUSTODIAN.

This section is new and permits a future custodian for a minor to be nominated to receive a distribution under a will or trust, or as a beneficiary of a power of appointment, or of contractual rights such as a life or endowment insurance policy, annuity contract, P.O.D. account, benefit plan, or similar future payment right. Nomination of a future custodian does not constitute a "transfer" under the AkUTMA and does not create custodial property. If it did, the nomination and beneficiary designation would have to be permanent, since a "transfer" is irrevocable and indefeasibly vests

ownership of the interest in the minor under sec. 13.46.100(b).

Instead, this section permits a revocable beneficiary designation that takes effect only when the donor dies, or when a lifetime transfer to the custodian for the minor beneficiary occurs, such as a distribution under an inter vivos trust. However, an unrevoked nomination under this section is binding on a personal representative or trustee (see sec. 13.46.040(b)) and on insurance companies and other obligors who contract to pay in the future (see sec. 13.46.060(b)).

The person making the nomination may name contingent or successive future custodians to serve, in the order named, in the event that the person first nominated dies, or is unable, declines, or is ineligible to serve. Such a substitute future custodian is a custodian "nominated . . . under AS 13.46.020" to whom the transfer must be made under secs. 13.46.040(b) and 13.46.060(b).

Any person nominated as future custodian may decline to serve before the transfer occurs and may resign at any time after the transfer. See sec. 13.46.170.

#### Sec. 13.46.030. TRANSFER BY GIFT OR EXERCISE OF POWER OF APPOINTMENT.

To emphasize the different kinds of transfers that create presently effective custodianships under the AkUTMA, they are separately described in secs. 13.46.030, 13.46.040, 13.46.050, and 13.46.060. This section in part corresponds to Section 2(a) of the 1966 version of the UGMA and covers the traditional lifetime gift that was the only kind of transfer authorized by the 1966 version of the UGMA. It also covers an irrevocable exercise of a power of appointment in favor of a custodian, as distinguished from the exercise of a power in a revocable instrument that results only in the nomination of a future custodian under sec. 13.46.020.

#### Sec. 13.46.040. TRANSFER AUTHORIZED BY WILL OR TRUST.

This section is new and has no counterpart in the UGMA. It is based on nonuniform provisions adopted by Connecticut, Illinois, Wisconsin, and other states to validate distributions from trusts and estates to a custodian for a minor beneficiary, when the use of a custodian is expressly autho-

alized by the governing instrument. It also covers the designation of the custodian whenever the settlor or testator fails to make a nomination, or the future custodian nominated under sec. 13.46.020 (and any alternate named) fails to qualify.

Sec. 13.46.050. OTHER TRANSFER BY FIDUCIARY.

This section is new and has no counterpart in the UGMA. It covers a new concept, already authorized by the law of some states through nonuniform amendments to the UGMA to permit custodianships to be used as guardianships or conservator substitutes, even though not specifically authorized by the person whose property is the subject of the transfer. It also permits the legal representative of the minor, such as a conservator or guardian, to transfer the minor's own property to a new or existing custodianship for the purposes of convenience or economies of administration.

A custodianship may be created under this section even though not specifically authorized by the transferor, the testator, or the settlor of the trust if three tests are satisfied. First, the fiduciary making the transfer must determine in good faith and in his fiduciary capacity that a custodianship will be in the best interests of the minor. Second, a custodianship may not be prohibited by, or inconsistent with, the terms of any governing instrument. Inconsistent terms would include, for example, a spendthrift clause in a governing trust, provisions terminating a governing trust for the minor's benefit at a time other than the time of the minor's age of majority, and provisions for mandatory distributions of income or principal at specific times or periodic intervals. Provisions for other outright distributions or bequests would not be inconsistent with the creation of a custodianship under this section. Third, the amount of property transferred, (as measured by its value) must be of such relative small amount that the lack of court supervision and the typically stricter investments standards that would apply to the conservator otherwise required will not be important. However, if the property is of significant size, transfer to a custodian may still be made if the court approves and if the other two tests are met.

The custodianship created under this section without express authority in the governing instrument will terminate upon the minor's attainment of the statutory age of majority in Alaska, i.e., at the same age a conservatorship of the minor

would end. See sec. 13.46.190 and the Commentary to sec. 13.46.190.

Sec. 13.46.060. TRANSFER BY OBLIGOR.

This section is new and, like sec. 13.46.050, permits a custodianship to be established as a substitute for a conservator to receive payments due a minor from sources other than estates, trusts, and existing guardianships covered by secs. 13.46.040 and 13.46.050. For example, a tort judgment debtor of a minor, a bank holding a joint or P.O.D. account of which a minor is the surviving payee, or an insurance company holding life insurance policy or benefit plan proceeds payable to a minor may create a custodianship under this section.

Transfer is mandatory when a future custodian has been nominated under sec. 13.46.020 as a named beneficiary of an insurance policy, benefit plan, deposit account, or the like, because the original owner of the property specified a custodianship (and a future custodian) to receive the property. If that custodian (or any alternate named) is not available, if none was nominated, or none could have been nominated (as in the case of a tort judgment payable to the minor), this section is permissive and does not preclude the obligor from requiring the appointment of a conservator to receive payment; it allows the obligor to transfer property to a custodian unless the property exceeds the stated value, in which case a conservator must be appointed to receive it.

Sec. 13.46.070. RECEIPT FOR CUSTODIAL PROPERTY.

This section discharges transferors from further responsibility for custodial property delivered to and receipted for by the custodian. See also sec. 13.46.150 which protects transferors and other third parties dealing with custodians. Because a discharge or release for a donative transfer is not necessary, this section had no counterpart in the UGMA.

This section does not authorize an existing custodian, or a custodian to whom an obligor makes a transfer under sec. 13.46.060 to settle or release a claim of the minor against a third party. Only a conservator, a guardian ad litem, or other person authorized under other law to act for the minor may release such a claim.

Sec. 13.46.080. MANNER OF CREATING CUSTODIAL PROPERTY AND EFFECTING TRANSFER; DESIGNATION OF INITIAL CUSTODIAN; CONTROL.

The 1966 version of the UGMA contained optional bracketed language permitting an adopting state to limit the class of eligible initial custodians to an adult member of the minor's family or a guardian of the minor. This optional limitation has been deleted because it would preclude the use of an individual and uncompensated custodian if no qualified or willing family member is available.

Otherwise, with respect to transfers of securities, cash, and insurance or annuity contracts, this section tracks the cognate provisions of subsection 2(a) of the 1966 version of the UGMA, with one exception. Under sec. 13.46.080(a)(1)-(ii), a transfer of securities in registered form may be accomplished without registering the transfer in the name of the custodian so that transfers may be accomplished more expeditiously, and so that securities may be held by custodians in street name. In other words, sec. 13.46.080(a)(1)-(i) is not the exclusive manner for making effective transfers of securities in registered form.

In addition, subsection (a) creates new procedures for handling the additional types of property now subject to the Act; specifically:

Paragraph (a)(3) covers the irrevocable transfer of ownership of life and endowment insurance policies and annuity contracts.

Paragraph (a)(4) covers the irrevocable exercise of a power of appointment and the irrevocable present assignment of future payment rights, such as royalties, interest, and principal payments under a promissory note, or beneficial interests under life or endowment or annuity insurance contracts or benefit plans. The payor, issuer, or obligor may require additional formalities such as completion of a specific assignment form and an endorsement, but the transfer is effective upon delivery of the notification. (See sec. 13.46.020 and the Commentary to sec. 13.46.020 for the procedure for revocably "nominating" a future custodian as a beneficiary of a power of appointment or such payment rights.)

Paragraph (a)(5) is the exclusive method for the transfer of real estate and includes a disposition effected by will. Under the law of those states in which a devise of real estate vests in the devisee without the need for a deed from the personal representative of the decedent, a document such as the will must still be "recorded" under this provision to make the transfer effective. For inter vivos transfers, of course, a conveyance in recordable form would be employed for dispositions of real estate to a custodian.

Paragraph (a)(6) covers the transfer of personal property such as automobiles, aircraft, and other property subject to registration of ownership with a state or federal agency. Either registration of the transfer in the name of the custodian or delivery of the endorsed certificate in registerable form makes the transfer effective.

Paragraph (a)(7) is a residual classification, covering all property not otherwise covered. Examples would include nonregistered securities, partnership interests, and tangible personal property not subject to title certificates.

The form of transfer document recommended and set out in subsection (b) contains an acceptance that must be executed by the custodian to make the disposition effective. While such a form of written acceptance is not specifically required in the case of registered securities under (a)(1), money under (a)(2), insurance contracts or interests under (a)(3) or (a)(4), real estate under (a)(5), or titled personal property under (a)(6), it is certainly the better and recommended practice to obtain the acceptance of the designated custodian on the instrument of transfer, or otherwise.

A transferor may create a custodianship by naming himself as custodian, except for transfers of securities under (a)(1)(B), insurance and annuity contracts under (a)(3)(B), and titled personally under (a)(6)(B), which are made without registering them in the name of the custodian, and transfers of the residual class of property covered by (a)(7). In all of these cases a transfer of possession and control to a third party is necessary to establish donative intent and consummation of the transfer, and designation of

the transferor as custodian renders the transfer invalid under sec. 13.46.100(a)(2).

Note, also, that the Internal Revenue Service takes the position that custodial property is includable in the gross estate of the donor if he appoints himself as custodian and dies while serving in that capacity before the minor attains the age of 21. Rev.Rul. 57-366, C.B. 1957-2, 618; Rev.Rul. 59-357, C.B. 1959-2, 212; Rev.Rul. 70-348, C.B. 1970-2, 193; Estate of Prudowsky v. Comm'r, 55 T.C. 890 (1971), affd. per curiam, 465 F.2d 62 (7th Cir. 1972).

The AkUTMA has been drafted in an attempt to avoid income attribution to the parent or inclusion of custodial insurance policies on a custodian's life in the estate of the custodian through the changes made in the standards for expenditure of custodial property and the custodian's incidents of ownership in custodial property. See secs. 13.46.120 and 13.46.130 and the Commentary to secs. 13.46.120 and 13.46.130. However, the much greater problem of inclusion of custodial property in the estate of the donor who serves as custodian remains. Therefore, despite the fact that this section permits it in the case of registered securities, money, life insurance, real estate, and personal property subject to titling laws, it is generally still inadvisable for a donor to appoint himself custodian or for a parent of the minor to serve as custodian. See, generally Sections 2036 and 2038 Internal Revenue Code and Rulings and cases cited above; with respect to gifts of closely held stock when a donor retains voting rights by serving as custodian, see Section 2036(b), Internal Revenue Code overruling U.S. v. Byrum, 408 U.S. 125 (1972), rehearing denied 409 U.S. 898.

Subsection (c) tracks in substance Section 2(c) of the 1966 version of the UGMA. However, it replaces the requirement that the transferor "promptly do all things within his power" to complete the transfer, with the requirement that such action must be taken "as soon as practicable." This change is intended only to reflect the fact that possession and control of property transferred from an estate can rarely be accomplished with the immediacy that the term "promptly" may have implied. In the case of inter vivos transfers, no relaxation of the former requirement is intended, since "prompt" transfer of dominion is usually practicable.

Sec. 13.46.085. NATIVE CORPORATIONS; CUSTODIANS.

This section has no comparable provision in the UGMA or the UTMA. This section is derived from AS 45.60.016 which was added to the Alaska Uniform Gifts to Minors Act in 1972 to address the issue of transfers to minors arising under the Alaska Native Claims Settlement Act.

Sec. 13.46.090. SINGLE CUSTODIANSHIP.

The first sentence follows Section 2(b) of the 1966 version of the UGMA. The second sentence states what was implicit in the 1966 version of the UGMA, that additional transfers at different times and from different sources may be made to an existing custodian for the minor and do not create multiple custodianships. This provision also permits an existing custodian to be named as successor custodian by another custodian for the same minor who resigns under sec. 13.46.170 for the purpose of consolidating the assets in a single custodianship.

Note, however, that these results are limited to transfer made under the AkUTMA. Gifts previously made under the Alaska UGMA or under the UGMA or the UTMA of another state must be treated as separate custodianships, even though the same custodian and minor are involved, because of possible differences in the age of distribution and custodian's powers under those other Acts.

Even when all transfers to a single custodian are made under the AkUTMA and a single custodianship results, custodial property transferred under secs. 13.46.050 and 13.46.060 must be accounted for separately from property transferred under secs. 13.46.030 and 13.46.040 because the custodianship will terminate sooner with respect to the former property since the State of Alaska has a statutory age of majority at 18, which is lower than 21. See sec. 13.46.190 and the Commentary to sec. 13.46.190.

Sec. 13.46.100. VALIDITY AND EFFECT OF TRANSFER.

Subsection (a) generally tracks Section 2(c) of the 1966 version of the UGMA, except that the transferor's designation of himself as custodian of property for which he is not eligible to serve under sec. 13.46.080(a) makes the transfer ineffective. See Commentary to sec. 13.46.080.

The balance of this section generally tracks Section 3 of the 1966 version of the UGMA with a number of necessary, and

Perhaps significant, changes required by the new kinds of property subject to custodianships. The 1966 version of the UGMA provides that a transfer made under its terms "conveys to the minor indefeasibly vested legal title to the [custodial property]." Because equitable interests in property may be the subject of a transfer under the AkUTMA, the reference to "legal title" has been deleted, but no change concerning the effect or finality of the transfer is intended.

However, subsection (b) qualifies the rights of the minor in the property, by making them subject to "the rights, power, duties and authority" of the custodian under the AkUTMA, a concept that may have been implicit and intended in the 1966 version of the UGMA, but not expressed. The concept is important because of the kinds of property, particularly real estate, now subject to custodianship. If the minor is married, it would be possible for homestead, dower, or community property rights to attach to real estate (or other property) acquired after marriage by the minor through a transfer to a custodianship for his benefit. The quoted language qualifying the minor's interest in the property is intended to override these rights insofar as they may conflict with the custodian's ability and authority to manage, sell, or transfer the property while it is custodial property. Upon termination of the custodianship and transfer of the custodial property to the former minor, the custodial property would then become subject to such spousal rights for the first time.

For a list of the immunities enjoyed by third persons under subsection (c), see sec. 13.46.150 and the Commentary to sec. 13.46.150.

Because custodianship under the AkUTMA can extend beyond the age of majority in many states (and can in this bill), or beyond emancipation of a minor through marriage or otherwise, the Drafting Committee of the UTMA considered the addition of a spendthrift clause to this section. The idea was rejected because neither the 1966 version of the UGMA nor its predecessors had such a provision, because spendthrift protection would extend only until 21 in any event and judgments against the minor would then be enforceable, and because the spendthrift qualification on the interest of the minor in the property may be inconsistent with the theory of the UTMA to convey the property indefeasibly to the minor.

Sec. 13.46.110. CARE OF CUSTODIAL PROPERTY.

Subsection (a) expands Section 4(a) of the 1966 version of the UGMA to include the duties to take control and appropriately register or record custodial property in the name of the custodian.

Subsection (b) restates and makes somewhat stricter the "prudent person" fiduciary standard for the custodian, since it is now cast in terms of a prudent person "dealing with property of another" rather than one "who is seeking reasonable income and the preservation of his capital," as under the 1966 version of the UGMA. The rule also adds a slightly higher standard for professional fiduciaries. The rule parallels section 7-302 of the Uniform Probate Code (AS 13.36.-075) in order to refer to the existing and growing body of law interpreting that standard. The 1966 version of the UGMA permitted a custodian to retain any security or bank account received, without the obligation to diversify investment. This subsection extends that rule to any property received.

In order to eliminate any uncertainty that existed under the 1966 version of the UGMA, subsection (c) grants specific authority to invest custodial property in life insurance on the minor's life, provided the minor's estate is the sole beneficiary, or on the life of another person in whom the minor has an insurable interest, provided the minor, the minor's estate, or the custodian in his custodial capacity is made the beneficiary of the policies.

Subsection (d) generally tracks Section 4(g) of the 1966 version of the UGMA but adds the provision requiring that custodial property consisting of an undivided interest be held as a tenant in common. This provision permits the custodian to invest custodial property in common trust funds, mutual funds, or in a proportional interest in a "jumbo" certificate of deposit. Investment in property held in joint tenancy with right of survivorship is not permitted, but the AkUTMA does not preclude a transfer of such an interest to a custodian, and the custodian is authorized under subsection (b) to retain a joint tenancy interest so received.

Subsection (e) follows Section 4(h) of the 1966 version of the UGMA, but adds the requirement that income tax information be maintained and made available for preparation of the

minor's tax returns. Because the custodianship is not a separate legal entity or taxpayer, the minor's tax identification number should be used to identify all custodial property accounts.

#### Sec. 13.46.120. POWERS OF CUSTODIAN.

Subsection (a) replaces the specific list of custodian's powers contained in Section 4(f) of the 1966 version of the UGMA which related only to securities, money, and insurance, then the only permitted kinds of custodial property. It was determined not to expand the list to try to deal with all forms of property now covered by the AkUTMA and to specify all powers that might be appropriate for each kind of property, or to refer to an existing body of state law, such as the Trustee's Powers Act, since such powers would not be uniform. Instead, this provision grants the custodian the very broad and general powers of an unmarried adult owner of the property, subject to the prudent person rule and to the duties of segregation and record keeping specified in sec. 13.46.110. This approach permits the AkUTMA to be self-contained and more readily understandable by volunteer, non-professional fiduciaries, who most often serve as custodians. It is intended that the authority granted includes the powers most often suggested for custodians, such as the power to borrow, whether at interest or interest free, the power to invest in common trust funds, and the power to enter contracts that extend beyond the termination of the custodianship.

Subsection (a) further specifies that the custodian's powers or incidents of ownership in custodial property such as insurance policies may be exercised only in the capacity as custodian. This provision is intended to prevent the exercise of those powers for the direct or indirect benefit of the custodian, so as to avoid as nearly as possible the result that a custodian who dies while holding an insurance policy on his own life for the benefit of a minor will have the policy taxed in his estate. See, Section 2042, Internal Revenue Code; but compare Terriberry v. U.S., 517 F.2d 286 (5th Cir. 1975), and Rose v. U.S., 511 F.2d 259 (5th Cir. 1975).

#### Sec. 13.46.130. USE OF CUSTODIAL PROPERTY.

Subsections (a) and (b) track subsections (b) and (c) of Section 4 of the 1966 version of the UGMA, but with two significant changes. The standard for expenditure of custodial

property has been amended to read "for the use and benefit of the minor," rather than "for the support, maintenance, education and benefit of the minor" as specified under the 1966 version of the UGMA. This change is intended to avoid the implication that the custodial property can be used only for the required support of the minor.

The Internal Revenue Service has taken the position that the income from custodial property, to the extent it is used for the support of the minor-donee, is includable in the gross income of any person who is legally obligated to support the minor-donee, whether or not that person or parent is serving as the custodian. Rev. Rul. 56-484, C.B. 1956-2, 23; Rev. Rul. 59-357, C.B. 1959-2, 212. However, Reg. 1.662(a)-4 provides that the term "legal obligation" includes a legal obligation to support another person if, and only if, the obligation is not affected by the adequacy of the dependent's own resources. Thus, if under local law a parent may use the resources of a child for the child's support in lieu of supporting the child himself or herself, no obligation of support exists, whether or not income is actually used for support, at least if the child's resources are adequate. See, Bittker, Federal Taxation of Income Estates and Gifts Para. 80.44 (1981).

For this reason, subsection (c) has been added to specify that distributions or expenditures may be made for the minor without regard to the duty or ability of any other person to support the minor and that distributions or expenditures are not in substitution for, and shall not affect, the obligation of any person to support the minor. Other possible methods of avoiding the attribution of custodial property income to the person obligated to support the minor would be to prohibit the use of custodial property or its income for that purpose or to provide that any such use gives rise to a cause of action by the minor against his parent to the extent the custodial property or income is so used. The first alternative was rejected as too restrictive, and the second as too cumbersome.

The "use and benefit" standard in subsections (a) and (b) is intended to include payment of the minor's legally enforceable obligations such as tax or child support obligations or tort claims. Custodial property could be reached by levy of a judgment creditor in any event, so there is no reason not to permit custodian or court-ordered expenditures for enforceable claims.

An "interested person" entitled to seek court ordered distributions under subsection (b) would include not only the parent or conservator or guardian of the minor and a transferor or a transferor's legal representative, but also a public agency or official with custody of the minor and a third party to whom the minor owes legally enforceable debts.

Sec. 13.46.140. CUSTODIAN'S EXPENSES, COMPENSATION, AND BOND.

This section parallels and restates Section 5 of the 1966 version of the UGMA. It deletes the statement that a custodian may act without compensation for services, since that concept is implied in the retained provision that a custodian has an "election" to be compensated. However, to prevent abuse, the latter provision for permissive compensation is denied to a custodian who is also the donor of the custodial property.

The custodian's election to charge compensation must be exercised (although the compensation need not be actually paid) at least annually or it lapses and may not be exercised later. This provision is intended to avoid imputed income to the custodian who waives compensation, and also to avoid the accumulation of a large unanticipated claim for compensation exercisable at termination of the custodianship.

This section deletes as surplusage the bracketed optional standards contained in the 1966 version of the UGMA for determining "reasonable compensation" which included, "in the order stated," a direction by the donor, statutes governing compensation of custodians or guardians, or court order. While compensation of custodians becomes a more likely occurrence and a more important issue under the AkUTMA because property requiring increased management may now be subject to custodianship, compensation can still be determined by agreement, by reference to a statute or by court order, without the need to so state in the AkUTMA.

Sec. 13.46.150. EXEMPTION OF THE THIRD PERSON FROM LIABILITY.

Sec. 13.46.150 carries forward, but shortens and simplifies, Section 6 of the 1966 version of the UGMA with no substantive change intended. The 1966 version of the UGMA permit-

ted a 14 year old minor to appoint a successor custodian and specifically provided that third parties were entitled to rely on the appointment. Because this section refers to any custodian, and "custodian" is defined to include successor custodians (Sec. 13.46.990(7)), a successor custodian appointed by the minor is included among those upon whom third parties may rely.

Similarly, because this section protects any third "persons," it is not necessary to specify here or in sec. 13.46.100(c) that it extends to any "issuer, transfer agent, bank, life insurance company, broker, or other person or financial institution," as did the 1966 version of the UGMA. See the definition of "person" in AS 01.10.060.

This section excludes from its protection persons with "knowledge" of the irregularity of a transaction, a concept not expressed but probably implied in Section 6 of the 1966 version of the UGMA. See, e.g., State ex rel. Paden v. Currel, 597 S.W.2d 167 (Mo. App. 1980) disapproving the pledge of custodial property to secure a personal loan to the custodian.

Similarly, this section does not alter the requirements for bona fide purchaser or holder in due course status under other law for persons who acquire from a custodian custodial property subject to recordation or registration.

#### Sec. 13.46.160. LIABILITY TO THIRD PERSONS.

This section has no counterpart in the 1966 version of the UGMA and is based upon Section 5-429 of the Uniform Probate Code (AS 13.26.305), relating to limitations on the liability of conservators. Because some forms of custodial property now permitted under the AkUTMA can give rise to liabilities as well as benefits (e.g., general partnership interests, interests in real estate or business proprietorships, automobiles, etc.) the Drafting Committee for the Uniform Transfers to Minors Act believed it is necessary to protect the minor and other assets the minor might have or acquire from such liabilities, since the minor is unable to disclaim a transfer to a custodian for his benefit. Similar protection for the custodian is necessary so as not to discourage nonprofessional or uncompensated persons from accepting the office. Therefore this section generally limits the claims of third parties to recourse against the custodial

property, as third parties dealing with a trust are generally limited to recourse against the trust corpus.

The custodian incurs personal liability only as provided in subsection (b) for actual fault or for failure to disclose his custodial capacity "in the contract" when contracting with third parties. In oral contracts, oral disclosure of the custodial capacity is sufficient. The minor, on the other hand, incurs personal liability under subsection (c) only for actual fault.

When custodial property is subjected to claims of third parties under this section, the minor, the minor's legal representative, if not a party to the action by which the claim is successfully established, may seek to recover the loss from the custodian in a separate action. See sec. 13.46.180 and the commentary to sec. 13.46.180.

Sec. 13.46.170. RENUNCIATION, RESIGNATION, DEATH, OR REMOVAL OF CUSTODIAN; DESIGNATION OF SUCCESSOR CUSTODIAN.

This section tracks but condenses Section 7 of the 1966 version of the UGMA to provide that the custodian, or if the custodian does not do so, the minor if he is 14, may appoint the successor custodian, or failing that, that the conservator of the minor or a court appointee shall serve. It also covers disclaimer of the office by designated or successor custodians or by nominated future custodians who decline to serve.

The AkUTMA broadens the category of persons who may be designated by the initial custodian as successor custodian from an adult member of the minor's family, his conservator, or a trust company to any adult or trust company. However, the minor's designation remains limited to an adult member of his family (expanded to include a spouse and a stepparent, see sec. 13.46.990(10)), his conservator, or a trust company.

Sec. 13.46.180. ACCOUNTING BY AND DETERMINATION OF LIABILITY OF CUSTODIAN.

This section carries forward section 8 of the 1966 version of the UGMA, but expands the class of parties who may require an accounting by the custodian to include any person who made a transfer to the custodian (or that person's legal

representative), the minor's guardian of the person, and the successor custodian.

Subsection (b) authorizes but does not obligate a successor custodian to seek an accounting by the predecessor custodian. Since the minor and other persons mentioned in subsection (a) may also seek an accounting from the predecessor at any time, it is anticipated that the exercise of this right by the successor should be rare.

Subsection (a) also gives the same parties (other than a successor custodian) the right to seek recovery from the custodian for loss or diminution of custodial property resulting from successful claims by third persons under sec. 13.46.160, unless that issue has already been adjudicated in an action under that section to which the minor was a party.

This section does not contain a separate statute of limitations precluding petitions for accounting after termination of the custodianship. Because custodianships can be created without the knowledge of the minor, a person might learn of a custodian's failure to turn over custodial property long after reaching majority, and should not be precluded from asserting his rights in the case of such fraud. In addition, the 1966 version of the UGMA has no such preclusion and seems to have worked well. Other law, such as general statutes of limitation and the doctrine of laches, should serve adequately to protect former custodians from harassment.

#### Sec. 13.46.190. TERMINATION OF CUSTODIANSHIP.

This section provides that a custodianship terminates when the earliest of the following occurs:

- (1) the minor reaches 21, if the property was transferred to the minor under secs. 13.46.030 or 13.46.040, unless the term is changed under sec. 13.46.195 to a later date;
- (2) the minor reaches 18, if the property was transferred to the minor under sec. 13.46.050 or 13.46.060;
- (3) the date specified in the transfer made under sec. 13.46.080 is reached, if the time has been changed under sec. 13.46.195; or

(4) the minor's death.

Sec. 13.46.195. DELAY IN TRANSFER OF CUSTODIAL PROPERTY AFTER MINOR ATTAINS AGE 18.

This section is adopted from the California Uniform Transfers to Minors Act. This section is new. There is no provision for choice as to when custodial property shall be transferred to the minor under the Uniform Transfers to Minors Act or under prior Alaska law. This section gives this choice since most transferors who specifically authorize a custodian wish to preserve the custodianship as long as possible. This is most likely to be the case, for example, where the custodial property is intended to be preserved and used to finance a college education.

A transferor may feel that a particular child at 18 does not have, or will not have, sufficient maturity to manage a substantial gift, particularly when the transferor wishes to make the gift for a particular purpose, e.g. education. A custodian under the Alaska Uniform Gifts to Minors Act must deliver the property to the minor when the minor reaches 18 (AS 45.60.031(d)). Therefore, a testamentary or inter vivos trust may be necessary to achieve the transferor's goals. Continuing the custodianship past the age of 18 permits the transferor donor to avoid the expense of preparing a trust instrument to create a trust that otherwise would be required in order to retain the property under custodial management until the minor reaches the specified age.

For property transferred under sec. 13.46.030 or 13.46.040, allows the time for transfer of the property to the minor to be changed to a time other than when the minor attains the age of 18 years. Requires the time to be specified in the transfer under sec. 13.46.080.

Subsection (c) contains optional language which the donor-transferor may use to allow a minor the option of terminating the custodianship during a six month period beginning on the minor's 21st birthday. In order to exercise this option, a minor must provide written notice of the minor's intention to terminate to the custodian within 6 months of the minor's 21st birthday. This option has been provided so that a transferor may transfer property by irrevocable gift, under sec. 13.46.030, into a custodianship in a manner consistent with Section 2503(c) of the Internal Revenue Code

and the Internal Revenue Service's position as put forth in Rev.Rul. 74-43.

Rev.Rul. 74-43 provides, in relevant part, that a gift into a trust for the benefit of a minor, when such a trust contains a provision that the minor has the right to compel distribution at age 21 by giving written notice to the trustee, qualifies as a gift of a present interest, and, therefore, also qualifies for the annual exclusion provided in Section 2503(b) of the Internal Revenue Code.

The use of the optional language contained in subsection (c) that allows a minor to compel delivery of custodial property when the minor reaches the age of 21 should qualify a transfer of property by irrevocable gift under sec. 13.46.030 as a gift of a present interest under Section 2503(c) of the Internal Revenue Code.

Subsection (d) permits the custodianship to continue until the minor attains a specified age between 18 and 25 years where the transfer is made under a provision in a will or trust that provides that the custodianship is to continue until the specified age.

Subsection (e) permits the custodianship to continue until the minor attains a specified age between 18 and 25 years where the custodial property is transferred under sec. 13.-46.030 if the transfer specifies that the custodianship is to continue until the specified age.

Subsection (f) states that if the transfer under sec. 13.-46.080 doesn't specify an age, the time for the transfer is when the minor reaches 21.

Subsection (g) validates a transfer that specifies a maximum time for the duration of the custodianship that is longer than permitted by this section by reducing the duration of the custodianship to the maximum duration permitted for a custodianship created by that type of transfer.

Because property in a single custodianship may be distributable at different times, separate accounting for custodial property by source may be required. See Commentary to sec. 13.46.090. Also see 17 Cal.L.Rev.Comm. Reports 601 (1984); 84 Cal.S.J. 11794.

Sec. 13.46.200. APPLICABILITY.

This section is new and has two purposes. First, it operates as a "savings clause" to validate transfers made after its effective date which mistakenly refer to Alaska's UGMA rather than to the AkUTMA. Second, it validates transfers attempted under the UGMA of another state which would not permit transfers from the source or of property of that kind or under the UTMA of another state with no nexus to the transactions, provided in each case that Alaska has a sufficient nexus to the transaction under sec. 13.46.010.

Sec. 13.46.210. EFFECT ON EXISTING CUSTODIANSHIPS.

Subsection (a) is new and is based on Section 45-109a of the Connecticut Uniform Transfers to Minors Act which validates gifts of real estate and partnership interests made prior to their inclusion as "custodial property" under that Act. However, this provision goes further and purports also to validate prior transfers of the kind now covered by that Act, i.e., transfers from estates, trusts, guardianships, and obligators.

All states have previously enacted some version of the UGMA, and it will be more orderly to subject gifts or other transfers under the UGMA to the procedures of the UTMA rather than to keep both the UGMA and UTMA in force, presumably for 18 or 21 years until all custodianships created under prior law have terminated. Subsection (b) is intended to apply the AkUTMA to prior gifts and existing custodianships insofar as it is constitutionally permissible to do so. However, prior custodianships will continue to terminate at the age prescribed by the Act under which the gift or transfer was made.

Subsection (c) is also new and is based upon Section 45-109b of the Connecticut Act. This subsection is intended for adoption in those states that changed the age of majority. Its purpose is to avoid resurrecting custodianships which terminated during the period that another age of majority governed termination. The dates used are the dates when the age of majority was changed in the state.

Subsection (d) is also new. This subsection is derived from sec. 27 of the UTMA, relating to the effect of the repeal of the UGMA.

Sec. 13.46.220. UNIFORMITY OF APPLICATION.

No commentary.

Sec. 13.46.990. DEFINITIONS.

To reflect the broader scope and the unlimited types of property to which the AkUTMA will apply, a number of definitional changes have been made from the 1966 version of the UGMA. In addition, several definitions specifically applicable to the limited types of property (cash, securities, and insurance policies) subject to the 1966 version of the UGMA have been eliminated as unnecessary. These include the definitions of "bank," "issuer," "life insurance policy or annuity contract," "security," and "transfer agent." No change in the meaning or construction of these terms as used in the AkUTMA is intended by these deletions.

The definitions of "domestic financial institution" and "insured financial institution" have been eliminated because few, if any, states limit deposits by custodians to local institutions, and the prudent person rule of sec. 13.46.-110(b) of the AkUTMA may dictate the use of insured institutions as depositories, without having to so specify.

The principal changes or additions to the remaining definitions are discussed below.

"Benefit Plan" The definition of "benefit plan" is intentionally very broad and is meant to cover any contract, plan, system, account, or trust such as a pension plan, retirement plan, death benefit plan, deferred compensation plan, employment agency arrangement, or stock bonus, option or profit sharing plan.

"Conservator" The term "conservator" rather than "guardian of the estate" has been employed to conform to Uniform Probate Code terminology (AS 13.06 - 13.36). The term includes a guardian of the minor's property, whether general, limited or temporary, and includes a committee, tutor, or curator of the minor's property.

"Custodial Property" The definition of "custodial property" has been generalized and expanded to encompass every conceivable legal or equitable interest in property of any kind, including real estate and tangible or intangible personal property. The term is intended, for example, to include joint interests with right of survivorship, beneficial interest in land trusts, as well as all other intangible

# **CORRECTION**

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

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"Custodial Property" The definition of "custodial property" has been generalized and expanded to encompass every conceivable legal or equitable interest in property of any kind, including real estate and tangible or intangible personal property. The term is intended, for example, to include joint interests with right of survivorship, beneficial interest in land trusts, as well as all other intangible

interests in property. Contingent or expectancy interests such as the designation as a beneficiary under insurance policies or benefit plans become "custodial property" only if the designation is irrevocable, or when it becomes so, but the AkUTMA specifically authorizes the "nomination" of a future custodian as beneficiary of such interests (see sec. 13.46.020). Proceeds of custodial property, both immediate and remote, are themselves custodial property, as is the case under UGMA.

Custodial property is defined without reference to the physical location of the property, even if it has one. No useful purpose would be served by restricting the application of the AkUTMA to, for example, real estate "located in this state," since a conveyance recorded in the state of the property's location if done with proper formalities, should be effective even if that state has not enacted the UTMA. The rights, duties, and powers of the custodian should be determined by reference to the law of the state under which the custodianship is created, assuming there is sufficient nexus under sec. 13.46.010 between that state and the transferor, the minor, or the custodian.

"Minor" "Minor" is defined as an individual who has not attained the age of 18 years (consistent with AS 25.20.010), except that the term "minor" may include an older individual under some circumstances when the term is used with reference to the beneficiary for whose benefit custodial property is held or is to be held for a period past the age of 18 years. See the Commentary to secs. 13.46.190 and 13.46.195.

"Personal Representative" The definition of the term "personal representative" is based upon the definition in the Uniform Probate Code (AS 13.06.050(30)).

"Transfer" The new definition of "transfer" is necessary to reflect the application of the AkUTMA not only to gifts, but also to distributions from trusts and estates, obligors of the minor, and transfers of the minor's own assets to a custodianship by the legal representative of a minor, all of which are now permitted by the AkUTMA.

"Transferor" The new definition of "transferor" is required because the term includes not only the maker of a gift, i.e., a donor in the usual sense, but also fiduciaries and obligors who control or own property that is the subject of the transfer. Nothing in the AkUTMA requires that a trans-

feror be an "adult." If permitted under other law of the state relating to emancipation or competence to make a will, gift, or other transfer, a minor may make an effective transfer of property to a custodian for his benefit or for the benefit of another minor.

"Trust Company" Only entities authorized to exercise "general" trust powers qualify as a "trust company"; that is, the authority to exercise only limited fiduciary responsibilities, such as the authority to accept Individual Retirement Account deposits, is not sufficient.

Sec. 13.46.999. SHORT TITLE.

No commentary.

Section 3. Makes a technical citation change necessitated by the new chapter.

Sections 4 and 5. Amends Uniform Anatomical Gift Act (AS 13.50) by deleting witness requirement when donor signs donation document. Section 4 conforms another section to this change.

Section 6. Repeals the sections of the present Alaska Uniform Gifts to Minors Act (AS 45.60).

Section 7. Makes the Act effective January 1, 1990.

TBC:gc  
wkg8/048



**Mark T. Handley**  
Attorney at Law  
Judiciary Committee

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**HB**

**171**

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: An Act relating to AFDC and  
establishing an effective date.  
 Sponsor: Rep. Ellis, Bover, M. Davis et al  
 Requestor: House Finance Committee

Agency Affected: \_\_\_\_\_  
 BRU: Public Assistance Administration  
 Components: Alaska Work Program

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

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	750.0	750.0	750.0	750.0	750.0	750.0
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
<b>TOTAL OPERATING</b>	<b>750.0</b>	<b>750.0</b>	<b>750.0</b>	<b>750.0</b>	<b>750.0</b>	<b>750.0</b>
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING:** (Thousands of Dollars)

GENERAL FUND	750.0	750.0	750.0	750.0	750.0	750.0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>750.0</b>	<b>750.0</b>	<b>750.0</b>	<b>750.0</b>	<b>750.0</b>	<b>750.0</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

FY 91 funding includes: Adult Basic Education 500.0  
Parenting Education 250.0 H/S

Prepared by: House Finance Committee Phone: 465-3727  
 Division: Co-Chairman Ron Larson Date: 4/4/90  
 Approved by Co. Chairman Lyman Hoffman Date: 4/4/90  
 Agency: \_\_\_\_\_

**Distribution (by preparer):**

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

# Alaska State Legislature

SENATOR PAUL FISCHER, Chairman  
SENATOR JIM DUNCAN, Vice Chairman  
SENATOR AL ADAMS  
SENATOR LLOYD JONES  
SENATOR TIM KELLY



P.O. BOX V  
ROOM 508  
STATE CAPITOL  
(907) 465-3762

## Senate Committee on Health, Education and Social Services

Amendment to CS HB 171 (Fin)

by Fischer

#1 Page 13, Line 20, Delete line "(1) is centrally located."

#2 Page 13, Line 22, Delete "The highest number of".

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3111 C STREET, SUITE 455  
ANCHORAGE, ALASKA 99503  
(907) 581-7628

WHILE IN SESSION  
P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-3704

# ALASKA STATE HOUSE

OFFICE OF MAJORITY WHIP


CHAIR  
HEALTH, EDUCATION & SOCIAL SERVICES

JUDICIARY

SPECIAL COMMITTEE ON  
FOREIGN & DOMESTIC TRADE

## REPRESENTATIVE JOHNNY ELLIS

TO: Sen. Paul Fischer, Chair,  
Health, Social Services and Education Committee

FROM: Rep. Johnny Ellis 

RE: Request for a Committee Hearing of CSHB 171 (Finance)

DATE: April 20, 1990

I respectfully request a committee hearing on CSHB 171 (Finance) during the week of April 30, if possible.

HB 171 is based on the Family Support Act federal mandates and the Alaska Family Support Task Force's recommendations concerning welfare reform. It is imperative that we pass this bill through the Legislature this session because of the federal mandates and deadlines for implementation.

After the HB 171 passed out of the House HESS committee, the only changes to the bill and the fiscal note occurred in the Finance Committee. A committee substitute was adopted which basically changed most of the "shall's" directed at the Dept. Health and Social Services to "may's". They can be found on page 6, line 21; pg. 7, line 8; pg. 8, line 3; pg.10, line 16, 19, and 26; and pg. 13, line 3. The \$3.7 million fiscal note was then able to be reduced to \$750,000.

I've attached a sectional analysis for CS HB 171 (Finance). If you have any questions about the bill, please contact me or Kimberly of my staff at 465-3704. Thank you very much.

STATE OF ALASKA  
THE LEGISLATURE

POLCH V STATE CAPITOL  
JUNEAU ALASKA 99811  
727 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 20, 1990

SUBJECT: Sectional Analysis  
(CSHB 171(Finance))

TO: Representative Johnny Ellis  
Chair, House HESS Committee

FROM: Terri Lauterbach *TL*  
Legislative Counsel

Following is a brief sectional analysis of CSHB 171(Finance). If you have specific questions about any section, please let me know.

Section 1. Statement of findings.

Sec. 2. Deletes obsolete language relating to the WIN program. Authorizes sanctions for failure to comply with the JOBS program.

Sec. 3. Adds specific language relating to AFDC eligibility of unemployed parents and minor parents.

Sec. 4. Provide direction to DHSS on setting standards for the amount of assistance that will be granted under the AFDC program.

Sec. 5. Amends the definition of "dependent child" so that 18-year-olds in school and children with two parents in the household where the principal wage earner is unemployed are eligible for AFDC.

Sec. 6. Establishes the JOBS program, which replaces the WIN program.

Sec. 7. Repeals the WIN program statute.

Sec. 8. Directs DHSS to seek federal funding for a demonstration program relating to alternative definitions of "un-

Representative Johnny Ellis  
Page 2  
April 20, 1990

employment" for use in the AFDC program when granting aid for children in two-parent families where the principal wage earner is unemployed.

Sec. 9. Directs DHSS to explore JOBS program alternatives for dealing with two-parent families that receive AFDC because of the unemployment of the principal wage earner.

Sec. 10. Allows DHSS to establish a temporary pilot project relating to education and training of pregnant teenagers and teenage parents.

Sec. 11. Makes the bill take effect October 1, 1990.

TL:gc  
G14/016

## INTRODUCTION

The federal Family Support Act of 1988, often called welfare reform, mandates that states make massive changes in the way they handle almost every aspect of welfare. In Alaska those changes will begin taking place on April 1, 1990.

To prepare for these changes, some 150 Alaskans spent part of last summer holding hearings, gathering information and preparing reports. The final results are the recommendations from Alaska's Family Support Task Force, chaired by Sen. Rick Uehling and Rep. Johnny Ellis.

## WHY THE CHANGE?

The Family Support Act's primary goal is to take people off welfare by providing them with education, training and the child care necessary to win and keep jobs. It is also intended to support families and children in need by extending benefits to two-parent families.

## HOW MUCH WILL IT COST?

In the long run, federal and state governments believe welfare reform will bring down costs by taking people off welfare. Program implementation, however, is costly. Depending on the number of people who participate, which is driven by available funds, Alaska's combined state and federal budget for fiscal year 1991 is estimated to be between \$17.84 million and \$34.15 million. The State of Alaska's share of that will be between \$9.07 million and \$20.7 million.

## WHAT WILL CHANGE?

**J.O.B.S.**  
(Job Opportunity and Basic Skills)

JOBS, which will replace the current WIN program, will offer education, training, job search, on-the-job training and supportive services. These will include continuing child care and

family medical coverage for one year after the client leaves welfare for a job.

Under the Family Support Act, welfare clients will be under much greater pressure to train for and find jobs than they are now. In Alaska, the recommendation is that all Aid for Family with Dependent Children (AFDC) clients with children age three or older be required to participate in JOBS.

Services will focus on people and families who are seen as the least likely to leave welfare without them. Chief among these are teen-age parents without a high school diploma. Such clients will be required to attend school to receive AFDC benefits, as will any adult client who is found to test below an eighth grade literacy level. Other clients who will receive priority are those who have been on welfare for at least 36 of the past 60 months and those who will soon be ineligible for AFDC because their children are getting older.

JOBS also requires coordination of existing education and training programs in the state in order to make these services as accessible as possible to welfare clients.

Service to Alaska Natives will change dramatically under JOBS. Access to training, education and jobs will be increased greatly by offering JOBS through regional Native non-profit organizations, rather than at only a few urban sites. Twelve Native organizations have already begun offering JOBS in their areas.

JOBS will be available to non-Native clients beginning Oct. 1, 1990.

## TWO-PARENT HOUSEHOLDS

Beginning Oct. 1, 1990, Alaska must offer assistance to two-parent households in which the principal wage earner is unemployed. The coverage will include year-round AFDC benefits, Medicaid and the requirement that one or both

parents participate in a work project.

It is estimated that some 625 new families will be included in this coverage in fiscal year 1991 and about twice that number the following year.

### **BENEFITS WHILE WORKING**

To ensure that parents who find jobs can afford to continue working and to provide an incentive to find jobs, welfare reform offers child care assistance and Medicaid benefits for up to a full year after a client begins working. These benefits will be offered beginning April 1, 1990. Child care benefits will be administered through the Department of Community and Regional Affairs' existing child care programs.

It is estimated that these benefits will provide medical coverage and child care for some 1,170 children by 1992.

### **CHILD SUPPORT ENFORCEMENT**

In keeping with its goal of encouraging families to be self sufficient, the Family Support Act implements several changes in child support. Chief among these are:

- \* Guidelines for judges who set support orders must be periodically reviewed and updated.
- \* Child support orders must be reviewed regularly and may be modified by the Child Support Enforcement Division at the request of either parent.
- \* Employers must withhold child support payments from wages for nearly all support orders on a phased-in schedule beginning November 1990.
- \* A greater effort must be made to establish paternity, including identifying both parents at the time of birth.

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Published by the Alaska Department of Health and Social Services, Division of Public Assistance.

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## **People Reaching Independence and Dignity through Employment**

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### **How welfare reform will affect Alaska**

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FAMILY SUPPORT ACT OF 1988

HOW DOES IT CHANGE WELFARE IN ALASKA?

WELFARE REFORM

CURRENT

Includes intact, two parent families in AFDC when primary wage earner is unemployed.

Only single parent families are eligible.

On a phased-in schedule, these families must participate in work programs in order to receive benefits.

Alaska currently has no comparable work programs.

Creates "JOBS" - a new employment and training program. JOBS must provide in depth services to the hard to serve, to help families move off assistance.

"WIN" is replaced. WIN has become primarily a job search agency because of reduced funding levels.

Regional Native organizations serve Alaska Native clients in each of 12 ANCSA regions.

State WIN serves Natives in 5 State WIN locations.

Parents exempt until youngest child is 3 years (unless parents are teens).

All parents exempt until youngest child is 6 years.

Other training and education education programs coordinate services for welfare clients.

Existing programs have no mandate to serve welfare clients.

JOBS must obtain public comments and SJTCC review of plan.

No review required.

JOBS must target its resources to the hard to serve welfare clients, especially young parents and long term dependent.

No targeted populations.

Teenage parents must work toward H.S. diploma or G.E.D.

No education mandate.

All participants must aim for basic literacy level of grade 8.

No literacy requirement.

Requires child care guarantee.

No child care required.

Requires public review of supportive services plan.

No review required.

Requires Transition Benefits when families leave welfare for work.

Up to 12 months of Medicaid.  
Up to 12 months of child care on a sliding scale fee basis.

Up to 4 months.  
No child care.



# The impact of welfare dependency on the economic system

World markets are far more competitive today than ever before in our history. If we are to compete in them effectively and

maintain our nation's prosperity, we must have an adequate supply of well-trained, productive people in the labor force.

## Why we need to help people become self-sufficient

### Facts about the economy

#### Changes in the labor market

Without a better system for helping people to overcome barriers to employment, we are almost certain to face an economic crisis. A severe labor shortage is expected

soon as a result of the low birth rates of the 1970s, which will reduce the pool of entrants to the labor force.

□ In 1988, there were only 7.9 million 16-to-19-year-olds in the labor force vs. 9.9 million in 1978. Similarly, 16-to-24-year-olds represented 24% of the labor force in 1978, but will represent only 16% by 1995.

□ In 1988, the unemployment rate fell to 5.5%—the lowest rate in 14 years. Pockets of labor shortages have already appeared, particularly among entry-level workers, and in fields such as food service, nursing, and clerical/secretarial work.

□ An estimated 82% of the entrants to the labor force in the next 12 years will be women and minorities. The growth of the number of blacks in the labor force is double that of whites, and Hispanic growth is expected to be even greater. Although minorities now comprise only 21% of the labor force, they will fill 57% of the new jobs created during the next century. Many women and minorities lack the education and experience to fill the available jobs.

#### Increasing job skills

At the same time as the labor force will be shrinking, the skill level required for most jobs will be increasing. However, this new labor pool may not be qualified to fill the available jobs.

□ By 1990, more than 50% of all jobs will require education or technical training beyond high school. By the year 2000, the average skill level of all American jobs is expected to increase by 28%, requiring increased reading, writing, and math skills.

□ More than one in seven youths drop out of school. In many urban schools, the rates are 50% or more. Over 50% of all Hispanic youth will drop out of school. School dropouts are two-and-a-half times more likely to be unemployed than those who

graduate.

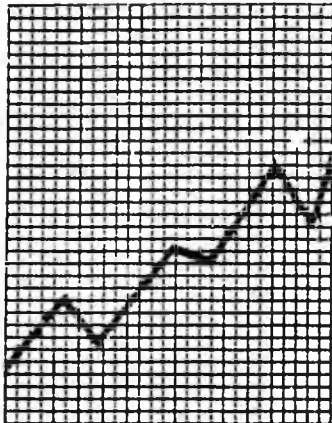
□ One of every eight 17-year-olds is functionally illiterate, as is one in three welfare recipients, and one in three unemployed people.

#### The cost of inaction

Helping individuals become productive not only benefits the economy but also reduces the direct fiscal and social costs of poverty. Allowing a separate underclass to develop is a tragic waste of human potential. Children trapped in a cycle of poverty might otherwise have made significant contributions to the quality of our lives in science, politics, commerce, the arts, or the humanities. What's more, by perpetuating the poverty cycle, we are allowing the costs of dependency and associated problems to increase.

□ The federal government spent \$120 billion on aid to the poor in 1987, compared with \$7.7 billion in 1964.

□ Despite today's increased spending, one in four children lives in poverty. Poor children are much less likely to be prepared adequately to enter the labor market.



□ More than one million teenage girls become pregnant each year. Over 50% of all teenage mothers end up on welfare. They remain there for an average of seven years, while 50% of all welfare recipients stay for only two years. Teenage pregnancies cost the United States over \$16 billion each year in welfare expenditures alone.

□ The lifetime cost of a single alcohol or drug abuser in terms of lost productivity, as well as direct economic burdens, is \$85,000. It is estimated that one in ten adults in the work force suffers from alcohol or drug abuse problems that may threaten their health, their jobs, or their families' safety or stability.

□ Remedial training and lost productivity cost U.S. businesses \$25 billion a year.

□ Each year, dropouts cost America \$240 billion in lost earnings and foregone taxes over their lifetimes.

□ Every \$1.00 spent on early prevention and intervention can save \$4.75 in costs of welfare, crime, and remedial education further down the road.

# The welfare system

Aid to Families with Dependent Children (AFDC), typically referred to as welfare, was created during the Great Depression of the 1930s to support widows and orphans. The elderly and disabled are supported through Social Security and Supplemental Security Income. The newly unemployed receive unemployment compensation for a limited number of months through the Employment Security Program.

AFDC is run by the states which set their own eligibility rules and benefit levels within guidelines established by the federal government. Federal funds cover approximately 54% of the costs.

When AFDC was established, women were not expected to enter the labor force, thus income maintenance was an appropriate goal. Today, most welfare recipients are separated, divorced, or never married, and most women in our society, even those with small children, are in the labor force. The realities of life in America have changed, but the welfare system has not changed with them. What is needed today is not an income-maintenance program, but an employment program to help people overcome the barriers to employment, develop skills, and chart a career path out of poverty.



## Characteristics of

□ Most welfare recipients rely on welfare for short-term crises—divorce, desertion, unemployment. Approximately half leave the program within two years.

□ However, approximately 17% of welfare recipients remain in the program for more than eight years. At any one time, these long-term recipients make up 50% of the welfare caseload.

□ Long-term welfare recipients are disproportionately black, female, single, teenage mothers, poorly educated, and lacking any work history. Three-fifths of adults on welfare are school dropouts and one-fourth have no work experience.

□ In 1969, only 28% of adults on welfare had never been married. By 1986 this figure had risen to 46%. In 19% of these families the husband has deserted, and in 21% the parents are divorced or legally separated. In only .8% of the families is the father deceased. The remaining families are two-parent families eligible for benefits under the Unemployed Parents Program.

□ In 1984, 37% of welfare recipients worked some portion of the year.

## The bottom line

To preserve America's competitiveness and prosperity, and to fulfill the promise of our national values of equal opportunity for all, we need to invest in our human capital. We cannot allow people to fall into poverty and despair without giving them a helping hand. If we don't strive to achieve this goal, we undermine the very foundation of our social and political institutions. We cannot have a strong nation with-

out strong, productive people. We cannot ignore the plight of the millions of poor children who do not have an adequate start in life. They are our future.

To accomplish our goal, we need to form partnerships among the public, private, and voluntary sectors to turn the welfare program into a program that expects welfare recipients to work and truly helps them achieve that goal through appropriate training,

education, and job placement. We must address the problems that perpetuate dependency—problems such as illiteracy, teen parenthood, dropping out of school, and drug and alcohol abuse. We must reduce fear and ignorance and help people develop a strong belief in themselves and their ability to develop positive productive lives.

# The impact of welfare dependency on the social system

## Welfare recipients

□ Inflation has eroded the value of welfare benefits which are set by the states. They have declined 35% since 1970 when adjusted for inflation. Even when combined with other aid programs such as Food Stamps and low-income energy assistance, the decline is 25%.

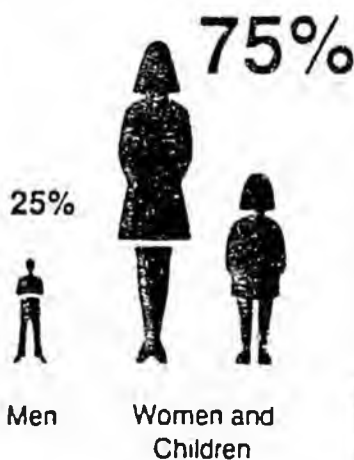
□ Although welfare and other programs for the poor comprise only 10% of the federal budget, they bore 30% of the budget cuts made in 1981 and 1982.

□ Welfare recipients often don't take low-paying jobs because these do not provide health benefits for their children should they become ill. Families on welfare are covered by Medicaid, but benefits terminate abruptly several months after taking a job with no phaseout.

□ Similarly, child-care subsidies, rental assistance, and low-income energy assistance often terminate either at the time of full-time employment or shortly afterwards. By taking a job, welfare recipients can find themselves worse off financially than if they had stayed on welfare.

## Poverty population

Poverty is widespread among women and children.



The cornerstone of this nation is a belief in the right to life, liberty, and the pursuit of happiness. We strive to provide everyone with an equal opportunity to achieve his or her hopes and dreams. The openness of our economic and social systems has

enabled many people to achieve great success no matter how humble their beginnings. But that promise is not being fulfilled for many people mired in poverty who need help in turning their dreams into reality.

## Facts about poverty

### PRESENT SCOPE

□ Today, approximately 34 million of all Americans live below the poverty line. In 1988, the federal poverty line was \$11,650 for a family of four.

□ In 1986, children under 18 represented 39% of the poverty population, while adults represented 50% and the elderly 10.5%.

□ The poverty population includes 8 million families, nearly half headed by a single parent. As many as 95% of the single heads of these households are women. Nearly 40% of all single-parent households are poor, four times as many as two-parent families.

□ Today, 25% of all American children are born into poverty but for Hispanics the figure is 40%; for blacks it is 50%.

□ The majority of those in poverty are white (24 million), 34% are black, and 26% are Hispanic.

□ Not all of the poor are unemployed. In 1984, 32% of all the poor worked some portion of the year. Two million parents, although working full time, lived in poverty.

□ Poverty is not confined to the largest urban areas. In 1980, while 31% of the nation's poor lived in the central cities of the 100 largest urban areas, 21% lived in the suburbs of those cities and 48% lived in smaller urban areas or in rural areas.

### GROWTH OF POVERTY

Despite our prosperity, we have seen a stubborn rise in poverty in the past decade. Increasingly, the poverty population is made up of women and children in single-parent households. We need to determine the causes of

these trends, whatever they may be, and begin to take steps to reverse them.

□ In the 1980s, poverty rates have been rising. During the 1970s, the rates hovered between 11% and 12%. In 1982, they rose to a high of 15% and since have declined to 14%.

□ While the greatest decrease in poverty has been among the aged, the greatest increase has been among female-headed households and children. The proportion of blacks in the poverty population has remained relatively stable.

□ Single-parent households with incomes under the poverty level have increased from 2.4 million in 1975 to 3.4 million in 1985. Between 1982 and 1983, increases in the number of these households headed by women accounted for 95% of the increase of poverty among all families.

□ Sixty percent of children born today can expect to live at some time in a single-parent family, 90% of which are headed by women. Divorce accounts for 68% of these families; illegitimacy, 20%; separation, 8%; and death of a spouse only 3%.

□ The number of full-time working poor increased two-thirds between 1978 and 1986.

□ When adjusted for inflation, household income in middle- to low-income ranges has dropped. Between 1973 and 1985, average weekly wages fell 13%. At the same time, family income for those in the middle fifth of the U. S. income distribution dropped 10%, but for the next-to-the-bottom fifth, it fell 20%; for the bottom fifth, it dropped 34%.

□ Inflation has reduced the buying power of the minimum wage, also. When adjusted for inflation in 1986, the minimum wage had 25% less buying power than it did in 1981.

## WELFARE REFORM OVERVIEW

The Family Support Act of 1988 is the most comprehensive overhaul of the Aid to Families with Dependent Children (AFDC) program since it was enacted in 1935. Passage of the new Act was the result of a two year bipartisan effort by the nation's governors. It begins to change the current welfare system from an income maintenance program with minor work components, into a system that actively promotes family self-sufficiency and assists clients in leaving welfare for work.

### KEY FEATURES OF THE FAMILY SUPPORT ACT:

#### A. Cash and Medical Benefits for Unemployed Parents:

For the past several years, states have had the option of covering two-parent households in which the principal age earner is unemployed. Alaska has not included these families in its AFDC program. The Act mandates AFDC unemployed parent (UP) coverage in all states beginning October 1, 1990.

#### B. Job Opportunities and Basic Skills Training (JOBS)

The Act repeals the WIN (Work Incentive) program in the work programs established under the old AFDC program and replaces it with JOBS. State programs begin October 1, 1990. The key differences between the old and the new program are:

1. Alaska Native organizations receive the direct federal funding to provide JOBS services to Alaska Native AFDC clients. Native grantees will begin their programs before the State begins its JOBS. Native funding for FY91 is expected to be 38% of Alaska's total JOBS funding; no State or local match is required.
2. Services must be targeted to the long-term dependent and those most at risk of becoming long term dependent.
3. Because long-term dependent and at risk clients are also the hardest to serve they will require more in-depth services.
4. Supportive services such as child care, transportation, medical assistance, increase.
5. Federal funding levels will increase and match funds are available for new services, as long as federal funds are targeted to long-term dependent and at-risk individuals.
6. Phased-in performance standards increase the number of clients served.

#### C. Transitional Benefits While Working:

1. The Act creates a new entitlement to day care assistance for up to twelve months for anyone who leaves AFDC because of increased earnings, beginning April 1, 1990.
2. The Act also makes the current four-month extended Medicaid benefits available for up to a full year, beginning April 1, 1990.

#### D. Child Support Enforcement:

The Act addresses several child support enforcement issues, but the four main features are:

1. Each state establish guidelines by October 1989 which are a rebuttable presumption for judges who set support orders, with periodic review of the guidelines;
2. Support orders must also be reviewed regularly;
3. Employers must immediately withhold child support payments from wages for nearly all support orders on a phased in schedule beginning November 1990;
4. The identities of both parents must be established at the time a birth is recorded,

## GOALS OF ALASKA'S FY 91 FAMILY SUPPORT ACT PACKAGE

### UNEMPLOYED. TWO-PARENT FAMILIES

Cover the 1495 poor children in 623 intact families with AFDC cash benefits, and provide them and their parents with medical coverage, by October 1, 1990.

Why: Congress felt that poor children in intact families were being penalized in the 20 states who did not cover them.

Tools: Unemployed Parents AFDC, Medicaid.

Establish one pilot program each in urban and rural Alaska that allows parents in UP families to "work off" their AFDC grant and medical insurance.

Why: By definition, both parents in UP families are able bodied, and at least one has recent work experience. If no paying jobs are available, one parent may support the family by performing work or community service for their AFDC grant and health insurance. States with strong Work programs experience lower UP cash assistance payments than states without Work requirements.

Tools: State JOBS, Native Grantees.

### JOB OPPORTUNITIES AND BASIC SKILLS TRAINING (JOBS)

Provide meaningful job training opportunities to 620 non-natives and 380 Alaska Natives on AFDC. AFDC clients whose youngest child is three years or older are mandatory participants if child care is available.

Why: In our society, work is tied to self-esteem. The work force has changed and more than 60% of women with young children work.

Tools: JTPA training funds, JOBS case management services, child care, medical coverage.

JOBS, cont'd.

Raise the literacy level of JOBS participants who do not perform above an 8th grade level.

Why: Any job which pays enough to support a family requires basic competency in English and math.

Tools: Adult Basic Education (A.B.E.) services, both urban and rural.

Ensure that young parents between ages of 13-24 on AFDC get a high school diploma. The law mandates education for those under 20 without a diploma and targets young parents under 24 for special attention.

Why: The single most predictable profile of a long-term welfare dependent is one of a young parent who lacks a high school education. Investing here will be our biggest pay off.

Tools: DOE pilot for 25 teen parents, other JOBS services, child care, medical, and supportive services.

Ensure clients with barriers to learning or training get help.

Why: One of the most frequent concerns of job training professionals is that clients' underlying problems, such as substance abuse, are not addressed during or before training. The result is another failure for the client and waste of precious training resources.

Tools: Specialized intensive case management and supportive services for 25 JOBS clients who are appropriate for treatment. (Treatment resources come from existing system).

JOBS, cont'd.

In exchange for parents' participation, guarantee cash assistance, child care and medical coverage to 1000 AFDC families participating in training or education.

Why: In this contract, if parents agree to try to improve themselves, then the government must give them the tools to do so. As a practical matter, the government is already paying cash and medical for this client. The new expense is for child care.

Tools: AFDC cash, JOBS, child care and medical.

Make sure there is enough supply of child care/of the right hours in the right places to meet the needs of FSA clients.

Why: Alaska must exempt parents from participation if child care cannot be found. Supply of part-time, weekend, evening care and care for very young children must be generated. Entry level jobs, especially in service sector may not be 8-5 pm.

Tools: Information and referral brokering service to recruit providers and match with client needs and to do ground work for licensing.

Ensure that 1400 children placed in child care while parents work or train get quality care, beginning April 1, 1990 and October 1, 1990.

Why: It is shortsighted to address the needs of a parent in poverty only to ignore the needs of their children. Quality care must be available to all clients.

Tools: JOBS component to educate the parent to choose good quality care, licensing resources.

JOBS, cont'd.

Ensure that parents have the tools to balance work and family.

Why: Being a good parent is the most important job most of us will ever do, yet it is the job for which we receive the least formalized training. Single parents, young parents, families with economic pressures, or low education levels could benefit greatly.

Tools: JOBS will provide parenting training during its orientation sessions. In future years, JOBS may offer scholarships to community-based parenting programs for AFDC clients.

TRANSITION BENEFITS WHILE WORKING

Help with child care expenses and medical coverage for up to one year for the working poor who leave AFDC for a job.

Why: Lack of affordable child care and medical coverage are two major reasons parents do not permanently make the transition from welfare to work. It seems safer to "do nothing."

Tools: Transitional child care and medical benefits beginning April 1, 1990, via Medicaid and DCRA.

CHILD SUPPORT ENFORCEMENT

Ensure that Alaska has ability to review and modify child support guidelines and all support orders periodically.

Why: It is important that child support payments reflect current economic conditions, needs, and family situations.

Tools: Child Support Enforcement Division staff within Department of Revenue; Court System's Child Support Guideline Committee.

CHILD SUPPORT ENFORCEMENT cont'd.

Beginning November 1990, immediately withhold child support payments for new and modified orders from paychecks.

Why: Experience indicates that collections are much higher when they are automatically withheld from wages. Current practice is to immediately withhold payments only for obligors whom the system has marked as being delinquent in their payments. This creates a stigma for those obligors.

Tools: CSED, employers.

Increase paternity establishment for AFDC cases.

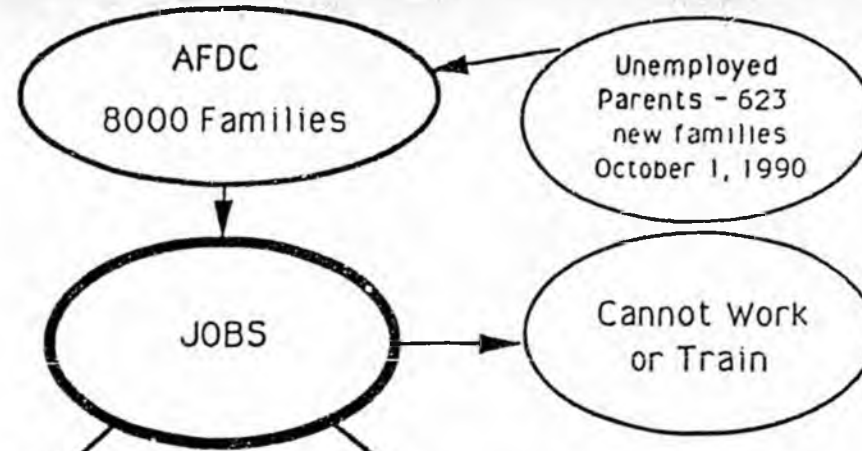
Obtain Social Security Numbers of both parents before Birth Certificate is issued.

Why: Parents should be responsible for their children, whether or not they live in the same home. AFDC cash outlays can be reimbursed by child support payments collected by CSED on behalf of AFDC clients.

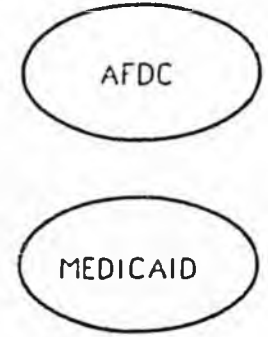
Tools: CSED staff, DPA eligibility workers, Bureau of Vital Statistics, sanctions if clients don't cooperate.

CASH ASSISTANCE

WELFARE REFORM

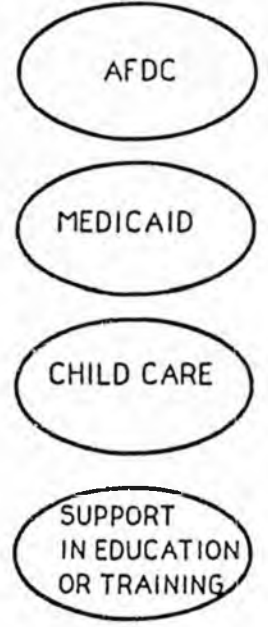
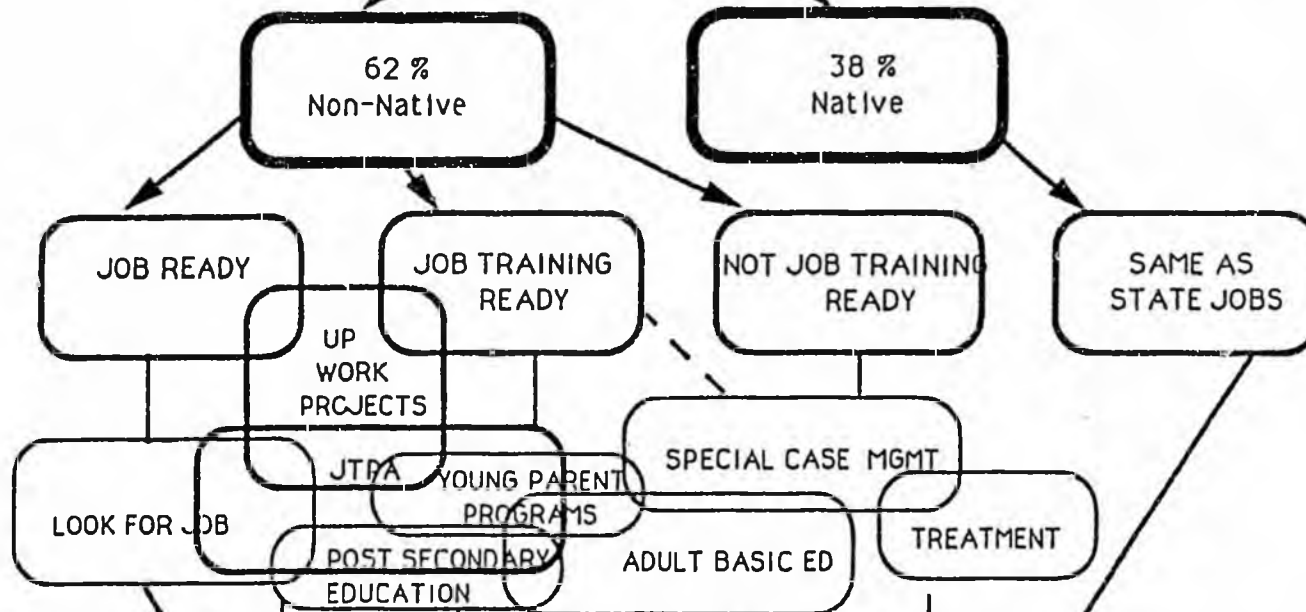


BENEFITS



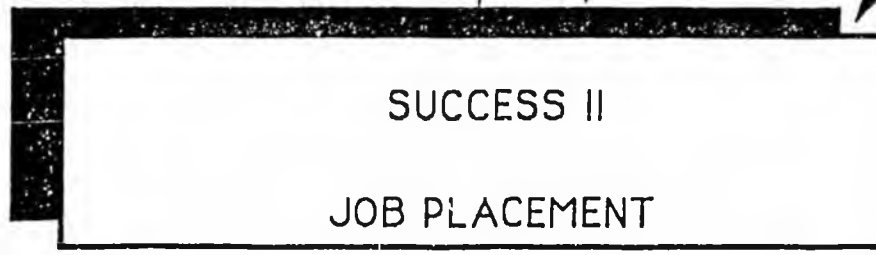
JOBS

October 1, 1990



TRANSITION BENEFITS

April 1, 1990



**HB**

**175**

# 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

HB 175

H. HESS	3/9/89
H. HESS	3/10/89
H. HESS	4/4/89

Original sponsor: Health, Education and  
Social Services Committee

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE  
2 CS FOR HOUSE BILL NO. 175 (Judiciary)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 SIXTEENTH LEGISLATURE - FIRST SESSION  
5 A BILL

6 For an Act entitled: "An Act relating to the construction of laws pertain-  
7 ing to adoption; modifying policy statements relating  
8 to strengthening a child's family ties or family  
9 life; relating to review of orders in certain chil-  
10 dren's proceedings; and modifying the definition of  
11 'child abuse or neglect'."

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

13 \* Section 1. AS 25.23 is amended by adding a new section to read:

14 Sec. 25.23.005. CONSTRUCTION OF CHAPTER; RIGHTS OF PERSONS  
15 AFFECTED BY ADOPTION. This chapter shall be liberally construed to  
16 the end that the best interests of adopted children are promoted. Due  
17 regard shall be given to the rights of all persons affected by a  
18 child's adoption.

19 \* Sec. 2. AS 47.05.060 is amended to read:

20 Sec. 47.05.060. PURPOSE AND POLICY RELATING TO CHILDREN. The  
21 purpose of this title as it relates to children is to secure for each  
22 child the care and guidance, preferably in the child's own home, that  
23 will serve the moral, emotional, mental, and physical welfare of the  
24 child and the best interests of the community; to preserve and  
25 strengthen the child's family ties unless efforts to preserve and  
26 strengthen the ties are likely to result in physical or emotional  
27 damage to the child [WHENEVER POSSIBLE], removing the child from the  
28 custody of the parents only as a last resort when the child's welfare  
29 or safety or the protection of the public cannot be adequately

1        safeguarded without removal; and, when the child is removed from the  
2        family, to secure for the child adequate custody and care and adequate  
3        planning for permanent placement of the child.

4        \* Sec. 3. AS 47.10.080(f) is amended to read:

5                (f) A minor found to be delinquent or a child in need of aid is  
6        a ward of the state while committed to the department or the depart-  
7        ment has the power to supervise the minor's actions. The court shall  
8        review an order made under (b) or (c)(1) or (2) of this section an-  
9        nually, and may review the order more frequently to determine if  
10       continued placement, probation, or supervision, as it is being pro-  
11       vided, is in the best interest of the minor and the public. If annual  
12       review under this subsection would arise within 90 days of the hearing  
13       required under (1) of this section, the court may postpone review  
14       under this subsection until the time set for the hearing. The depart-  
15       ment, the minor, the minor's parents, guardian, or custodian are  
16       entitled, when good cause is shown, to a review on application. If  
17       the application is granted, the court shall afford these parties and  
18       their counsel reasonable notice in advance of the review and hold a  
19       hearing where these parties and their counsel shall be afforded an  
20       opportunity to be heard. The minor shall be afforded the opportunity  
21       to be present at the review. At any review conducted under this  
22       subsection, whether or not by hearing, the court shall make written  
23       findings of fact and conclusions of law regarding the following is-  
24       sues:

25                (1) why the child was removed from the home;

26                (2) what services have been provided to or offered to the  
27        parents to facilitate reunion;

28                (3) what services were utilized by the parents to facili-  
29        tate reunion;

1                   (4) the visitation history between the parents and the  
2 child;

3                   (5) whether additional services are needed to facilitate  
4 the return of the child to the child's parents;

5                   (6) when return of the child can be expected;

6                   (7) whether, under the circumstances of the case, reason-  
7 able efforts are being made to promote family reunification or other-  
8 wise address permanency planning.

9 \* Sec. 4. AS 47.10.080 is amended by adding a new subsection to read:

10                   (1) Within 18 months of the date a minor is initially committed  
11 to the department under AS 47.10.142(e), the court shall hold a hear-  
12 ing to review the placement and services provided and to determine the  
13 future status of the minor. The court shall make appropriate written  
14 findings, including findings related to the following:

15                   (1) whether the child should be returned to the parent;

16                   (2) whether the child should remain in foster care for a  
17 specified period;

18                   (3) whether the child should be placed for adoption;

19                   (4) whether the child should remain in foster care on a  
20 permanent or long-term basis because of special needs.

21 \* Sec. 5. AS 47.17.010 is amended to read:

22                   Sec. 47.17.010. PURPOSE. In order to protect children whose  
23 health and well-being may be adversely affected through the inflic-  
24 tion, by other than accidental means, of harm through physical abuse  
25 or neglect or sexual abuse or sexual exploitation, the legislature  
26 requires the reporting of these cases by practitioners of the healing  
27 arts and others to the appropriate public authorities. It is the  
28 intent of the legislature that, as a result of these reports, protec-  
29 tive services will be made available in an effort to prevent further

1 harm to the child, to safeguard and enhance the general well-being of  
2 the children in this state, and to preserve family life unless those  
3 efforts are likely to result in physical or emotional damage to the  
4 child [WHENEVER POSSIBLE].

5 \* Sec. 6. AS 47.17.070(2) is amended to read:

6 (2) "child abuse or neglect" means the physical injury or  
7 neglect, mental injury, sexual abuse, sexual exploitation, or mal-  
8 treatment of a child under the age of 18 by a person who is responsi-  
9 ble for the child's welfare under circumstances which indicate that  
10 the child's health or welfare is harmed or threatened thereby; in this  
11 paragraph, "mental injury" means an injury to the intellectual or  
12 psychological capacity of a child, as evidenced by an observable and  
13 substantial impairment in the child's ability to function within the  
14 normal range of performance and behavior, with due regard to the  
15 child's culture;

16 \* Sec. 7. AS 47.10.083 is repealed.

100,000

Date of Committee Action: 4/6/89

The HEALTH, EDUCATION, & SOCIAL SERVICES Committee considered: HB 175

HOUSE BILL NO. 175 [PROGRAMS & PROCEEDINGS RELATING TO MINORS]  
"An Act relating to programs and proceedings concerning children; and emphasizing that the best interests of the child must be considered under certain programs and during certain proceedings involving children."

RECOMMENDS:

- replacing with CS HB 175 (HESS)  the same title
- the attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

ADOPTS:

House HESS letter of intent

ATTACHES NEW FISCAL NOTE(s):

- fiscal impact
- zero fiscal note
- zero with analysis

APPROVES PREVIOUS:

- fiscal note(s) published: \_\_\_\_\_
- zero fiscal notes(s) published: \_\_\_\_\_

SIGNING DO PASS:

[Signature]  
[Signature]  
MARK BOYER  
[Signature]  
[Signature]

SIGNING OTHER THAN DO PASS:

(Do Not Pass, No Recommendation, Amend)

[Signature]  
[Signature]

[Signature]  
 Chairman's signature

# HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

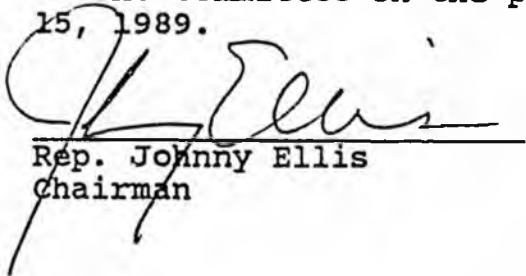
ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES



P.O. BOX V, JUNEAU 99811  
(907) 465-3759

## HOUSE HESS COMMITTEE LETTER OF INTENT TO CSHB 175 (HESS)

It is the intent of the House HESS Committee to endorse the Division of Family and Youth Services' "Permanency for Dependent Children" project as a means of expediting the planning and placement of children in state custody in permanent and safe homes. The Division is requested to report to the Committee on the progress of this project by October 15, 1989.

  
Rep. Johnny Ellis  
Chairman

April 6, 1989  
Date of Adoption

House Letter of Intent

# FISCAL NOTE

## REQUEST:

Revision Date: \_\_\_\_\_  
 Title: An Act relating to programs  
& proceedings concerning children...  
 Sponsor: House HESS Committee  
 Requestor: \_\_\_\_\_

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

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

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

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

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

### FUNDING: (Thousands of Dollars)

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

### POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary) Although CSHB 175 has a zero fiscal note, the legislation has potentially serious financial implications. If CSHB 175 does not become law, the Department will likely lose approximately \$100,000 in federal grant funds which are currently used for child abuse and neglect programs within Alaska.

Prepared by: Yvonne Chase, Director  
 Division: Family and Youth Services

Phone: 465-3170  
 Date: 4-6-89

Approved by Commissioner: MARA M. MINSON  
 Agency: Department of Health & Social Services

Date: 4-6-89

### Distribution (by preparer):

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



**STATE OF ALASKA**  
**1989 LEGISLATIVE SESSION**

Bill Version: HB 175  
 Publish Date: 2/15/89

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: **Alaska Court System**  
 Title: **An act relating to programs** BRU: **Trial Courts**  
           **& proceedings concerning children...**  
 Sponsor: **HESS** Components:  
 Requestor: **HESS**

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

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL</b>						
----------------	--	--	--	--	--	--

<b>REVENUE</b>						
----------------	--	--	--	--	--	--

**FUNDING: (Thousands of Dollars)**

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

Full-time						
Part-time						
Temporary						

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

No fiscal impact.

Prepared by:  
 Division:

*Jan Strandberg*  
 Jan Strandberg, General Counsel  
 Alaska Court System

Phone: 284-3228  
 Date: 03/17/89

Approved by:  
 Agency:

*Arthur H. Snowden, II*  
 Arthur H. Snowden, II, Administrative Director  
 Alaska Court System

Date: 03/17/89

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

SENATE COMMITTEE REPORT

FURTHER

JUD

5/1/89

DATE TURNED INTO OFFICE 5/5/89

Mr. President:

HESS

Committee considered CSHB 175 (JUD)

construction of laws pertaining to adoption; modifying policy statements relating to strengthening a child's family ties or family life; relating to review of orders in certain children's proceedings; and modifying the definition of child abuse or neglect and recommended

- replace with \_\_\_\_\_ CS \_\_\_\_\_ )  same title
- or adopt \_\_\_\_\_ CS \_\_\_\_\_ )  new title
- attached amendment(s) and  technical title change (HB only)
- \_\_\_\_\_ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

FISCAL NOTE(S)  zero  fiscal impact  appropriation no FN

new  updated  previous

same as previous fiscal note(s) published \_\_\_\_\_

MEMBERS SIGNING DO PASS

*Ray Jones*

*Tim Kelly*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

OTHER RECOMMENDATIONS

*See Adams - No Rec*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

*Paul Grube (Do Pass)*  
Chair signature and recommendation

Committee Backup attached

DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
DIVISION OF FAMILY AND YOUTH SERVICES

PERMANENCY FOR DEPENDENT CHILDREN

AN INNOVATIVE PROJECT

March 1989

Every child should have the right to a permanent and safe home.

DOES EVERY CHILD HAVE A PERMANENT HOME?

No! At any time in Alaska 900 to 1,100 children are in out of home care. Today, there are 222 children in the custody of the State of Alaska who have been in continuous out of home care for more than two years.

Although most children in custody will return to their own homes, for some, termination of parental rights is the only way they will ever have a chance for a permanent family. A quick survey throughout the state revealed that there have been approximately 35 cases of nonvoluntary terminations of parental rights during the past 18 months. There have also been five guardianships, 17 relinquishments, and there are approximately 50 cases pending termination. Some parts of the state have not had a termination of parental rights case before the court for ten years.

More must be done to assure a permanent home for every dependent child. Better assessment and focused treatment are needed to help the child's parents, and, when that is unsuccessful, faster, more definitive action is needed to make a permanent, substitute home possible for the child.

WHAT CAN BE DONE TO ASSURE PERMANENCY FOR CHILDREN?

The Division of Family and Youth Services (DFYS), together with the Department of Law, is launching a new project, Permanency for Dependent Children (PDC). This project will be implemented in Nome, Bethel, Barrow, Fairbanks, Juneau, Anchorage, and Ketchikan by July 1, 1989. Training to prepare staff will occur in June.

The goals of PDC are to speed up recognition of those cases in which termination of parental rights, or another permanent plan, should be pursued and to reduce delays in court action necessary to achieve the permanent plan. There are many components to achieving these goals:

Permanency Planning Court Specialists --

At least one permanency planning court specialist will be identified and trained in each of the offices listed above. The social workers will be trained as a team so that standardized procedures are developed statewide and so that these specialists have special support for their work.

The court specialists will conduct periodic reviews of all cases in which a child has been in custody for one year or has been removed from parental care and placed in foster care more than once. The specialists will also be available to consult and assist regarding any child's case where the caseworker or supervisor believes that a permanent plan other than return to the parents may be needed.

In those cases where the parents are not actively involved and progressing, a team decision will be made about whether continued effort with the parents is most appropriate or termination of parental rights should be pursued. In the former cases, further review will occur quarterly to be certain that no "drift" occurs.

In situations where termination of parental rights is identified as the most appropriate permanent plan, the permanency planning court specialist will be responsible for preparing the case for presentation to the court. The specialist will prepare chronologies of events, organize the evidence, interview and prepare witnesses, identify and prepare expert witnesses, and generally assist the ongoing caseworker and the assigned attorney.

Freeing a child for adoption requires the court to terminate the most precious relationship in our society -- that between parent and child. Preparation for these proceedings is extraordinarily demanding, time consuming, and stressful. By assigning specialists, we expect to eliminate delays which occur when ongoing workers are trying to balance this kind of preparation with their day-to-day obligations to respond to the needs of children, parents, and foster parents. The added expertise the specialists can bring to consultation about ongoing cases will also help less experienced workers improve their assessment and treatment skills.

Training regarding Permanency Planning --

In conjunction with the Department of Law, training and orientation for all new social workers will include information concerning legal standards for termination of parental rights, documenting events and services offered throughout a case, and assessing when termination of parental rights or another permanent plan should be pursued.

Updates on these subjects will be included in periodic training for all of the social workers. This will help keep skills current and offer an opportunity to incorporate the findings of the permanency planning court specialists about how best to prepare for court proceedings when they are required.

Specialists will be trained as a team. Their training will focus on legal and child welfare issues associated with permanency planning. The training will include information on how to conduct case reviews, assessment of treatment plans and progress, weighing permanent plan alternatives such as guardianship, adoption and long-term foster care, and preparing for complex legal proceedings.

#### Department of Law Participation --

In the Fairbanks, Anchorage, and Juneau offices of the Attorney General, arrangements will be made to make attorneys available to assist with training the DFYS specialists and to consult with the specialists and take cases to court. In the other offices, the Assistant Attorneys General assigned to represent DFYS will be offered support and consultation from the three larger offices, as needed.

In Juneau, a paralegal position, which is currently not filled, will be dedicated specifically to child in need of aid termination proceedings.

In Anchorage, the 1990 budget request includes the addition of an attorney and a paralegal to the human services section. Both of those positions will be dedicated to children's proceedings--including consultation with other attorneys handling termination cases. The attorney specialist will also be responsible for developing and implementing the monitoring and evaluation system for all child protection attorneys' cases in Anchorage.

Fairbanks attorneys will continue weekly staffings on all pending cases. The Fairbanks office has been involved in vigorously pursuing termination cases for quite a period of time. They will participate in concerted monitoring of cases, and evaluation of this new statewide effort.

#### HOW WILL WE KNOW IF WE ARE SUCCEEDING?

No later than August 15, 1990, a report will be jointly issued by the two Departments on the project's first year of operation.

In developing this project, DFYS gathered significant information about the status of permanency planning in Alaska. With the

Department of Law, we closely examined statutes concerning termination of parental rights and the many perceptions about permanency planning and "the best interests of a child." The information we have gathered is set out here as the starting place for the project evaluation, which will be described in the August 1990 report.

The annual report will include an analysis of the impact the project has had on achieving a permanent plan for the children presently in placement more than two years. It will address the project's impact on reducing the average length of time before a permanent plan is achieved for all children in out of home care. It will also include findings about what works and what doesn't and plans and recommendations for further action.

#### WHY SHOULD WE START THIS PROJECT?

... What is happening to children in the custody of the State of Alaska?

... Are plans for permanency being made in a timely manner?

... What is the Division of Family and Youth Services doing to prevent foster care drift?

... What is in the best interest for each child?

... Are permanent plans being finalized for children?

... What are the barriers to quality care for children in State custody?

For several hundred children, the answers to these questions are vital elements in their day-to-day survival and their future well-being. These are questions considered by policy-makers, legislators, judges, social workers, guardians, and DFYS. These are the questions that drove us to the conclusion that we needed more focused attention than had previously been devoted to permanency planning in Alaska.

Even after a child has been removed from his or her home, the child's immediate safety is not assured. Without continuing appropriate service for the child and the family, the child is at risk of victimization by the protection system. Immediate and long-term goals are necessary for each child who is removed from his or her home. The nationally recognized term for this type of planning is "permanency planning."

#### WHAT IS PERMANENCY PLANNING?

Permanency planning for children is a concept, a philosophy, and the desired outcome of DFYS intervention with a family. In practice, permanency planning begins with the first act of intervention by the agency. Each child's situation is assessed in two ways:

- 1) The risk of harm to the child in his own home is determined.
- 2) The family is assessed to identify needed changes so the family can provide safe, nurturing care for the child.

Through permanency planning, the goal of safe, stable care is achieved individually for each child:

1. When the child's family can be rehabilitated in a reasonable period of time, the permanency planning goal is to reunite the child with his family;
2. When the potential for reuniting a child with his family exists, an interim placement should be found which "could be permanent" if the attempt to reunite the child with his family is unsuccessful. Future planning in this direction reduces the number of placements the child must experience;
3. Sometimes adoption is best for the child and is possible when the child's parents' rights are terminated in court;
4. When the child's family cannot be rehabilitated and relatives can provide a safe, nurturing environment, a permanent relative placement may be the plan;
5. For Alaskan Native children, relatives and tribal members must be considered, and are usually most appropriate to provide the needed permanent placement;
6. Foster families frequently are willing to provide permanent care to a child who cannot be freed for adoption and has no relatives who can provide safe and permanent care;
7. Guardianship is also an avenue for permanency which does not require termination of parental rights. Relatives, tribal members and foster families can be named guardians.

Permanency for Dependent Children  
 March 1989

WHERE ARE WE IN MEETING PERMANENCY PLANNING GOALS IN A TIMELY MANNER?

According to a recent analysis (data from December 1985 and the most recent analysis in January 1989), approximately 21% to 23% of the children in state care have been there for more than two years. In Washington, Maine, and Massachusetts the statistic is 30%, 51% and 31%, respectively. Alaska has a lower percentage rate. However, for the 222 children in Alaska who have been in substitute care for more than two years, timely permanency planning has not occurred, and for the 33 children who are between the ages of two and five, out of home care represents the majority of their life span. The following chart shows the region, age, and sex of these children.

<u>REGION</u>	<u>AGE AND SEX</u>						<u>TOTAL</u>
	<u>2-5 yrs.</u>		<u>6-10 yrs.</u>		<u>11-18 yrs.</u>		
	<u>M</u>	<u>F</u>	<u>M</u>	<u>F</u>	<u>M</u>	<u>F</u>	
Western	2	6	4	6	3	4	25
Northwestern					1		1
Northern	1		7	5	8	18	39
Southcentral	12	15	18	13	32	41	131
Southeastern		1	4	1	10	10	26
Totals	15	22	33	25	54	73	222
	37		58		127		

Alaska also appears to be doing a better job than some of the other states by not "losing" children for years in the system.

At the same time, the number of moves a child makes from foster home to foster home and from the child's home to a foster home is a measure of the quality of care the child is receiving from the "system". In 1985, 74% of the children in DFYS custody had been in at least two placements and 25% had over five placements.

In comparison, New Jersey reports that 45% of their children in substitute care have had only one placement. However, the other 55% represent multiple placements. Washington State's data for FY 86 indicated that of the 5,745 children placed, 3,858 (67%) received one placement each; 1,114 (20%) received two placements; 711, three to five placements; and 62 children had received more than six placements. The Division's program goals include reducing the number of placements for each child as well as reducing the length of time in placement for children.

#### HOW DO STATUTES AFFECT THIS PROCESS?

State and federal statutes define standards of proof for termination of parental rights: state statute mandates clear and convincing evidence that the parents' conduct is likely to continue. The Indian Child Welfare Act mandates evidence beyond a reasonable doubt that continued custody by the parents is likely to result in serious physical or emotional damage to the child and proof that active efforts have been made to offer remedial services. The statutes do not give time frames for the filing of a petition to terminate parental rights.

Both the parents' ability to change and to meet the child's needs are key elements. Although there are barriers to the timely planning for children in custody in Alaska, the statutes are rarely, if ever, the barrier. Ideal progression is dependent on the resources and skill of staff in the state agency, the community's resources for assisting the parents to learn to care for their child and to overcome the parents' problems, the skill and availability of the state's attorney, and the wisdom of the court.

Permanent status for some children can be achieved only through the termination of their parents' rights. State and federal statutes give the legal rules and structure to the courts and the state agency to use in deciding when the termination of parental rights can be granted:

AS 47.10.080 (c) (3) provides that by order, upon a showing in the adjudication by clear and convincing evidence that there is a child in need of aid under AS 47.10.010 (a) (2) as a result of parental conduct and upon a showing in the disposition by clear and convincing evidence that the parental conduct is likely to continue to exist if there is no termination of parental rights, terminate parental rights and responsibilities of one or both parents and commit the child to the department or to a legally appointed guardian of the person of the child, and the department or guardian shall report annually to

the court on efforts being made to find a permanent placement for the child.

The Indian Child Welfare Act (P.L. 95-608) provides in pertinent part that no termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

The Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) provides in pertinent part that effective October 1, 1983, in each case, reasonable efforts will be made (A) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and (B) to make it possible for the child to return to his home; and it provides for the development of a case plan (as defined in section 475[1]) for each child receiving foster care maintenance payments under the State plan and provides for a case review system which meets the requirements described in section 475(5) (B) with respect to each such child.

The term 'case plan' means . . . a plan for assuring that the child receives proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his own home or the permanent placement of the child . . . 475(5) The term 'case review system' means a procedure for assuring that . . . (B) the status of each child is reviewed periodically but no less frequently than once every six months by either a court or by administrative review . . . in order to determine the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to the home or placed for adoption or legal guardianship and

WHAT IS IN THE BEST INTERESTS OF A CHILD?

This question elicits emotional, philosophical, societal, tribal, and sometimes religious responses which are different for every child whose needs have not been met by the child's parents. The court ultimately may have to provide the answer for many children.

We believe it is in the best interest of every child to be loved and cared for by the child's own parents. Unfortunately, even with help to the parents, this is not always possible. The "reasonable efforts" requirement of the Adoption Assistance and Child Welfare Act of 1980 recognized, on a federal level, the bond which a child has with his family and the importance of maintaining that bond. The Indian Child Welfare Act has similar requirements. Both federal laws, like Alaska State law, recognize, however, that this goal may not be attainable for every child. When it is not, another permanent family must be found for the child.

FINALLY --

We will need lots of help to make this project work. We must have enough social workers and lawyers. Treatment providers must recognize the urgency. Tribal advocates and Native organizations must be included so we have the best possible support for parents of Native children and help finding and supporting the most appropriate substitute placements, when that is required. Guardians ad litem must advocate vigorously.

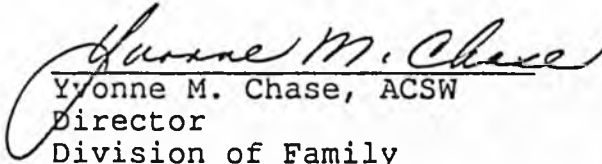
Meeting the goal of a permanent home for every child requires difficult decisions and painful choices. Most important, we need the commitment of every Alaskan to meeting this goal.

Permanency for Dependent Children  
March 1989

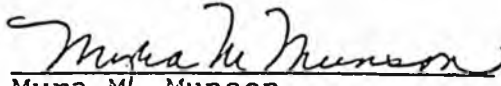
10

For more information, please contact:

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Director  
Division of Family and Youth Services  
P.O. Box H-05  
Juneau, Alaska 99811-0630  
(907) 465-3170

  
Yvonne M. Chase, ACSW  
Director  
Division of Family  
and Youth Services

Date: 3/8/89

  
Myra M. Munson  
Commissioner  
Department of Health and  
Social Services

Date: 3/8/89

**HB**

**203**



ALASKA ASSOCIATION OF ELEMENTARY SCHOOL PRINCIPALS  
ALASKA ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS  
ALASKA ASSOCIATION OF SCHOOL ADMINISTRATORS

• ALASKA COUNCIL OF SCHOOL ADMINISTRATORS •  
326 Fourth St., Suite 408 Juneau, Alaska 99801 586-9702

RECOMMENDATION FOR AMENDMENTS TO:

HB 203  
LIMITED TEACHER CERTIFICATES

Line 5 page 2 delete "who supervises teachers;" The sentence would then read (A) an individual serving in an administrative capacity.

Rationale: under current law the definition of a teacher included a certified administrator. We support that definition since there are a variety of responsibilities assigned to administrators and to be in that position you must be certified.

# FISCAL NOTE

**REQUEST:**

Revision Date: 1/16/90  
 Title: Requirements for limited teacher certificates  
 Sponsor: House HESS  
 Requestor: Maclean

Agency Affected: Education  
 BRU: Education Finance and Services  
 Components: District Support

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

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	F
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING: (Thousands of Dollars)**

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

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

Prepared by: Marv Hakala Phone: 465-2800  
 Division: Commissioner's Office Date: 1/16/90  
 Approved by Commissioner: William G. Demmert Date: 1/16/90  
 Agency: Education

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

**HB**

**208**

# Alaska State Legislature

SENATOR PAUL FISCHER, Chairman  
SENATOR JIM DUNCAN, Vice Chairman  
SENATOR AL ADAMS  
SENATOR LLOYD JONES  
SENATOR TIM KELLY



P.O. BOX V  
ROOM 508  
STATE CAPITOL  
(907) 465-3762

## Senate Committee on Health, Education and Social Services

### Changes in Senate CS for CS for House Bill 208 (HESS)

1. Lowers the maximum amount to be given to undergraduates to \$2000 from \$2750. (Sec. 7.)
2. Lowers the maximum amount to be given to graduate students to \$2500 from \$3250. (Sec. 8.)
3. Places a requirement that a loan for half-time students may only be used for books, tuition and required fees. Sec. (9.)
4. Changes Sec. 9 of original bill to give flexibility to the Postsecondary commission in determining which schools may be eligible for loans that have been in operation for 1 year. This change is incorporated into (sec.10) of the CS.