ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
6914 HOUSE JUDICIARY

158

THE ASSOCIATION FOR CHILDREN FOR
ENFORCEMENT OF SUPPORT (ACES)
ALASKA CHAPTER
P. O. Box 92910
Anchorage, Alaska 99509
(907) 274-2010

May 3, 1991

Representative Georgianna Lincoln
House HESS Co-Chair
P. O. Box V
Juneau, AK. 99811

Dear Rep. Lincoln:

The Alaska Chapter of ACES encourages all HESS members to vote DO PASS on HB52.

There are many children in the school system who turn 18 (the age of majority) during their senior year in school. My own son turns 18 only three weeks after starting his senior year. Custodial parents do not relinquish their financial responsibilities while their child is a senior in high school, despite the fact that they may turn 18 years old. It doesn't seem fair that non-custodial parents, however, no longer have a responsibility at that point.

To say the least, the senior year in high school is <u>the most</u> expensive year in a child's life. It is already sad to watch so many of them go without the basic needs, much less the humiliation of not being able to afford to engage in any senior social activities - for lack of funds.

And this problem is only going to get worse since new laws have made it clear that kids will be starting school later, so it is a given that eventually all kids will turn at least 18 years old while they're in high school.

The provision for financial help with a college education will also help Alaskan kids. Since it is not mandatory, and merely allows that issue to be considered before the courts, we encourage you to support that option also.

Alaskan children and custodial parents thank you for your consideration of this bill. Please vote YES.

Sincerely,

Glenda J. Straube

Glenda J. Straube
Volunteer Coordinator

JAN 10, 1992

REP. FRAN ULMER
PO BOX V
JUNEAU, AK 99811-3100
RE: HB 52 (SPONSOR SUBSTITUTE)
DEAR FRAN,

THANK YOU FOR CLARIFYING MY CONCERNS ABOUT THE POST-MAJORITY CHILD SUPPORT BILL.
I SUPPORT THE SPONSOR SUBSTITUTE AS WRITTEN AND HOPE YOU WILL SUBMIT IT TO THE LEGISLATURE.
IT IS ALSO MY HOPE THAT THIS BILL WILL NOT BE ALTERED, AS IT PASSES THROUGH COMMITTEES, TO ADD UNFAIR BURDENS ON NON-CUSTODIAL FAMILIES AND CHILDREN THAT THE STATE WOULD NOT ALSO EQUALLY IMPOSE UPON CUSTODIAL FAMILIES AND THEIR CHILDREN. AS YOU KNOW, ALL PERSONS INCLUDING CHILDREN ARE GAURENTEED EQUAL TREATMENT, OPPORTUNITIES, AND PROTECTION UNDER THE LAW.

ON JAN 8, 1992 THE LEGISLATIVE COMMITTEE OF THE GOVERNOR'S COMMISSION ON CHILDREN AND YOUTH DISCUSSED THIS BILL, AND WE PLAN TO CONTINUE THE DISCUSSION AT OUR NEXT MEETING IN LATE JANUARY.

I BELIEVE THIS BILL IS GOOD PUBLIC POLICY AND I WILL ADVOCATE FOR IT AT EVERY OPPORTUNITY.
SINCERELY,
Steve Stevens

Alaska State Legislature

HOUSE OF REPRESENTATIVES

REPRESENTATIVE FRAN ULMER

M E M O R A N D U M
February 3, 1992

TO: Rep. Pat Carney, Co-chair
Rep. Georgianna Lincoln, Co-chair
House Health, Education and Social Services Committee

FROM: Rep. Fran Ulmer

RE: Sponsor Substitute for HB 52, relating to child support for non-minors

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The purpose of SSHB 52 is to provide child support for unmarried, 18 year old children who are living as dependents and actively pursuing a high school diploma. This support is authorized until the child finishes high school or reaches 19 years of age, whichever comes earlier.

Currently, courts are authorized to order child support only for minor children. The result is that many Alaska children must complete their final year of high school without the benefit of financial support from the non-custodial parent. Some families in this situation have applied for Aid to Families with Dependent Children which provides for public assistance payments until the child completes high school or reaches age 19. SSHB 52 would eliminate the need for those families to apply to the state for assistance.

For those children with developmental disabilities who may require additional years to complete secondary school, current law already provides the authority to award continuing support payments for a handicapped adult child. Streb v. Streb, 774 P.2d 798 (Alaska 1989).

The sponsor substitute is a substantial redrafting of the original HB 52. All references to support for non-minor children over the age of 19 have been dropped from the bill. The current version of this legislation uses AFDC guidelines in regard to non-minor assistance payments to establish upper limits for the duration of child support. It affirms the importance of completing secondary education and the need for the support of children to be borne equitably by both parents.

State Capitol
Juneau, AK 99801-1182

(907) 465-4947
Fax 465-2108

Alaska State Legislature

HOUSE OF REPRESENTATIVES

REPRESENTATIVE FRAN ULMER

MEMORANDUM
January 14, 1992

TO: Rep. Georgianna Lincoln, Co-chair
Rep. Pat Carney, Co-Chair
House Health, Education and Social Services Committee

FROM: Rep. Fran Ulmer

RE: SSHB 52 relating to child support for children who are not minors

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I would like to request a hearing for Sponsor Substitute for HB 52 which provides child support up to the age of 19 years for dependent children who are still attending high school. The revised bill eliminates all other prior language in the bill authorizing the court to order child support for children over the age of 18 who are attending college or vocational school. In SSHB 52, child support is authorized only until the child completes high school or reaches the age of 19, whichever comes first. This provision will eliminate the need for those 18 year old children who are still in school to draw upon public assistance as they do now.

The revised version of HB 52 should satisfy all those criticism of the bill which were expressed at the previous hearing on the bill in the HESS committee.

Thank you for your consideration of this request.

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Alaska State Legislature

HOUSE OF REPRESENTATIVES

REPRESENTATIVE FRAN ULMER

MEMORANDUM
February 19, 1992

TO: Rep. Dave Donley, Chair
House Judiciary Committee

FROM: Rep. Fran Ulmer

RE: Sponsor Substitute for HB 52, relating to child support for non-minors

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The purpose of SSHB 52 is to provide child support for unmarried 18 year old children who are living as dependents and actively pursuing a high school diploma. This support is authorized until the child finishes high school or reaches 19 years of age, whichever comes earlier. The concept for this legislation was recommended by the Family Support Task Force.

Currently, courts are authorized to order child support only for minor children. The result is that many Alaska children must complete their final year of high school without the benefit of financial support from the non-custodial parent. Some families in this situation have applied for Aid to Families with Dependent Children which provides for public assistance payments until the child completes high school or reaches age 19. SSHB 52 would eliminate the need for those families to apply to the state for assistance.

For those children with developmental disabilities who may require additional years to complete secondary school, current law already provides the authority to award continuing support payments for a handicapped adult child. Streb v. Streb, 774 P.2d 798 (Alaska 1989).

The sponsor substitute is a substantial redrafting of the original HB 52. All references to support for non-minor children over the age of 19 have been dropped from the bill. The current version of this legislation uses AFDC guidelines in regard to non-minor assistance payments to establish upper limits for the duration of child support. It affirms the importance of completing secondary education and the need for the support of children to be borne equitably by both parents.

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Sponsor Substitute for HB 52
Sectional Analysis

Section 1. A court appointed representative for a child under the age of 19 whose interests may be affected by a divorce may attend divorce mediation conferences.

Section 2. While divorce litigation is pending, the court is authorized to order reasonable support for unmarried children under the age of 19 who are actively pursuing a high school diploma and who are living as dependents with a parent or guardian.

Section 3. Provides that a judgment may be modified regarding child support for unmarried children under the age of 19 who are actively pursuing a high school diploma.

Section 4. Requires post-majority support to be included, among other items, as issues covered by dissolution agreements.

Section 5. Among other items, a dissolution petition must state the marital and educational status of each child under the age of 19 born to or adopted by the petitioners.

Section 6. A petition for dissolution may be dismissed, or an action continued, if a representative of an unmarried child under the age of 19 objects to a term providing, or failing to provide, support.

Section 7. In an action involving the custody, support or visitation of a child, the court may appoint someone to represent a child under the age of 19 who is actively pursuing a high school diploma or its equivalent and living as a dependent.

Section 8. Replaces the word "minor" with the word "child" regarding the appointment of a person to provide guardian ad litem services in divorce proceedings

Section 9. Deletes the word "minor" from "minor child" in regard to the court's authority to order parents to assign to the custodian of the child the portion of salary or wages sufficient to pay the ordered child support.

Section 10. Deletes the word "minor" from "minor child" in regard to subrogated child support orders.

HB 52
Sectional Analysis

Section 1. A court appointed representative for a child under the age of 26 whose interests may be affected by a divorce may attend divorce mediation conferences.

Section 2. While divorce litigation is pending, the court is authorized to order reasonable support for unmarried children under the age of 22 who are actively pursuing a high school diploma and are living as dependents, and reasonable post-secondary educational support for children as outlined in Section 10 of the bill (see below).

Section 3. Provides that a judgment may be modified regarding child support for unmarried children under the age of 22 who are actively pursuing a high school diploma, and reasonable postsecondary educational support for other children as outlined in Section 10 of the bill.

Section 4. Requires post-majority support and postsecondary educational support to be included, among other items, as issues covered by dissolution agreements.

Section 5. Among other items, a dissolution petition must state the educational status of each child under the age of 26 born to or adopted by the petitioners.

Section 6. For dissolutions which will receive heightened scrutiny, the written agreements must include post-majority support and postsecondary educational support that is at least as great as would be ordered by a court under Section 10 of the bill.

Section 7. A petition for dissolution may be dismissed or an action continued if a representative of a child who is not a minor objects to a term providing or failing to provide post-majority support or postsecondary educational support.

Section 8. In an action involving the custody, support or visitation of a child, the court may appoint someone to represent the child who is not a minor with regard to postsecondary educational support or other post-majority support.

Section 9. Replaces the word "minor" with the word "child" regarding the appointment of a person to provide guardian ad litem services in divorce proceedings

Section 10. (a) Authorizes the court to order 4 years of reasonable postsecondary educational support for children while they are:

1) unmarried;
2) under the age of 26;
3) at least half-time students in good standing in a career education program, college or university that qualifies for loans from the Alaska Post-Secondary Education Commission;

(b) Directs the court to consider the following issues when determining what reasonable support may be:

1) the earnings, income and resources of the parents, including real and

personal property;
2) the financial needs and resources, physical and emotional condition, and educational needs of the child; and
3) the standard of living, including the likely educational attainment, the child would have enjoyed had the marriage stayed intact.

Section 11. Deletes the word "minor" from "minor child" in regard to the court's authority to order parents to assign to the custodian of the child the portion of salary or wages sufficient to pay the ordered child support.

Section 12. Deletes the word "minor" from "minor child" in regard to subrogated child support orders.

Section 13. The changes made by this Act constitute a material change in circumstances for purposes of a motion to modify a child support determination under AS 25.20.110.

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 5, 1992 FURTHER REFERRALS:

Date of Committee Action: 2.21.92

The JUDICIARY Committee considered: SSHB 52

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 52 CHILD SUPPORT FOR NONMINORS

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

RECOMMENDATIONS: [ ] the same title
be replaced with _____ [ ] a new title
[ ] have attached amendments(s)
[✓] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact _____ [ ] fiscal note(s) _____

[ ] zero fiscal note _____ [ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Dave Dooley		Kevin Pat Parnell		✓	
	–				
	X				
	✓				
	X				

Dave Dooley
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SSHB52

Revision Date: February 3, 1992
Title: Act relating to child support for children who are not minors
Sponsor: Ulmer, B. Davis
Requestor:

Department Affected: Department of Revenue
BRU: Child Support Enforcement Division
Component:
COMPONENT SERIAL NO. | | 1 | 1 | 1 |

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	44.4	46.6	49.1	51.8	54.7	57.1
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	3	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	47.4	46.6	49.1	51.8	54.7	57.1
CAPITAL	0	0	0	0	0	0
REVENUE	26.9	27.2	27.5	27.7	28.0	28.3
*FUND SOURCE: 1004	23.6	23.9	24.2	24.4	24.7	25.0
FUND SOURCE: 1016	3.3	3.3	3.3	3.3	3.3	3.3

FUNDING: (Thousands of Dollars)

GENERAL FUND	16.1	15.8	16.7	17.6	18.6	19.4
FEDERAL FUNDS	31.3	30.8	32.4	34.2	36.1	37.7
OTHER	0					
FUND SOURCE:	0					
TOTAL	47.4	46.6	49.1	51.8	54.7	57.1

POSITIONS:

FULL-TIME	1	1	1	1	1	1
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: 0

ANALYSIS: See attached analysis.

Prepared By: Teri D. Mahaney
Division: Child Support Enforcement Division
Phone: 263-6279
Date: February 3, 1992

Approved by Commissioner: Darral J. Raxwinkel
Agency: Department of Revenue
Date: 2/3/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DSR, Gov. Legis. Ofc., & Impacted Agency(ies).

rev 10/07/91

FISCAL NOTE ANALYSIS
CHILD SUPPORT ENFORCEMENT DIVISION
BUDGET COMPONENT #111
PAGE 2 OF 2

Reference: HB 52 Child support for children who are not minors

Summary:

This bill would allow the court to order support for 18 year old dependent children who are actively pursuing a high school diploma or vocational training. Support orders for these children would enable CSED to collect support for children over age 18, including children who are receiving public assistance benefits. The Division of Public Assistance grants AFDC benefits to children who are over eighteen and enrolled in school (and expected to graduate before age 19).

Assumptions:

HB 52 will increase child supports collections in AFDC (public assistance) cases and increase the amount of incentives that the State receives from the Federal Government.

Average benefit payment	$341 per month
41 children with an average support payment of	$200 per month
Collection rate of	24%

Based on these assumptions, CSED would collect an additional $23,616 in these AFDC cases the first year. CSED projects an increase in collections of 1% per year.

Positions:

One Child Support Enforcement Officer I at $44.4 with a 4.5% increase per year.

Other Expenditures:

One time cost of equipment and computer terminal: $3.0.

Funding:

Funding for the CSED's operating costs is 66% Federal funding and 34% State General Fund Match.

Economic Impact:

Child Support collections in AFDC cases are deposited in the general fund to help pay the State's AFDC General Fund Match. In addition, the State receives Federal incentives for its child support collections, both AFDC and non-AFDC. This would increase incentives by $3.3 in the first year based on the above assumptions.

TDM:tmr

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB52

Revision Date: February 1, 1991
Title: Act relating to child support for children who are not minors
Sponsor: Ulmer, B. Davis
Requestor:

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

COMPONENT SERIAL NO. | | | |

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	77.6	81.0	83.0	88.5	92.5	96.6
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	4	1	1	1.1	1.2	1.3
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	3	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	84.6	82.0	84.0	89.6	93.7	97.9
CAPITAL	0	0	0	0	0	0
REVENUE	85	94	104	115	127	141

FUNDING: (Thousands of Dollars)

GENERAL FUND	28.8	27.9	28.6	30.5	31.8	33.3
FEDERAL FUNDS	55.8	54.1	55.4	59.1	61.9	64.6
OTHER	0	0	0	0	0	0
TOTAL	84.6	82.0	84.0	89.6	93.7	97.9

POSITIONS:

FULL-TIME	2	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: 0

ANALYSIS: See attached analysis.

Prepared By: Ardith Lynch
Division: Child Support Enforcement Division
Phone: 263-6277
Date: February 4, 1991

Approved by Commissioner: Lee E. Fisher
Agency: Department of Revenue
Date: 2-28-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

Reference: HB 52 Child support for children who are not minors

HB 52 will have a positive fiscal impact on the Child Support Enforcement Division; it will increase AFDC collections, thereby also increasing the amount of incentives that CSED receives from the Federal Government. The increased revenue will exceed the additional operating costs of implementation of this bill by the Child Support Enforcement Division.

This bill would allow the court to order support for children who are over eighteen, including children who reach age 18 during their final year of school. It would therefore enable CSED to collect support for children over age 18 who are receiving public assistance benefits. The Division of Public Assistance estimates that AFDC benefits are paid to an average of 83 children each month who are over eighteen and enrolled in school (and expected to graduate before age 19), with an average benefit payment amount of $298 per month attributable to that child. Assuming an average child support order for these children of $225 per month, and a collection rate of 33%, CSED would collect an additional $74,000 in these AFDC cases in the first year. (CSED projects an increase in collections of 12% per year.) Child support collections in AFDC cases are deposited in the general fund to help pay the State's AFDC general fund match. In addition, CSED earns federal incentives on its collections, both AFDC and non-AFDC, which would increase by $11,000 in the first year. However, collection of additional support in both AFDC and non-AFDC cases will require additional caseworker time. In addition, support orders must be modified to include post-majority support. This fiscal note reflects the cost of one additional Child Support Enforcement Officer I and one additional Clerk IV who will be assigned to modification and enforcement. The positions in the first year will cost $74,200, with associated equipment and contractual costs for computer terminals at $6,000 (one-time cost) and telephones at $1000. Increases in personnel services costs in the years beyond FY 92 are projected at a conservative rate of 4.5 percent.

CSED supports this bill because it will provide continued financial support for children on public assistance, thereby reducing public dependency and increasing state collections.

AAL:dab

(7)

Date Referred: January 14, 1992 FURTHER REFERRALS: Judiciary

Date of Committee Action: 2/4/92

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered: SSHB 52

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 52 CHILD SUPPORT FOR NONMINORS

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

RECOMMENDATIONS: [ ] the same title
be replaced with _____ [ ] a new title

[ ] have attached amendments(s)
[ ] do pass
[ ] do not pass
[ ] no recommendations
[✓] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[✓] fiscal impact Revenue (CSED)
[ ] zero fiscal note _____

APPROVES PREVIOUS: (Dept/Date)
[ ] fiscal note(s) _____
[ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Patti Cowe	✓				
Mary Miller	✓				
Bettye Davis	✓				
J. E. Bowles	✓				
Cheri Davis	—				

Patti L Cowe
CHAIRMAN'S SIGNATURE

UPDATE

Altering the Boundaries of Child Support

by Jeff Ball

Introduction

If one thinks of child support as a cube, one can visualize how recent changes in legislation, case law and philosophy have transmogrified the once-static cube into an expanding elastic shape. If the length of the cube represents the longevity of one's duty to support a child, the width the spectrum of persons having a potential duty of support, and the depth the amount of the duty, including the degree to which non-monetary benefits may be considered as part of the obligation, one can see how all three dimensions are being stretched beyond past borders.

Three separate occurrences have played dominant roles in the degree of fluctuation the cube has recently undergone. The first event was the nationwide reduction in the age of majority from 21 to 18, and the resultant reduction in the length of the support duty in most states. While a few states such as Mississippi and Colorado still use 21 as the age of majority,[1] most states lowered the legal threshold of adulthood to 18 soon after the U.S. Constitution was amended to lower the voting age to 18 in federal elections.[2] Consequently, many states adjusted the termination of the obligor's responsibility to support the child to the lower age, though some states such as New York did not.[3] This created a gray area in which a child may still be dependent on parents for support without any entitlement to it. For instance, if a child is attending high school at age 18 and living at home, he or she would not be entitled to support in states that equate emancipation with age of majority. Most states have adjusted their termination date to take into account post-minority children who are still dependents.[4] In several states this date has gone beyond a child's completion of secondary education to college or vocational training.[5] Additionally, parents of adult children who are dependent due to a physical or mental disability may be liable for support in most states.[6]

This ties into the second driving influence in the reshaping of child support — a movement to ensure that someone is responsible for a dependent child, preferably someone close to the child and not the state. A combination of the conservative philosophy of weaning dependents from state dependence and liberal interest in ensuring that persons who inadequately care for themselves receive support has resulted in safeguards when the primary obligor or obligors cannot provide sufficient support for their children. Step-parents in many states are being held liable for the support of their non-adopted step-children when there is an enduring implicit or explicit parent/child relationship formed and the natural absent parent is not fully supporting the child.[7] In some states step-parent liability exists as long as the natural parent of the child remains married to the step-parent.[8] In some cases grandparents are facing liability to support grandchildren who are born to teenaged parents.[9] The use of the doctrine of *in loco parentis* has led to findings of financial liability of persons who are not next of kin although they fill that role.[10] Clearly the movement is in the direction of holding responsible for support those who have had a substantial, long-term influence on the child.

Another cause for expansion of the cube is the increasing awareness that support awards have, historically, inadequately represented the costs of raising a child, especially the skyrocketing costs of providing children with medical and dental needs.[11] As a response, many states are re-examining their methods for computing the support award amount, resulting in significant increases in many instances over what would have been awarded in the past. It appears that the federal government's mandate that all states have support guidelines has accelerated this review.[12]

This article will examine the first two dimensions of the support cube, the length of the support duty and the breadth of responsibility of that duty.

The Length of the Support Duty

From the days of Blackstone and Kent, the law has recognized the duty of parents to support their children.[13] This common law duty terminated upon emancipation, which either meant living independently from the family,[14] marrying,[15] or reaching a state-determined age at which the rights and responsibilities of adulthood were conferred, invariably age 21.[16]

Several states have long recognized the power of parties to contract for support duty that exceeded the statutory duty, and to have that agreement incorporated into a judically-enforceable court order.[17] Additionally, some states, such as Tennessee and Wyoming, have had judicially-created doctrines entitling adult children who are incapacitated to support from their parents.[18]

About 20 years ago, when the youth movement in America was powerful, arguments were made that someone old enough to be drafted should be allowed to vote. Congress passed and two-thirds of the states ratified the 26th Amendment to the U.S. Constitution, which lowered the voting age in federal elections to 18.[19] An avalanche of state legislative activity followed in which states not only lowered the age entitling one to vote in a state election to 18, but also reduced the age of majority to 18.[20] The reduction created confusion and litigation regarding then-current orders in which the duty of support lasted until the child reached the age of majority. Did this mean 21 or 18? Case law is divided whether the reduction affected existing orders and agreements in which no age was specified. A child's attaining the age of 18 became the end of the obligor's support duty in many states.[21]

Education Beyond Majority Age

When the age of majority was 21, few cases outside those involving disabled adult children resulted in litigation of the extension of the support duty. Children had finished high school by 21; most children in college were almost finished. Those out of school were supporting themselves by 21. When the age of majority was reduced generally to 18 in the early and mid-seventies, a group of quasi-dependent, healthy children emerged that did not fit under either a blanket dependency or independency niche. These children were either attending high school, college, or vocational school, looking for work or making wages that were too low to sustain self-sufficiency. As housing and rental costs have outpaced inflation since the mid-seventies, many 18 through 20-years olds cannot afford to live independently of their parents, even many of those with jobs.

Many states have altered their support duty laws to encompass those cases in which it is fair to presume dependency, such as an unmarried child finishing high school and living at home.[22] Of course many children do not complete high school by their 18th birthday, and many states have opted not to place high school students in the position of choosing education or work. Some states require that support continue until a child is 19 or finishes high school or its equivalent, whichever occurs first.[23] Other states leave post-minority support decisions to the discretion of the court.[24]

When it comes to forcing an adult child to choose between post-secondary education and work, or a combination of the two, states vary in their responses. Some states view education of one's child as a paramount parental duty, even if the child would be too old to receive support if not in school.[25]

Other states review the circumstances of each case and leave it to the discretion of the court to determine whether a support duty exists.[26] These states take into account promises made or reasonable expectations the child had of parent-supported, post-secondary education, as well as the financial means of the parents and the child's immediate capacity for full or partial self-support. An interesting situation arises where a duty exists to pay college expenses for a child of divorced parents while one does not exist for a child in similar circumstances of nonseparated parents.[27]

Another value judgment made in many of these cases has to do with determining the likelihood that, if the family had remained unified, the child would have gone to college and had his or her education bankrolled by the family. Many courts look at family background to see if one can auger a duty.[28] A situtation may arise where a child of well-educated parents who has little academic potential may be entitled to continued support while a more gifted child from a modest family background may not.

Still some other states do not allow the courts to assert jurisdiction over post-minority children unless the parents had signed a separation agreement incorporated in a court order that provides for adult child support, particularly college expenses.[29] The theory is that parties are free to extend a support duty, while the court ensures that there is a minimal duty of support owed while the child is a minor.

Disability

Physical or mental disabilities in an adult child are common exceptions to the termination of sup-

port duty upon the child reaching adulthood.[30] Where states diverge is the degree to which the adult child must be mentally or physically disabled, functionally dependent on others, and destitute in order to qualify or continue to qualify for support.[31]

Some states look at the disability factor alone, determining that an adult child found to be at least marginally handicapped is entitled ultimately to parental support.[32] A few states include emotionally-dysfunctioning adult children in their definitions of disabled children for the purpose of finding a parental duty of support.[33]

States also disagree about the necessity of the disability occurring during the child's minority in order to justify a post-minority support obligation. Some states contend that there cannot be a springing duty of support after an interim of no duty, so that an adult child who becomes disabled would not have recourse to make a support claim against one or both parents.[34] Others reason that the need of the child is the determining factor, not the age at which the disability began.[35]

Dependency

Some states find a support duty if the child is or remains dependent on the obligor. This broad catch-all category may include disabled adult children as well as adult children attending school.[36] It may also include children who are indigent, receiving public assistance or unemployed.[37] Often a state that has a law requiring a parent to support an indigent child regardless of the child's age to the best of the parent's ability has a reciprocal duty emanating from the child to the parent if the parent is indigent.[38]

Premature Termination of the Support Duty

So far this article has reviewed ways to elongate a support duty past the age of majority. At the same time, myriad precedents exist for terminating a suport duty before a child reaches the age of majority. With duty often based on the premise that support is tied to dependency, both emotionally and financially, parents of children who manifest independence may find themselves without a child support duty. When a child marries, enters the armed services, lives independently of his or her parents, earns enough to be self-sufficient, or is emancipated officially by a court, the parental support duty may be severed.[39] Generally, duty termination requires actions by the minor child that indicate independence; a parent may not unilaterally or even through agreement with the other parent absolve himself or herself of the support duty for a minor child. Courts, ever the third party to a domestic relations matter, have long been hesitant to sanction a parent's attempt to possibly jeopardize a child's welfare by permitting a premature termination of a support duty without strong signs that a minor child will be self-sufficient.[40]

Armed Services

To paraphrase an old adage, the army will make a man (or woman) out of you. Enlisting in the armed services is considered in many states as an act of independence sufficient to support a termination of the parental support duty.[41] Other states require more proof of self-sufficiency than merely the act of enlisting.[42] Also, since most states have lowered their age of majority to 18, and one cannot enlist in the armed services before 18, the issue of emancipation is mainly academic. In states such as New York where a support duty extends until the child is 21, the issue is still important. Although there is no military draft at this time, and its abolition coincided roughly with the time the age of emancipation and support duty length were lowered in most states to the 18th birthday of the child, it is interesting to speculate whether an involuntary act by a child such as reporting lawfully to the armed services branch that drafted him (or her) would also be grounds for termination of the parent's support duty.

Marriage

In most states, to be pronounced husband and wife is to be pronounced independent of the couple's parents, regardless of the couple's capability to fend for themselves.[43] Although considered a prime indicium of self-sufficiency, the marriage ceremony of course does not by itself instill in minor children the ability to function without financial and often emotional support from either set of parents. As a result, some states do not find marriage itself an "emancipating" act, without further proof of the couple's independence.[44] Indeed, when minor newlyweds expecting a child move in with parents, the financial responsiblities may measurably increase for the parents.

Independent Living

When a minor child voluntarily moves out of his or her parents' home, establishes an independent means of financial support, and acts in a responsible manner that leads one to conclude the child can function adequately in an adult world, the justification for a parent's continued support duty often

ends, and courts will sometimes terminate the legal duty.[45] Some courts, constrained by statute and precedent, will not find a minor capable of self support regardless of the evidence.[46] Also, some states require an affirmative court action brought by the responsible parent to terminate the support duty and will not retroactively reduce the arrearages accrued since the date of independence.[47] Indeed, federal law requires states, as a condition of continuing to receive federal welfare money, to prohibit retroactive modification of accrued arrearages, as each support installment past due is to be considered vested.[48] Thus a child may earn more than a parent responsible for his or her support and yet the support duty continues until the parent takes steps to terminate it.

Determining whether a child is independent for support purposes generally hinges on the facts of each case. A minor child may live in his or her parents' home and yet the court may still find that the child is independent and the parent's support duty terminated. A minor child may live away from home in a college dormitory or with some friends and the court may still find a parental duty of support. It boils down to a court determining whether it will allow a parent to abrogate a duty prematurely, and if so, under what conditions and presumptions.

Death of a Parent

When an obligor parent dies, does his or her support duty automatically end? States are split on this point, some finding that death terminates all responsibility[49] and others finding that the obligor's estate may be liable.[50]

In many states with a history of county responsibility for "public charges," the county is statutorily authorized to proceed against the estate of the deceased obligor to collect reimbursement for any county aid provided to the decedent's child.[51] Other states allow the surviving parent to collect from the decedent's estate for past, current and future support, the latter usually as a lump sum.[52]

The Breadth of the Support Duty — Who is Liable?

Parents

Traditionally, the father was responsible for the support of his minor child.[53] Over the last several decades the responsiblity has broadened to include both mother and father, either as the custodial parent or non-custodial parent.[54] The law has moved away from placing the father only in the center of the family circle, from whom all duties emanate and to whom all responsibilities are owed. Although several states still have possibly unconstitutional language stressing gender distinction, the trend has been to classify duty neutrally by referring to the parent-child relationship itself and the capability of either or both parents to support the child adequately. Also, the distinction between the support duty of fathers of children born out of wedlock and that of fathers at one time or another married to the child's mother has for the most part disappeared, as the children born out of wedlock have received favorable treatment from the U.S. Supreme Court over the past two decades in equal protection cases.[55]

Another interesting consideration is the existence of a parental duty of support when neither parent has legal custody of the child, such as when a custody order ends at 18 or when parents are living together. Is there a support duty to these parents' adult children if they are attending college? Does it matter whether or not the adult child selected a path that was with parental blessings? States vary as to whether a duty exists in such circumstances.[56]

Step-parents

As divorce has become a common phenomenon in America, many children live with spouses of their custodial parents who are not the children's natural parents. Step-parent liability is now a major issue affecting millions of children. Some states impose step-parent liability by statute,[57] while others have used estoppel and *in loco parentis* principles to create a common law duty.[58] Estoppel theory comes into play when a step-parent has held him or herself out to be the natural father of the child or has totally assumed a parental role for a long period of time. The latter concept is the basis for the *in loco parentis* theory of liability. It is clear that children adopted by step-parents have the same rights of support from the adoptive step-parent as if the step-parent were a natural parent.

Some states look to the natural parent who is absent from the household as the primary obligor, with the step-parent secondarily liable.[59] Other states place the liability on both step-parent and natural parent, which is sometimes implicitly done by taking into account the contribution of the step-parent to the payment of the child's expenses and the step-parent's income when determining the natural parent's liability.[60]

Most states tend to terminate the step-parent duty when the relationship between step-parent and

natural parent legally ends, such as by divorce or death.[61] Some states have said that separation does not by itself terminate a step-parent's support duty; there must be a lawful divorce to sever the ties.[62] States using equity principles may be more likely to terminate a duty when the step-parent/step-child relationship ends or at least fades in intensity, be it before or after an official dissolution.[63]

Cohabitants

A few states have statutes that make live-in partners of the custodial parent at least secondarily liable for the support of the custodial parent's child.[64] Cohabitants, who at common law had no duty, often have close relationships with their partners' children, creating in many cases surrogate parencies. This fairly recent addition to the breadth of duty may primarily be linked to the welfare system's byproduct in many states — aid available only to those families whose heads of household are not legally married.[65] As a consequence, several states want to make sure that the cohabitant faces the same degree of liability as would a natural parent. Also, as a result of a nationwide trend toward more extramarital cohabitation, many children are brought up in homes analogous to a step-parent/natural parent situation except for the lack of a marriage vow between the heads of household. In many of those cases, the cohabitant acts *in loco parentis* to the child.

Grandparents and Other Relatives

Very few states hold grandparents liable for the support of their grandchildren.[66] Grandparent liability sometimes attaches when the child of the grandparent is a minor at the time the grandchild is born and the child is not married or financially independent.[67] Some states have dependency laws to cover incapacity or indigency of family members beyond the spouse or issue of the parent.[68] The idea of extended family liability is not new to many cultures, including many ones indigenous to America. The liability of a grandparent or other relative invariably arises only when the liability of the natural parent, step-parent or *in loco parentis* parent is unenforceable.

Conclusion

Reality shows that children do not automatically become independent, fully-functioning adults upon a birthday or upon the taking of a marriage vow. In a world more complex (albeit less harsh) than that faced by our predecessors, where children may be less innocent of "adult" ways but remain by and large unsophisticated in the rudiments of "getting by and making a living," a large percentage of post-minority youths lack the immediate and sometimes long-term ability to survive independently. The financial and emotional dependencies of these adult children have not gone overlooked by states, especially in the years following the wholesale lowering of the presumptive age of majority from 21 to 18. Family law has traditionally followed equitable principles, and the extension of a support duty to those who are still dependent owed by those who can best provide it accentuates the triumph of fairness over rigidity. The gray areas persist, though, as what is fair to one person becomes unfair to another, where one person's necessities are another person's luxuries, and where a person whose philosophy may be to teach independence to a child faces legal liability for support until the child is motivated to accept the provider's lesson. One example of the dilemma is determining the "fairness" of holding a modest-income, absent-parent liable for the entire cost of sending a child to private college when the parent may have insisted the child go to a public college or pay for much of his or her education if the absent parent had remained part of the child's household. Is it relevant whether there is a family history of post-secondary school attendance or if the child has shown exceptional academic promise? The issue goes beyond dependency to expectation. It is dealing with this politically-charged area of expectation that courts and legislatures may face their most difficult hurdle, as deciding a family's expectation of entitlement may unavoidably be a very subjective determination. The support cube's boundaries still appear to be fluctuating, often on a case-to-case basis.

Mr. Ball is an assistant director of the ABA Child Support Project, located in Washington, D.C.

Footnotes

1. *See, e.g.*, In re Plummer, 703 P.2d 657 (Colo. Ct. App. 1985); Taylor v. Taylor, 478 So.2d 310 (Miss. 1985).
2. U.S. CONST. AMEND. 26.
3. N.Y. DOM. REL. LAW § 3-A-31 (Uniform Support of Dependents Law).
4. *See, e.g.*, Verna v. Verna, 288 Pa. Super. 511, 432 A.2d 630 (1981); S.C. CODE ANN. § 20-7-90.
5. *See* IOWA CODE ANN. 598.1 (2); VT. STAT. ANN. tit. 15, § 201.
6. *See, e.g.*, Feinberg v. Diamant, 378 Mass. 171, 389

N.E.2d 998 (1979); Eckenroed v. Eckenroed, 668 S.W. 2d 104 (Mo. Ct. App. 1984).
7. N.D. CENT. CODE § 140-09-09; OR. REV. STAT. § 109.053.
8. VT. SAT. ANN. tit. 15, § 296; WASH. REV. CODE ANN. § 26.16.205.
9. Rhodes v. Rhodes, 305 So. 2d 352 (La. Ct. App. 1974); Skeens v. Patero, 60 Md. App. 48, 480 A.2d 820 (1984).
10. DEL. CODE ANN. tit. 13, § 501(b); VT. STAT. ANN. tit. 15, § 294.
11. *See generally*, R. Williams, Development of Guidelines for Child Support Orders (1987).
12. 42 U.S.C. § 667 (1987).
13. Blackstone's Commentaries (Lewis ed.) 419; Kent on American Law 190.
14. IND. CODE ANN. § 31-1-11.5-12(d); MO. REV. STAT. § 454.460.
15. C.v.R., 169 N.J. Super. 168, 404 A.2d 366 (1979); Church v. Hancock, 261 N.C. 764, 136 S.E. 2d 81 (1964).
16. Blair v. Brewington, 445 So. 2d 294 (Ala. 1983).
17. Gersten v. Gersten, 281 So. 2d 607 (Fla. Dist. Ct. App. 1973); McClain v. McClain, 235 Ga. 417, 211 S.E. 2d 561 (1975).
18. Sayne v. Sayne, 39 Tenn. App. 422, 284 S.W. 2d 309 (1956); Kamp v. Kamp, 640 P. 2d 48 (Wyo. 1982).
19. U.S. CONST. AMEND. 26.
20. MONT. CODE ANN. § 40-5-201; OHIO REV. CODE ANN. § 3109.5.
21. *See, e.g.*, CONN. GEN. STAT. ANN. § 46b - 215; Oviatt v. Oviatt, 43 Mich. App. 628, 204 N.W. 2d 753 (1972).
22. *See, e.g.*, TENN. CODE ANN. § 34-1-101; TEX. FAM. CODE ANN. § 4.02.
23. CAL. CIV. CODE § 196; S.D. CODIFIED LAWS ANN. § 25-5-18.1.
24. *See, e.g.*, Evans v. Evans, 456 So. 2d 956 (Fla. Dist. Ct. App. 1984).
25. *See, e.g.*, IOWA CODE ANN. § 598.1(2).
26. Nicolls v. Nicolls, 371 A. 2d 400 (Conn. 1977); Sakovits v. Sakovits, 178 N.J. Super. 623, 429 A. 2d 1091 (1981).
27. In re Marriage of Urban, 293 N.W. 2d 198 (Iowa 1980).
28. *See, e.g.*, Wagner v. Wagner, 286 S.C. 489, 335 S.E. 2d 246 (1985).
29. *See, e.g.*, Kotler v. Spaulding, 4 Mass. App. Ct. 515, 510 N.E. 2d 770.
30. ARIZ. REV. STAT. ANN. § 25-320B; In re Koltay, 646 P. 2d 405 (Colo. Ct. App. 1982), *aff'd*, 667 P. 2d 1374 (Colo. 1983).
31. Feinberg v. Diamant, 378 Mass. 171, 389 N.E. 2d 998 (1979), compare with Sayne v. Sayne, 39 Tenn. App. 422, 284 S.W. 2d 309 (1956).
32. *See, e.g.*, Rose v. Rubenstein, 693 S.W. 2d 580 (Tex. Ct. App. 1985).
33. Sayne v. Sayne, 39 Tenn. App. 422, 284 S.W. 2d 309 (1956); Com. ex rel Magaziner v. Magaziner, 419 A. 2d 149 (Pa. Super. Ct. 1980).
34. Kamp v. Kamp. 640 P. 2d 48 (Wyo. 1982); Taylor v. Taylor, 478 So. 2d 310 (Miss. 1985); OHIO REV. CODE ANN. § 3109.5; TEX. FAM. CODE ANN. § 14.05(b); NEV. REV. STAT. § 125B.110.1.
35. ARIZ. REV. STAT. ANN. § 25-320B; N.H. REV. STAT. ANN. § 546-A; Sininger v. Sininger, 300 Md. 604, 479 A. 2d 1354 (1984).
36. DEL. CODE ANN. tit. 13, § 503; Blair v. Brewington, 445 So. 2d 294 (Ala. 1983); S.C. CODE ANN. § 20-7-90.
37. ALASKA STAT. § 25.20.030; IDAHO CODE § 32-1001.
38. CAL. CIV. CODE § 206; DEL. CODE ANN. tit. 13, § 505.
39. MO. REV. STAT. § 453.400; MONT. CODE ANN. § 40-5-201.
40. *See, e.g.*, Bernier v. Bernier, 125 N.H. 517, 484 A. 2d 1088 (1984).
41. MO. REV. STAT. § 454.460; N.C. GEN. STAT. § 110-129.
42. *See, e.g.*, Baker v. Baker, 217 Kan. 319, 537 P. 2d 171 (1975).
43. *See, e.g.*, C.v.R., 169 N.J. Super. 168, 404 A. 2d 366 (N.J. Ch. 1979); Going v. Going, 8 Tenn. App. 690 (Tenn. Ct. App. 1926).
44. Embree v. Embree, 85 Idaho 443, 380 P. 2d 216 (1963); UTAH CODE ANN. § 78-45-2(4).
45. MASS GEN. LAWS ANN. ch. 208, § 28; Bernier v. Bernier, 125 N.H. 517, 484 A. 2d 1088 (1984).
46. In re Marriage of Hughes, 734 S.W. 2d 280 (Mo. Ct. App. 1987).
47. Baker v. Baker, 217 Kan. 319, 537 P. 2d 171 (1975); Johnson v. Johnson, 215 Neb. 689, 340 N.W. 2d 393 (1983).
48. 42 U.S.C. § 666(a)(9).
49. Reinhardt v. Reinhardt, 131 So. 2d 509 (Fla. Dist. Ct. App. 1961); TEX. FAM. CODE ANN. § 14.05(d).
50. N.M. STAT. ANN. § 40-5-14; Caldwell v. Caldwell, 5 Wis. 2d 146, 92 N.W. 2d 356 (1958).
51. MONT. CODE ANN. § 40-5-201; S.D. CODIFIED LAWS ANN. § 25-7-14.
52. ILL. REV. STAT. ch. 40, § 510(c); NEV. REV. STAT. § 125B.130.
53. N.C. GEN. STAT. § 50-134(b).
54. OR. REV. STAT. £ 109.030; WASH. REV. CODE ANN. £ 26.16.205.
55. Weber v. Aetna Casualty and Surety Co., 406 U.S. 164 (1972); Levy v. Louisiana, 391 U.S. 68 (1968).
56. Dubroc v. Dubroc, 284 So. 2d 869 (La. Ct. App. 1973); Hoffman v. Hoffman, 122 A.D. 2d 583, 505 N.Y.S. 2d 273, appeal dismissed, 69 N.Y. 2d 706, 504 N.E. 2d 398 (1986); Childers v. Childers, 89 Wash. 29, 575 P. 2d 201 (1978)
57. MO. REV. STAT. § 453.400; N.Y. DOM. REL. LAW § 3-A-31 (Uniform Support of Dependents Law); N.D. CENT. CODE § 14-09-09.
58. A.S. v. B.S., 150 N.J. Super. 122, 374 A. 2d 1259 (1976); Niesen v. Niesen, 38 Wis. 2d 599, 157 N.W., 2d 660 (1968).
59. Byers v. Byers, 618 PO. 2d 930 (Okla. 1980); OR. REV. STAT. § 109.053; S.D. CODIFIED LAWS ANN. § 25-7-8.
60. *See, e.g.*, Ewing v. May, 705 S.W. 2d 910 (Ky. 1986); Guildelines in Determining Child Support as adopted by the State of Hawaii Department of the Judiciary.
61. OR. REV. STAT. § 109.053; VT. STAT. ANN. tit. 15, § 296.
62. Stahl v. Dep't of Social and Health Services, 43 Wash. App. 401, 717 P. 2d 320 (Wash. Ct. App. 1986).

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 5, 1992 FURTHER REFERRALS: 2-24-92 Rules

Date of Committee Action: 2.21.92

The JUDICIARY Committee considered: SSHB 52

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 52 CHILD SUPPORT FOR NONMINORS

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

RECOMMENDATIONS: [ ] the same title
be replaced with _____ [ ] a new title

[ ] have attached amendments(s)
[✓] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date) 5

[ ] fiscal impact _____ [X] fiscal note(s) Revenue 2-3-92

[ ] zero fiscal note _____ [ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Dave Dooley	✓	Kevin Pat Powell		✓	
[illegible]	✓				
[illegible]	X				
[illegible]	✓				
[illegible]	X				

Dave Dooley
CHAIRMAN'S SIGNATURE

HB

63

Office of the Borough Clerk

Ketchikan Gateway Borough
344 Front Street
Ketchikan, Alaska 99901
(907) 228-6605

DEC 10 1990

December 4, 1990

The Honorable Robin Taylor
House of Representatives
P.O. Box V
Juneau, Alaska 99811

REQUEST FOR AMENDMENT TO TITLE 29 - SECOND CLASS BOROUGH POWERS RELATING TO DAY CARE ASSISTANCE

Your help in changing Title 29 to allow the Borough to continue to administer the State's Day Care Assistance Program would be genuinely appreciated.

Since 1979 the Ketchikan Gateway Borough has contracted with the Department of Community and Regional Affairs to perform the administrative duties of the State's Day Care Assistance Program. During this time the Assembly and the Borough's legal staff have struggled with questions about the Borough's authority to administer the program which is largely a social services function. The Borough does not exercise social services powers. As a result of these continuing concerns the Assembly eventually decided to ask the State of Alaska to solicit proposals from other agencies for delivery of the program for fiscal year 1991. The public came forward and convinced the Assembly to reconsider this action. The Assembly heard person after person testify about the community service and irreplaceable benefits offered by this program.

The Assembly has determined to continue the Borough's involvement in the delivery of this needed service to the Community of Ketchikan. You can help the Borough do this "legally" by introducing and supporting an amendment to AS 29.35~~3~~00(b) which would be as follows:

> "A second class borough may by ordinance exercise the following powers on an areawide basis:
>
> "(5) license day care facilities and/or contract with the department to provide

day care assistance for the children of low and moderate income families according to the requirements of AS 44.47.250 - 44.47.310."

As you can see by the attached Borough Resolution No. 937, the Assembly unanimously supports such an amendment. Please let us know if we can provide additional information or support for the bill in any way. I am sure Linda Inglis, the Borough's Day Care Administrator, would be anxious to help in a moment's notice.

Georgianna Zimmerle
Borough Clerk

c Reed R. Stoops

Voting "Yes": Boatwright, Cruise, McCarty, Bartholomew, Tallman, Cote
Voting "No": None
Absent: None
4 Votes Required for passage
Effective Date: 10/15/90

KETCHIKAN GATEWAY BOROUGH

RESOLUTION NO. 937

A RESOLUTION OF THE ASSEMBLY OF THE KETCHIKAN GATEWAY BOROUGH, ALASKA, SUPPORTING AN AMENDMENT TO TITLE 29, SECOND CLASS BOROUGH AREAWIDE POWERS, WHICH WOULD ALLOW THE BOROUGH TO ADMINISTER THE STATE'S DAY CARE ASSISTANCE PROGRAM; AND ESTABLISHING AN EFFECTIVE DATE.

RECITALS

A. The Alaska State Legislature adopted a program to assist in providing day care for children of low and moderate income families in 1975.

B. Since 1979 the Ketchikan Gateway Borough has contracted with the Department of Community and Regional Affairs to perform the administrative duties of the Day Care Assistance Program. During this time the Borough's legal staff has expressed concern over the Borough's authority to engage in the providing of social services.

C. Because of the legal concerns regarding the Borough's authority to administer the Day Care Assistance Program, the Assembly decided on May 7, 1990 to request that the State of Alaska request proposals for delivery of the program for fiscal year 1991.

D. Following considerable public input and testimony in support of the Borough's continued administration of the program, that decision was rescinded on October 1, 1990.

E. The Borough Assembly believes the powers question can be mitigated through amendment of AS 29.35.500(b).

NOW, THEREFORE, IT IS RESOLVED BY THE ASSEMBLY OF THE KETCHIKAN GATEWAY BOROUGH, ALASKA, as follows:

Section 1. The Assembly supports an amendment to AS 29.35.500(b) as follows:

"Sec. 29.35.500(b) A second class borough may by ordinance exercise the following powers on an areawide basis: .

(5) license day care facilities and/or contract with the department to provide day care assistance for the children of low and moderate income families according to the requirements of AS 44.47.250 - 44.47.310."

Section 2. The Borough Clerk is directed to mail copies of this resolution to the three District I Legislators, Borough Lobbyist Reed R. Stoops, and the Commissioner of the Department of Community and Regional Affairs.

Section 3. This resolution is effective upon adoption.

ADOPTED this 15th day of October, 1990.

BOROUGH MAYOR

ATTEST:

BOROUGH CLERK

APPROVED AS TO FORM:

INTERIM BOROUGH ATTORNEY

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM January 10, 1991

SUBJECT: Municipal Powers Relating to Day Care (7LS-0429)

TO: Representative Robin Taylor

FROM: Terri Lauterbach TML
Legislative Counsel

Enclosed is a bill responding to your request to amend AS 29.35.210(b) to ensure that a second class borough has the power to contract with C&RA regarding the day care assistance program.

After discussing the matter with Tam Cook, the office's municipal law expert, we have determined that a better approach would probably be to am[illegible] the day care assistance statutes in AS 44.47, rather than to amend A[illegible]t way, various issues of interpretation in relation to other boroughs an[illegible] powers can be avoided while achieving your main objective. Therefore, the enclosed bill amends AS 44.47 to clarify that any municipality may contract with C&RA to administer the day care assistance program in the municipality. It is modeled after AS 19.30.251, which relates to local service roads and trails.

I hope you find this approach acceptable. If I can be of further assistance, please advise.

TML:gc
91-010.glc

Enclosure

KETCHIKAN GATEWAY BOROUGH
344 Front Street
Ketchikan, Alaska 99901
(907) 225-6151

Post-it™ brand fax transmittal memo 7671 | # of pages ▸ 2

To Joe Ambrose	From Linda Ough
Co R. P. Taylor	Co Ktn Gateway Bo
Dept.	Phone #
Fax # 465-2294	Fax # 225-7282

February 4, 1991

Representative Jerry Mackie,
Chairman, The House Community and Regional
Affairs Committee
P.O.Box V, Juneau Ak 99811

Dear Representative Mackie

The Borough became the contractor of the Day Care Assistance program about 15 years ago. Each year the "Powers" issue comes before the Assembly.

In April 1990, the Borough Assembly elected not to administer the program. The Department of Community and Affairs asked the City of Ketchikan if they would be willing to administer the program and the City Council declined. And to my knowledge no one else stepped forward. This has caused a great deal of anxiety and turmoil within our community.

In September 1990, Mrs. Judy Martin owner of the Jr Bear Day Care presented petitions to the Assembly with over 800 signatures from the business community and concerned parents, asking that the Assembly reconsider the vote to discontinue the program. The Assembly heard testimony of many parents that were on the wait list and also being served by the Day Care Assistance program, employers, providers of day care homes and centers and the President of the Chamber of Commerce.

Because of the public input the Assembly did reconsider their vote and elected to continue the Day Care Assistance program.

At the present time, we are serving 71 single parents with 103 children on the program. We have 10 licensed day care centers and 8 licensed homes caring for these children.

The wait list started in May, there are 38 parents with 58 children that qualify for assistance that are waiting to receive aid to continue their employment or continuing their education.

It would be in the best interest of the Day Care Program in Ketchikan to amend the State law. The Borough Assembly has consistently questioned the legality of exercising the power they believe they do not have.

Linda Inglis is the administrator of the Day Care Assistance Program and Transitional Day Care, if she can be of any assistance call her at 228-6636.

Sincerely,

David G. Crow
Borough Manager

cc: Linda Inglis

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

☑ *P.O. BOX B*
JUNEAU, ALASKA 99811-2100
PHONE: (907) 465-4700

☐ *949 E. 36TH AVENUE, SUITE 400*
ANCHORAGE, ALASKA 99508-4302
PHONE: (907) 563-1073

February 4, 1991

POSITION PAPER

RE: House Bill 63

SPONSOR: Representative Taylor

Program Effects of the Bill

The bill will grant the power to contract with the department under AS 44.47.250(b)(2) to municipalities that otherwise do not have this authority.

COMMENTS

The Department of Community & Regional Affairs supports the passing of this bill. In past, delay in contracting has been experienced due to the late hour realization that a municipality did not have the authority to contract for our program. This bill would eliminate the delay in contracting with those communities that do not possess this authority.

The passage of this bill will have no fiscal impact on the department.

Ed. Blatchford

Edgar Blatchford, Commissioner

Alaska State Legislature

COMMITTEES:

MEMBER
RULES
COMMITTEE ON COMMITTEES
WESTERN STATES LEGISLATIVE FORESTRY TASK FORCE
FINANCE SUBCOMMITTEE
DEC

P.O. BOX 1441
WRANGELL, ALASKA 99929
(907) 874-2316

While in Juneau
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4905

House of Representatives

ROBIN L. TAYLOR
MINORITY LEADER

SPONSOR POSITION STATEMENT
HB 63

February 6, 1991

TO: THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

FROM: REP. ROBIN L. TAYLOR RLT

This legislation was introduced at the specific request of the Ketchikan Gateway Borough Assembly to address concerns raised regarding the Borough's authority to administer the State Day Care Assistance Program.

While the KGB has acted as the pass-through agency for this program for more than ten years, members of the Assembly and the Borough legal staff have questioned the legality of exercising a social service function while not holding social service powers.

Although the Borough Resolution asks that AS 29 be amended, the drafter has recommended adding this new section to AS 44 as a better alternative.

Passage of this bill will clarify the Borough's right to administer this vital program and will also relieve the anxiety created by suggestions that the program be dropped.

I request your "do-pass" recommendation for this simple legislation.

Alaska State Legislature

COMMITTEES:

MEMBER
RULES
COMMITTEE ON COMMITTEES
WESTERN STATES LEGISLATIVE FORESTRY TASK FORCE
FINANCE SUBCOMMITTEE
DEC

P.O. BOX 1441
WRANGELL, ALASKA 99929
(907) 874-2316

While in Juneau
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4905

House of Representatives

ROBIN L. TAYLOR
MINORITY LEADER

MEMORANDUM

TO: THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

FROM: JOE AMBROSE, LEGISLATIVE AIDE

RE: HB 63

DATE: 2/7/91

Chairman Mackie has asked for an overview of HB 63.

This bill was introduced 1/23/91 at the specific request of the Ketchikan Gateway Borough Assembly. The bill as drafted represents the best advice of the Legal Division on how to address the Assembly's concerns without raising issues that might impact other boroughs.

The Gateway Borough Assembly has a long history of showing particular awareness of the limited powers granted to a second class borough. The Borough does not exercise social service powers. Both individual assembly members and the Borough Legal Department have struggled with questions about the authority to administer a program which is largely a social service function.

These concerns became especially pronounced last winter when the Day Care Assistance Program was expanded to include the new Federal program. In the past, the Borough had hired an administrator who used a desk in the Borough Manager's office and in fact was cross utilized as a receptionist. The expanded program has required the full time efforts of the administrator and the relocation of the program to separate office space. The Assembly anticipates the time when local funding will be needed to provide support.

This simple statute change will relieve the concerns of the elected officials that they are operating in a gray area. It will also relieve the anxiety of recipients who need to be assured of the continuing availability of the Day Care Assistance Program.

Alaska State Legislature

Please enter into the record my testimony to the House Community & Regional Affairs committee name

committee on HB 63 bill/subject, dated 3/25/91.

Count me in support of HB63. It allows second class boroughs the authority to address the issue of Daycare. If Alaska is going to remain Competitive. We must develop our workforce. Daycare allows us to fully utilize the workforce and production of the State. Vote yes on HB 63.

Signed: John A. Cote
Testifier

Ketchikan Gateway Borough
Representing (Optional)

P.O. Box 9350, Ketchikan, AK 99901
Address

225-3678
Phone No.

Alaska State Legislature

COMMITTEES:

MEMBER
RULES
INTERNATIONAL TRADES & TOURISM
LABOR & COMMERCE
ETHICS
WESTERN STATES LEGISLATIVE FORESTRY TASK FORCE

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House of Representatives

ROBIN L. TAYLOR
MINORITY LEADER

MEMORANDUM

TO: REP. DONLEY, CHAIR, HOUSE JUDICIARY

FROM: REP. TAYLOR

DATE: 3/28/91

REF: HB 63

Mr. Chairman:

HB 63 moved out of House Community and Regional Affairs on 3/26/91 with a unanimous do-pass recommendation.

I would appreciate a hearing in your committee at the earliest possible date. A review of committee action in C&RA will indicate that this bill should not consume much time as the legislation is not controversial in nature.

Thanks in advance for your consideration!

Alaska State Legislature

COMMITTEES:

MEMBER
RULES
INTERNATIONAL TRADES & TOURISM
LABOR & COMMERCE
ETHICS
WESTERN STATES LEGISLATIVE FORESTRY TASK FORCE

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House of Representatives

ROBIN L. TAYLOR
MINORITY LEADER

MEMORANDUM

TO: Rep. Dave Donley, House Judiciary Committee

FROM: Rep. Robin Taylor

DATE: 4/15/91

REF: HB 63

Mr. Chairman:

HB 63 was introduced 1/23/91 and referred to C&RA and Judiciary. It passed out of Community and Regional Affairs on March 26 with 7 "do-pass" recommendations and was referred to your committee.

This bill, with its zero fiscal note, is mainly a housekeeping measure and I would appreciate a hearing at the earliest possible date.

Thank you for your consideration.

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 23, 1991 FURTHER REFERRALS: Judiciary

Date of Committee Action: 3-25-91

The COMMUNITY AND REGIONAL AFFAIRS Committee considered: HB 63

HOUSE BILL NO. 63 CONTRACTS FOR DAY CARE ASSISTANCE

"An Act relating to municipal powers involving day care."

RECOMMENDATIONS: [ ] the same title
be replaced with _____ [ ] a new title

[ ] have attached amendments(s)
[X] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact _____ [ ] fiscal note(s) _____

[X] zero fiscal note DCRA [ ] zero fiscal note(s) _____

SIGNING DO PASS: SIGNING OTHER RECOMMENDATIONS:

	Check appropriate column:	Do Not Pass	No Rec	Amend
Richard Foster				
Gail Phillips				
Bettye Davis				
Jerry Baker				
Tom Mackie				
Cari Dawes				
J. E. Gonzales				

Tom Mackie

Chairman's Signature

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 63

Revision Date: _____ Department Affected: Community & Regional Affairs

Title: "An act relating to municipal powers involving day care." BRU: Child Assistance

Component: _____

Sponsor: Representative Taylor

Requestor: _____ COMPONENT SERIAL NO. 6 5 8

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Remond Henderson, Director (Remond Henderson) Phone: 465-4708

Division: Administrative Services Date: 2/5/91

Approved by Commissioner: Ed Rich

Agency: Community & Regional Affairs Date: _____

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 26, 1991 FURTHER REFERRALS:

Date of Committee Action: 5-8-91

The JUDICIARY Committee considered: HB 63

HOUSE BILL NO. 63 CONTRACTS FOR DAY CARE ASSISTANCE

"An Act relating to municipal powers involving day care."

RECOMMENDATIONS: [X] the same title
be replaced with _____ [ ] a new title

[ ] have attached amendments(s)
[X] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact _____ [ ] fiscal note(s) _____

[ ] zero fiscal note _____ [X] zero fiscal note(s) CRA 3-26-91

SIGNING DO PASS	*DP*	*OTHER RECOMMENDATIONS*	*DNP*	*NR*	*AM*
Terry Maxon					
Mark Dowley	A				
Mike Miller	✓				
Kevin Pat Parnell	✓				
[illegible]	—	[illegible] Ellis		X	
		Dave Donley		X	

Dave Donley
CHAIRMAN'S SIGNATURE

1

FISCAL NOTE

No. 1
Bill Version: HB 63
(H) Publish Date: 3/26/91

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Community & Regional Affairs
Title: "An act relating to municipal powers involving day care." BRU: Child Assistance
Component: _____
Sponsor: Representative Taylor
Requestor: _____ COMPONENT SERIAL NO. | | 6 | 5 | 8 |

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Remond Henderson, Director (Remond Henderson) Phone: 465-4708
Division: Administrative Services Date: 2/5/91
Approved by Commissioner: (Ed Reeks)
Agency: Community & Regional Affairs Date: _____

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

COMMITTEE COPY

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STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
DCRA ,	RDD	HB 63	Taylor

SHORT TITLE OF BILL

"An Act relating to municipal powers involving day care."

DEPARTMENT POSITION

Support Passage

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
Mike Worley	3/22/91	ER. ISZ FLD	3-28-91

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
None known	None known
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION TO BILL**
None known	None Known

FISCAL IMPACT: ☒ NONE ☐ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

The bill would grant the power for certain municipalities to contract with the Department to provide day care assistance services.

ANALYSIS OF BILL/PROGRAM EFFECTS

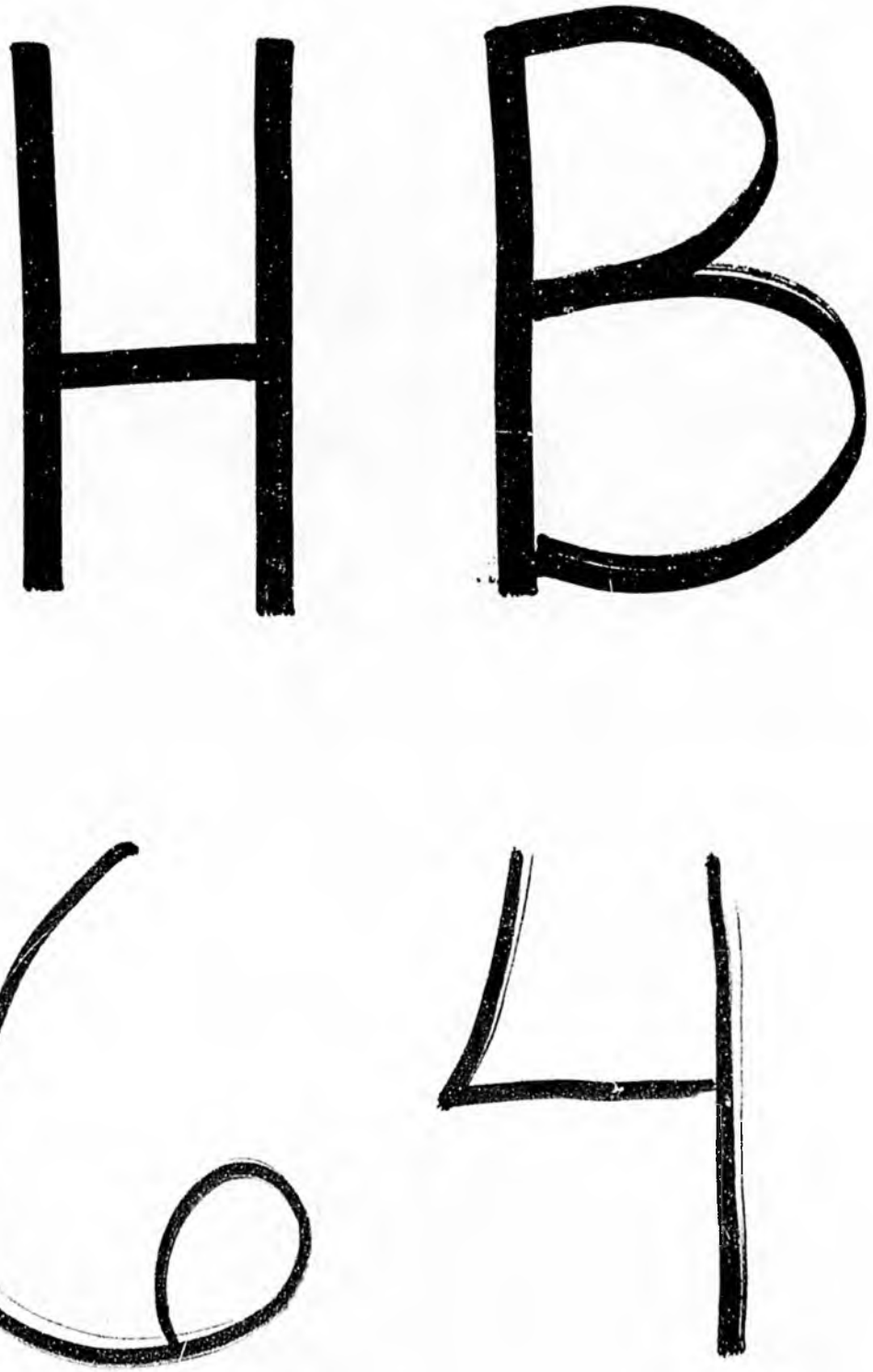
See above

AMENDMENTS PROPOSED

None

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

01-009 (Rev. 12/83)


HB
64

HOUSE COMMITTEE REPORT

(9)

Date Referred: January 23, 1991 FURTHER REFERRALS: Judiciary
Finance

Date of Committee Action: 2/19/91

The RESOURCES Committee considered: HB 64

HOUSE BILL NO. 64 INTERFERENCE WITH HUNTING/FISHING

"An Act relating to the obstruction or hindrance of lawful hunting, fishing, or trapping."

RECOMMENDATIONS: be replaced with CSHB64 (Res) [✓] the same title [ ] a new title

[ ] have attached amendments(s)
[ ] do pass
[ ] do not pass
[ ] no recommendations
[✓] individual recommendations
[ ] additional referral to the Judiciary Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact _____ [ ] fiscal note(s) _____

[✓] zero fiscal note ADF&G + DPS [ ] zero fiscal note(s) _____

SIGNING DO PASS: SIGNING OTHER RECOMMENDATIONS:

	Check appropriate column:	Do Not Pass	No Rec	Amend
	DAVIDSON Clif Davidson		✓	
	CARNEY		✓	
LEMAN Lyman D. Leman	FINKELSTEIN David Finkelstein			✓
ZAWACKI Jim Zawacki	MOYER Tom Moyer		✓	

Clif Davidson
Chairman's Signature

BILL NO: HB 64

DATE: February 15, 1991

TITLE: An Act Relating to the Obstruction or Hindrance of Lawful Hunting, Fishing, or Trapping.

CONTACT: Gayle A. Horetski
Deputy Commissioner

DEPARTMENT OF PUBLIC SAFETY

Passage of HB 64 would make it illegal to intentionally obstruct or hinder another person's lawful hunting, fishing, or trapping. The new offense is an "A" misdemeanor, which carries penalties of a fine of not more than $5000 or imprisonment for not more than one year, or both. Civil remedies are also provided for a person who is aggrieved by illegal conduct while lawfully hunting, fishing, or trapping.

Passage of this bill will provide law enforcement agencies with statutory authority to investigate and file charges on persons who intentionally obstruct or hinder trappers, fishermen, and hunters. Existence of an effectively worded statute may keep affected parties from "taking the law into their own hands".

The Department of Public Safety recommends that the word "intentionally" be moved from the end of the line to before "obstruct" on page 1, Line 6. The Department also recommends deleting the language on page 1, Lines 10-11, and the definition of "tamper" on page 2, Line 4, as this offense is already covered under existing criminal mischief laws (see AS 11.46.482 - AS 11.46.486).

The language on page 2, Lines 9-10 is vague, and subject to differing interpretations. The Department recommends deleting this language and also the lead-in language from page 1, Line 5: "Except as provided in (e) of this section,". (Note: Interference with commercial fishing gear is already a crime under AS 16.10.055.)

The Department of Public Safety supports the concept of this bill, but recommends the changes noted above.

Richard L. Burton
Commissioner

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 64

Revision Date: 2/6/91 Department Affected: Fish and Game

Title: Obstruction or hindrance of lawful hunting, fishing, trapping BRU: Division of Wildlife Conservation

Component: Wildlife Conservation

Sponsor: Representative Taylor

Requestor: COMPONENT SERIAL NO. 473

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0					
TRAVEL	0					
CONTRACTUAL	0					
SUPPLIES	0					
EQUIPMENT	0					
LAND & STRUCTURES	0					
GRANTS, CLAIMS	0					
MISCELLANEOUS	0					
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: No FY 91 impact

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Warren W. Wiley Phone: 465-4100

Division: Commissioner's office Date: 2/6/91

Approved by Commissioner:

Agency: Fish and Game Date: 2/6/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 64

Revision Date: _____
Title: An Act relating to the obstruction or hindrance of lawful hunting . . .
Sponsor: Representative Taylor, et.al.
Requestor: House Resources

Department Affected: Public Safety
BRU: Fish & Wildlife Protection
Component: Enforcement

COMPONENT SERIAL NO. | | 4 | 9 | 0 |

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

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact 0

ANALYSIS: (Attach a separate page if necessary)
No fiscal impact is anticipated.

Prepared by: Captain Conrad G. Seibel
Division: Fish & Wildlife Protection
Phone: 269-5509
Date: 2-5-91

Approved by Commissioner: Harold A. Hoekzema for Richard L. Burton
Agency: Department of Public Safety
Date: 2/5/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

not accepted

AMENDMENT

BY REPRESENTATIVE LINCOLN

TO: HB 64

Page 1, Line 5, following "(a) Except as provided in (e)"

Insert: "or (f) of this section, a person may not obstruct...."

Page 2, Line 11

Insert new language between (e) and (f) and reletter accordingly:

(f) "This section does not apply to activities undertaken on ANCSA corporation lands."

Failed

7-LS0441\A.1 -
Utermohle
02/15/91

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE FINKELSTEIN

TO: HB 64

Page 1, line 1:

Delete "or trapping"

Insert "trapping, or viewing of fish or game"

Page 1, line 5:

Delete "OR TRAPPING"

Insert "TRAPPING, OR VIEWING OF FISH OR GAME"

Page 1, line 5, after "not":

Insert "intentionally"

Page 1, line 6:

Delete "or trapping by intentionally"

Insert "trapping, or viewing of fish or game by"

Page 1, line 7, after "taking":

Insert "or viewing"

Page 1, line 9, after "take":

Insert "or to view"

Page 1, line 10, after "taking":

Insert "or viewing"

Page 2, line 3:

Delete "or trapping"

Insert "trapping, or viewing"

Page 2, line 8:

Delete "or trapping"

Insert "trapping, or viewing of fish or game"

ATTACHMENT B

Hunter Protection Legislation Being Considered by the Connecticut State Legislature

File No. 200

Substitute Senate Bill No. 269

State of Connecticut
SENATE

Senate, April 2, 1990. The Committee on Judiciary reported through SEN. AVALLONE, 11th DIST., Chairman of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING HARASSMENT OF HUNTERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 53a-183a of the general statutes is repealed and the following is substituted in lieu thereof:

(a) No person shall [: (1) Interfere with the lawful taking of wildlife by another person, or acts in preparation for such taking, with intent to prevent such taking; or (2) harass another person who is engaged in the lawful taking of wildlife or acts in preparation for such taking] OBSTRUCT OR INTERFERE WITH THE LAWFUL TAKING OF WILDLIFE BY ANOTHER PERSON AT THE LOCATION WHERE THE ACTIVITY IS TAKING PLACE WITH INTENT TO PREVENT SUCH TAKING.

(b) A PERSON VIOLATES THIS SECTION WHEN HE INTENTIONALLY OR KNOWINGLY:

(1) DRIVES OR DISTURBS WILDLIFE FOR THE PURPOSE OF DISRUPTING THE LAWFUL TAKING OF WILDLIFE WHERE ANOTHER PERSON IS ENGAGED IN THE PROCESS OF LAWFULLY TAKING WILDLIFE;

(2) BLOCKS, IMPEDES OR OTHERWISE HARASSES ANOTHER PERSON WHO IS ENGAGED IN THE PROCESS OF LAWFULLY TAKING WILDLIFE;

(3) USES NATURAL OR ARTIFICIAL VISUAL, AURAL,

OLFACTORY OR PHYSICAL STIMULI TO AFFECT WILDLIFE BEHAVIOR IN ORDER TO HINDER OR PREVENT THE LAWFUL TAKING OF WILDLIFE;

(4) ERECTS BARRIERS WITH THE INTENT TO DENY INGRESS OR EGRESS TO AREAS WHERE THE LAWFUL TAKING OF WILDLIFE MAY OCCUR;

(5) INTERJECTS HIMSELF INTO THE LINE OF FIRE;

(6) AFFECTS THE CONDITION OR PLACEMENT OF PERSONAL OR PUBLIC PROPERTY INTENDED FOR USE IN THE LAWFUL TAKING OF WILDLIFE IN ORDER TO IMPAIR ITS USEFULNESS OR PREVENT ITS USE; OR

(7) ENTERS OR REMAINS UPON PRIVATE LANDS WITHOUT THE PERMISSION OF THE OWNER OR HIS AGENT, WITH INTENT TO VIOLATE THIS SECTION.

[(b)] (c) Any person who violates any provision of this section shall be guilty of a class C misdemeanor.

STATEMENT OF LEGISLATIVE COMMISSIONERS: In subdivision (5) of subsection (b), the word "INTENTIONALLY" was deleted as redundant.

Committee Vote: Yea 20 Nay 3

* * * * *

"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

* * * * *

FISCAL IMPACT STATEMENT - BILL NUMBER sSB 269

STATE IMPACT None, see explanation below

MUNICIPAL IMPACT None

STATE AGENCY(S) Various State Agencies

EXPLANATION OF ESTIMATES:

STATE IMPACT: Passage of this bill would have no fiscal impact, as it simply redefines existing law.

* * * * *

OLR BILL ANALYSIS

sSB 269

AN ACT CONCERNING HARASSMENT OF HUNTERS

SUMMARY: This bill prohibits obstructing or interfering with someone who is legally hunting, fishing, trapping, or otherwise taking wildlife. To be illegal, the interference or obstruction must be intentional and must occur where the person is taking the wildlife. Neither the bill nor the penal code (Title 53a) define "taking" or "wildlife," but in the fish and game statutes (Title 26) "taking" is shooting, pursuing, hunting, killing, capturing, trapping, snaring, and netting; and "wildlife" includes all invertebrates, fish, amphibians, reptiles, birds, and mammals that are wild by nature.

The bill enumerates seven specific types of obstruction or interference that are prohibited and makes conviction for any of them a class C misdemeanor.

Finally, the bill repeals the existing statute regarding the harassment of hunters, trappers, and fishermen, which has been found unconstitutional.

EFFECTIVE DATE: October 1, 1990

FURTHER EXPLANATION

Prohibitad Acts and Penalty

The bill prohibits:

1. driving or disturbing wildlife to intentionally disrupt someone who is taking;
2. blocking, impeding, or harassing someone who is taking;
3. using natural or artificial items to affect an animal's sense of sight, hearing, smell, or feeling to hinder or prevent taking;
4. erecting barriers to keep people in or out of taking areas;
5. moving into a hunter's line of fire;
6. affecting someone's property (such as a boat, duck blind, or hunting stand) in a way that limits or prevents its use in taking; and
7. being on private land without permission while intending to violate this law.

Conviction for any of the enumerated violations is a class C misdemeanor, punishable by imprisonment for up to three months, a fine of up to $500, or both.

BACKGROUND

Court Case

In Francelle Dorman v. C. Robert Satti and Lester J. Forst, the U.S. District Court found Connecticut's harassment of hunters, trappers, and fishermen law unconstitutionally vague and overbroad (Feb. 1, 1988, Civil No. H-86-898). This decision was upheld by the

Second Circuit Court of Appeals (Dec. 7, 1988, Docket No. 88-7390). The statute (CGS Sec. 53a-183a, PA 85-351) made it a class C misdemeanor to intentionally try to stop another person from lawfully taking or preparing to take wildlife, or to harass such a person.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute
Yea 20 Nay 3

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 87 August Term, 1988

(Argued: September 28, 1988 Decided:)

Docket No. 88-7390

FRANCELLE DORMAN,

Plaintiff-Appellee,

-v.-

C. ROBERT SATTI and LESTER J. FORST,

Defendants-Appellants.

BEFORE:

OAKES, MINER, and ALTIMARI,

Circuit Judges.

Appeal from a judgment granting plaintiff-appellee's motion for summary judgment entered in the United States District Court for the District of Connecticut (Alan H. Nevas, Judge) declaring the Connecticut Hunter Harassment Act, Conn. Gen. Stat. § 53a-183a, unconstitutional on its face under the first and fourteenth amendments to the United States Constitution.

Affirmed.

Judge Miner dissents in a separate opinion.

KATHLEEN ELDERGILL, Manchester, Connecticut (Beck & Eldergill, Manchester, Connecticut, of counsel), for Plaintiff-Appellee.

HARRY WELLER, Deputy Assistant State's Attorney, Wallingford, Connecticut (Joseph I. Lieberman, Attorney General, State of Connecticut, L.D. McCallum, Assistant Attorney General, Office of the Chief State's Attorney, Wallingford, Connecticut, of counsel), for Defendants-Appellants.

ALTIMARI, Circuit Judge:

In 1985, the Connecticut legislature enacted, as part of the state's penal code, the Hunter Harassment Act which provides as follows:

> No person shall: (1) interfere with the lawful taking of wildlife by another person, or acts in preparation for such taking, with intent to prevent such taking; or (2) harass another person who is engaged in the lawful taking of wildlife or acts in preparation for such taking.

Conn. Gen. Stat. § 53a-183a (emphasis added). The Act, a class C misdemeanor, subjects the offender to a fine and/or imprisonment for up to three months. Id. §§ 53a-28; 53a-36(3).

On this appeal from the United States District Court for the District of Connecticut (Nevas, J.), we are asked to decide 1) as a preliminary matter, whether we should certify the statutory terms "interfere," "harass," and "acts in preparation" to the Connecticut Supreme Court for definitive interpretation under state law, and 2) assuming instead that we reach the merits, whether the district court properly determined that the Act, on its face, is unconstitutionally

vague and overbroad under the freedom of speech clause of the first amendment. For the reasons that follow, we deny defendants-appellants' motion to certify questions of state law to the Connecticut Supreme Court and affirm the judgment of the district court granting plaintiff-appellee's motion for summary judgment declaring the Act unconstitutional on its face.

BACKGROUND

On January 30, 1986, plaintiff-appellee Francelle Dorman, a resident of Niantic, Connecticut, was arrested during the goosehunting season for speaking to several hunters on state forest property located near her home. The adjoining state lands contain marshland inhabited by a variety of waterfowl. Plaintiff is morally opposed to the hunting and killing of animals, and consequently on the day of her arrest, she approached several hunters in the marsh and attempted to dissuade them from their plans to hunt the waterfowl. By her own admission, Dorman "walked with the hunters ..., [and] spoke to them about the violence and cruelty of hunting, of the beauty of the waterfowl and [of] their right to live peacefully and without harm." The hunters regarded her behavior as "antics," advised plaintiff that her actions were unlawful, and when she refused to leave, summoned a state law enforcement officer who arrested her for violating the Hunter Harassment Act, Conn. Gen. Stat. § 53a-183a (the "Act").

Following her arrest, the state prosecutor requested that the court dismiss the criminal charges, apparently conceding that the arrest of Dorman had been premature since she had only been "talking about what she was going to do to interfere with hunting geese." On April 22, 1986, the court granted the state's request and dismissed the criminal charges.

Four months later, Dorman filed the instant action in the district court under 42 U.S.C. § 1983 against defendants-appellants C. Robert Satti, chief prosecutor, and Lester J. Forst, the Commissioner of Public Safety. Plaintiff alleged, inter alia, that the actual arrest and the threat of future enforcement of the Act violated her rights under the first and fourteenth amendments, and she sought a judgment declaring the Act facially invalid and injunctive relief prohibiting the Act's enforcement. On cross-motions for summary judgment, the district court granted plaintiff's motion, holding as a matter of law that the Act, as written, is unconstitutionally vague and overbroad. Dorman v. Satti, 678 F. Supp. 375 (D. Conn. 1988). In May 1988, defendants filed a timely notice of appeal on the merits as well as a motion in this court under Second Circuit rule § 0.27 seeking certification to the Connecticut Supreme Court of the statutory terms "interfere," "harass," and "acts in preparation."

DISCUSSION

I. Certification.

Second Circuit rule 0.27 provides that certification to the highest court of a state is appropriate 1) "[w]here authorized by state law" and 2) in order to resolve an "unsettled and significant question of state law that will control the outcome of a case pending before this Court." The Connecticut certification statute adopted in 1985 provides, inter alia, that a "court of appeals of the United States" may certify "questions of law ... which may be determinative of the cause then pending ... and as to which it appears to the certifying court there is no controlling precedent in the decisions of the supreme court of th[e] state." Conn. Gen. Stat. § 51-199a(b).

The United States Supreme Court has encouraged the use of state certification procedures as an alternative to "the more cumbersome and ... problematic abstention doctrine." See Virginia v. American Booksellers Ass'n, Inc., 108 S. Ct. 636, 644 (1988). The purpose of certification is to obtain the benefit of an authoritative construction from the state's highest court before proceeding to the merits of the dispute. This may further the interests of federal/state comity by providing the state court with the opportunity to rule on an issue of state law before being precluded from doing so by a contrary federal court judgment. The state court's interest in accepting a certified question for

susceptible" to limiting interpretation. The district court found that the statute was "not susceptible to curative construction." 678 F. Supp. at 384. Although we are not bound by the district court's ruling, Boos v. Barry, 108 S. Ct. 1157, 1162-63 (1988); American Booksellers, 108 S. Ct. at 643-44; Elkins v. Moreno, 435 U.S. 647, 662 n.16 (1978), we agree with its determination. As Judge Nevas noted,

> [t]he lesson of Williams does not apply to the Hunter Harassment Act. First, because the Act fails to define the nature of the interference it proscribes, its language implicitly sweeps as broadly as that of the Houston ordinance, and it thus cannot be saved by a limiting construction as was Section 53a-167a. Second, in failing -- by virtue of its "acts in preparation" clause -- to limit the proscribed interference as to time and place, the Act carries its effect far beyond the proper scope of government regulation.

678 F. Supp. at 381-82.

Defendants cite language from American Booksellers to suggest that certification is appropriate whenever a state's highest court has not had an opportunity to rule on the pertinent statutory language. 108 S. Ct. at 645. While we agree that American Booksellers counsels in favor of expanded use of state certification procedures, we do not believe that it stands for the proposition that certification should be pursued whenever available. Cf. Houston v. Hill, 107 S. Ct. at 2514; Kidney, 808 F.2d at 957.

The Supreme Court's willingness in American Booksellers to certify the proffered narrowing construction was a consequence of its decision to certify another question to the Virginia Supreme Court. Consequently, the Supreme Court found it unnecessary to decide whether the Virginia statute was subject to curative construction. The Court did not do away with the rule that certification is appropriate only when the statute is susceptible to a narrowing construction that will avoid the constitutional infirmity. See Bellotti, 428 U.S. at 148.

In sum, although the Supreme Court has required certification in cases where the state court could decide between two plausible interpretations of an ambiguous statute, e.g., American Booksellers, 108 S. Ct. at 644; Bellotti, 428 U.S. at 144-48, and the parties in this case do offer conflicting interpretations of key terms in the Act, the Connecticut court would be in no better position than a federal court to decide which interpretation is correct. This is because, unlike the "unusual circumstances" presented in American Booksellers as well as in Bellotti, the statute in this case is so imprecise and indefinite that it is subject to any number of interpretations. The terms "interfere," "harass," and "acts in preparation" do not admit of distinct limiting constructions. They can mean anything. For this court to ask the Connecticut Supreme Court to consider construing the

statute to apply only to "core criminal conduct," as defendants would have it, would be tantamount to asking the Connecticut court "if it would care in effect to rewrite [the] statute." Houston v. Hill, 107 S. Ct. at 2515.

In view of the foregoing, we deny defendants' motion to certify questions of state law to the Connecticut Supreme Court.

II. The Merits.

When considering a facial challenge to the overbreadth and vagueness of a statute as measured against the first amendment, "a court's first task is to determine whether the enactment reaches a substantial amount of constitutionally protected conduct." Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 494 (1982). An act's overbreadth "must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep." Broadrick, 413 U.S. at 615. The purported vagueness must be such that the statute is incapable of "giv[ing] the person of ordinary intelligence a reasonable opportunity to know what is prohibited" by failing to provide "explicit standards" ensuring that it is not arbitrarily enforced. Grayned v. City of Rockford, 408 U.S. 104, 108 (1972). Defendants argue that the statutory terms the district court found overbroad and vague "can and should be read in a manner consistent with the First Amendment." Appellants' Brief at . Plaintiff contends that because the

Hunter Harassment Act does not define what constitutes interference or harassment and because the "acts in preparation" clause is not limited to any time, place or circumstance, the Act on its face impermissibly regulates protected free speech.

Plaintiff's facial attack on the constitutionality of the Act must be considered in light of the scope of the challenged government regulation. The Supreme Court has determined that statutory language prohibiting acts such as interference or harassment encompasses verbal as well as physical conduct. Houston v. Hill, 107 S. Ct. at 2511-12. Like the city ordinance struck down in Hill, the statute at issue here "deals not with core criminal conduct, but with speech." Id. at 2508. Consequently, the right of the government to prohibit such communicative expression is circumscribed by the first amendment. See Perry Educ. Ass'n v. Perry Local Educs. Ass'n, 460 U.S. 37, 45 (1983). "For the State to enforce a content-based exclusion it must show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end. The State may also enforce regulations of the time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication." Id. (citations omitted).

Although the Act would appear by its terms to be content-neutral, cf. Boos v. Barry, 108 S. Ct. at 1162-64 (District of Columbia statute that prohibits display of picket signs critical of foreign government within 500 feet of that country's embassy is a content-based restriction), it clearly is designed to protect hunters from conduct -- whether verbal or otherwise -- by those opposed to hunting. See 678 F. Supp. at 377 & n.2; cf. Renton v. Playtime Theatres, Inc., 475 U.S. 41, 46-48 (1986) (content-neutral statute is one not aimed principally at suppression of speech on the basis of its content). Of course, to the extent that the Hunter Harassment Act can be considered content-based, it cannot withstand strict scrutiny. There is no showing that protecting hunters from harassment constitutes a compelling state interest. Cf. Boos, 108 S. Ct. at 1164 (first amendment protects "insulting, and even outrageous, speech in order to provide 'adequate "breathing space"'" for exercise of right of free expression) (quoting Hustler Magazine, Inc. v. Falwell, 108 S. Ct. 876, 882 (1988); NAACP v. Button, 371 U.S. 415, 433 (1963)). Nor is the statute narrowly drawn to serve any putative compelling state interest. Indeed, the Act "criminalizes a substantial amount of constitutionally protected speech." Houston v. Hill, 107 S. Ct. at 2512.

Taking the statutory terms "interfere," "harass," and "acts in preparation" at face value, even as content-neutral

restrictions they cannot be justified as reasonable time, place or manner regulations of speech. See Frisby v. Schultz, 108 S. Ct. 2495, 2500-01 (1988); see also Clark v. Community for Creative Non-Violence, 468 U.S. 288, 293 (1984); Cox v. New Hampshire, 312 U.S. 569, 575-76 (1941). An "act[] in preparation" is nowhere defined in the statute, and thus the Act reaches a wide range of activities confined to no particular time, place or manner. Cf. State v. Williams, 534 A.2d at 238 (upholding state statute proscribing interference with police officer in the performance of his duties). As the district court recognized,

> the "acts in preparation" clause can be reasonably read to encompass buying supplies long before the actual hunt takes place ...; consulting a road map ...; making plans during a workplace coffee break; or even getting a good night's sleep before embarking on a hunting trip.

678 F. Supp. at 383. Accordinly, the Hunter Harassment Act is not the type of properly tailored statute, Houston v. Hill, 107 S. Ct. at 2511, that can be interpreted narrowly to avoid constitutional infirmity. Cf. Frisby, 108 S. Ct. at 2501.

CONCLUSION

Because we agree with Judge Nevas that Connecticut's Hunter Harassment Act is not subject to curative construction and as written is substantially overbroad and vague, defendants' motion to certify questions of state law

to the Connecticut Supreme Court is denied, and the judgment of the district court declaring the Act unconstitutional on its face is affirmed.

MINER, Circuit Judge, dissenting:

Because I believe that we should, if possible, have the benefit of the Connecticut Supreme Court's construction of the statute at issue before we pass on the merits of plaintiff's claim that the legislation does not measure up to federal constitutional requirements, I respectfully dissent.

The Hunter Harassment Act, duly enacted by the legislature and approved by the Governor of the State of Connecticut, prohibits interference with and harassment of those engaged in lawfully taking, or preparing to take, wildlife. The majority concludes that the words "interfere," "harass," and "acts in preparation" contained in the Act are not readily susceptible to the limiting construction necessary to preserve the constitutionality of the statute. I think that this determination is unwarranted.

The word "interfere" in a statute imposing a criminal penalty for interfering with a police officer easily yielded to an interpretation by the Connecticut Supreme Court that preserved the constitutionality of the statute. State v. Williams, 205 Conn. 456, 534 A.2d 230 (1987). The court in Williams confined the prohibited conduct "to meddling in or hampering the activities of the police in the performance of their duties." 534 A.2d at 238. A similar interpretation of the Hunter Harassment Act, substituting hunting activities for police duties, could save the Act from overbreadth and vagueness

concerns. I cannot agree with the district court that the Act sweeps as broadly as the ordinance struck down in Houston v. Hill, 107 S. Ct. 2502 (1987). The prohibition on interrupting a police officer in any manner in the Houston ordinance left no room for any construction that would have saved the ordinance without rewriting it.

Similarly, "harassment" has been afforded a restrictive definition under Connecticut law. A statute prohibiting harassment by written and telephonic communications requires evidence of an intention to annoy or alarm another person. Conn. Gen. Stat. § 53a-183 (1987). New York has a similar statute, which is entitled "Aggravated harassment." N.Y. Penal Law § 240.30 (McKinney Supp. 1988). Indeed, the offense of harassment is described by reference to specific conduct in various penal codes. See, e.g., N.Y. Penal Law § 240.25(1)-(5) (McKinney 1980); see also id. Practice Commentary following (referring to American Law Institute's Model Penal Code). There is therefore no reason why the Connecticut Supreme Court could not define harassment in the context of the Hunter Harassment Act without impinging on first amendment rights.

As to the term "acts in preparation," a narrowing construction might restrict the preparatory acts to those directly, unequivocally and immediately related to the act of taking wildlife. Here again, a construction considerate of fir amendment rights could save the statute. Moreover, the Hunter

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Harassment Act is subject to pruning by the Connecticut Supreme Court of any parts found to be contrary to law. The Connecticut severability statute allows for the excision of invalid portions of the Act without effect on the valid remainder. Conn. Gen. Stat. § 1-3 (1987); State v. Goling, 201 Conn. 435, 518 A.2d 57 (1986).

In Bellotti v. Baird, 428 U.S. 132 (1976), the United States Supreme Court directed certification to the Supreme Judicial Court of Massachusetts of "questions pertaining to construction of a state statute that was susceptible to multiple interpretations, one of which would avoid or substantially modify a federal constitutional challenge," Virginia v. American Booksellers Ass'n., 108 S. Ct. 636, 644 (1988). Similarly, a constitutional infirmity in the Act challenged here might be avoided by a decision of the Connecticut Supreme Court. If the term "harmful to juveniles," as defined in a Virgina statute prohibiting the display of certain visual or written materials, is considered subject to a narrowing construction by the Virginia Supreme Court after certification, American Booksellers, supra, then the objectionable terms in the Connecticut Hunter Harassment Act certainly should be capable of the sort of limiting construction that would meet constitutional challenges.

I would certify to the Connecticut Supreme Court questions as to the state law definitions of "interfere," "harass," and "acts in preparation" as used in the Hunter Harassment Act,

before proceeding to a consideration of the merits of plaintiff's claim. I also would certify a question as to whether the Connecticut Supreme Court would excise any portion of the Act on state law grounds.

review is particularly strong when it has not yet had the opportunity to interpret the pertinent statutory language. Id. at 645. Nevertheless, issues of state law "are not to be routinely certified to the highest courts of New York or Connecticut simply because a certification procedure is available. The procedure must not be a device for shifting the burdens of this Court to those whose burdens are at least as great." Kidney v. Kolmar Laboratories, Inc., 808 F.2d 955, 957 (2d Cir. 1987).

The test for determining the appropriateness of employing the certification procedure is whether the statute in question is "readily susceptible" to the proffered narrowing construction that would render an otherwise unconstitutional statute constitutional. See American Booksellers, 108 S. Ct. at 645; Bellotti v. Baird, 428 U.S. 132, 148 (1976); Erznoznik v. City of Jacksonville, 422 U.S. 205, 216 (1975); Broadrick v. Oklahoma, 413 U.S. 601, 613 (1973). In attempting to satisfy the "readily susceptible" standard, defendants in the instant case rely by analogy on the Connecticut Supreme Court's recent consideration of vagueness and overbreadth challenges to the state's criminal interference with a police officer statute, Conn. Gen. Stat. § 53a-167a. See State v. Williams, 205 Conn. 456, 534 A.2d 230 (1987). That statute provides that it is unlawful to "interfer[e]," i.e., to "obstruct[], resist[], hinder[] or endanger[]," a police officer "in the performance of his

duties." In Williams, the Connecticut Supreme Court held that the statute was not unconstitutionally overbroad or vague because the act defines the term "interfer[e]" and limits its reach to conduct "intended to obstruct the police in the performance of their duties." Id. at 238. According to the Williams court, "a reasonable interpretation of the statute confines its scope to conduct that amounts to meddling in or hampering the activities of the police in the performance of their duties." Id. The court distinguished the Connecticut statute from the ordinance struck down by the United States Supreme Court in Houston v. Hill, 107 S. Ct. 2502 (1987), which prohibited interfering with a police officer "'in any manner ... in the execution of his duty,'" 107 S. Ct. at 2506 (emphasis added), by finding that the Connecticut statute did not contain such a "broad sweep" of language. 534 A.2d at 238.

In construing the Connecticut statute to proscribe only physical conduct and "fighting" words, Chaplinsky v. New Hampshire, 315 U.S. 568, 572 (1942), the court in Williams was able to fit the statute within the constitutional parameters of free speech. Defendant contends that the Connecticut Supreme Court should be given a similar opportunity to narrowly construe the Hunter Harassment Act. We disagree.

For this court to certify a question to the Connecticut Supreme Court, the Hunter Harassment Act must be "readily

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ESKIMO WALRUS COMMISSION
P.O. Box 948
Nome, Alaska 99762

March 13, 1990

Senator Steve Frank
P.O. Box V
Juneau, AK 99811

FAX # 463-3378

Dear Senator Frank:

The Eskimo Walrus Commission is supporting Senate Bill 469 for adoption by the State Legislature.

We believe that adopting this Senate Bill would not infringe on those people that have a legitimate right to hunt, trap and fish.

Sincerely,

ESKIMO WALRUS COMMISSION

Jonah Tokeinna
Acting Chairman

JK:ct

1989 Subsistence Conference

Migratory Birds in Western Alaska

The topic of migratory birds was the focus of the next speaker, Jack U. Williams, Sr. of Mekoryuk. Chuck Hunt interpreted for him. As Mr. Williams was growing up, there were very many ducks and geese. He never heard of waterfowl sport hunting at that time, nor were there shotguns. They used bows and arrows when hunting waterfowl.

The Waterfowl Conservation Commission, chaired by Mr. Williams, originated in 1984. The main purpose of the WCC is to work with the USFWS and others to help people in the villages of the Y-K Delta deal with the issue of waterfowl population declines.

Animal Rights Groups Threaten Subsistence Lifestyles

The panel on "Threats to Our Way of Life - The Animal Rights Agenda" was next. Larry Merculieff, Commissioner of the Alaska Department of Commerce and Economic Development, and Dave Monture of Indigenous Survival International in Canada were the speakers.

Mr. Merculieff showed a video depicting animal rights protectionists harassing Natives on the Pribilof Islands, because of their use of fur seals for subsistence. His focus was on strategies and tactics used by the animal rights groups, their effect on aboriginal people, and what can be done about it. "What happened in the Pribilofs are exactly the same things that will be focused on throughout Alaska, throughout the entire Northern Hemisphere, and throughout the whole world," due to the activities of the animal rights groups.

Dave Monture described Indigenous Survival International as an organization born in 1984 as a direct result of the Dené people in Canada's Northwest Territories becoming very concerned about a new wave of a "colonial attitude from the South," -- people organizing with tremendous resources in a manner which would prove to be a great threat to Dené plans for self-determination and land claim settlements in the Northwest Territories.

"We're not dealing with people with the same sense of ethics or fairness, but we're dealing with people with a new zeal, a new religion for urban Western man," Monture said. ISI-Canada has joined with the British Museum to produce "The Living Arctic," a highly successful major exhibition in London, England designed to educate the public on aboriginal lifestyles.

In Conclusion

The afternoon session commenced with workshops on "Marine Mammals," "Title VIII of ANILCA," and the "Animal Rights Movement." The facilitators of these sessions reported back to the general assembly following the workshops.

The Animal Rights Movement workshop participants first viewed a film on strategies and the lack of ethics in the animal rights community, specifically in the Native seal campaign. It was concluded that animal rights groups pose a life-threatening situation to our people, not only in their methods of fire-bombs, but in actual cases of teenagers committing suicide in communities where seal subsistence is being cut off, thereby drastically altering traditional lifestyles.

The Marine Mammals workshop addressed the five species of seals in Alaska, sea otter, walrus, beluga whale, and polar bear. The participants learned that there are 900,000 fur seals today, and the population may have leveled off. The Fish & Wildlife program on walrus includes a management plan for walrus, monitoring populations, monitoring harvest, and habitat protection.

The Alaska Sea Otter Commission was formed in 1988. The Commission is very concerned about a proposed rule by the Fish & Wildlife Service to restrict cottage industry practices involving sea otter by Alaska Natives. The Commission has recently initiated a Memorandum of Agreement with FWS which, along with a Management Plan, would address problems FWS is trying to answer in its proposed rule.

Dave Monture of ISI-Canada (left) led a workshop on the threats that animal rights groups are posing to subsistence lifestyles. RurAL CAP attorney Eric Smith (below) explaining how villages can write their own fish and game regulations.

Photos by David Hardenbergh

1989 Subsistence Conference Summary

"Subsistence Is Survival"

Photo by David Hardenbergh

Co-Sponsored by the Alaska Federation of Natives, Inc. and the Rural Alaska Community Action Program, Inc.

October 16-17, 1989

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