

ALASKA LEGISLATURE COMMITTEE FILES

1993-1994

8672

7817

HOUSE • HEALTH EDUCATION & SOCIAL SERVICES

The Board's Workload

The workload for the Alaska Board of Parole increased significantly during the 1980's at a time when the prison population mushroomed. As an example, the 1980 criminal code revision did not begin to show an impact until about 1983 (Figure #1). In 1982, the Board's total workload including parole hearings, parole revocation hearings, warrants and preliminary hearings was under 400 cases. From 1982 to the current peak, the Board's workload increased fourfold. The increase was substantially related to the 1980 presumptive sentence law and mandatory parole law. Discretionary parole hearings and discretionary parole releases did not increase during that period in spite of the growing prison population. Each year, as a higher percentage of prisoners entering the system were sentenced after 1979 under the presumptive sentence law, the number of prisoners eligible for discretionary parole and the number of prisoners released on discretionary parole decreased.

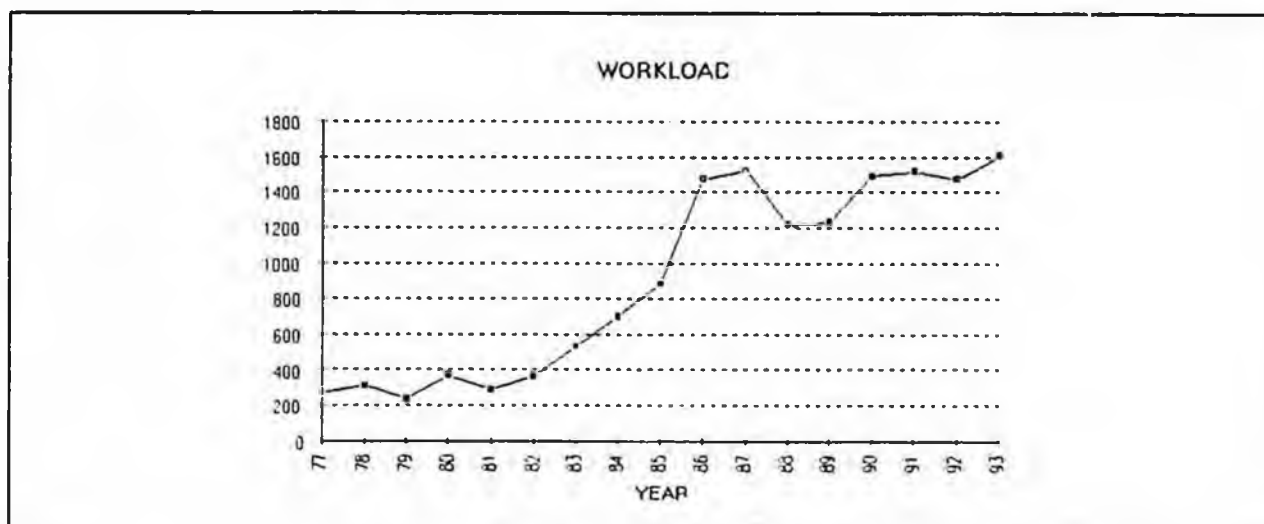


Figure #1

The Board's sharp increase in workload in 1986 and 1987 as indicated in Figure #1 is attributed to the added responsibility during those two years of reviewing prisoners eligible for release under the Governor's Emergency Conditional Commutation Release Plan.

During calendar year 1993, the Board held a total of 1608 hearings, 697 of which were in-person hearings. The remaining 911 case decisions included issuing warrants, setting or changing conditions, and reviewing appeals.

Discretionary Parole

During the calendar years 1991, 1992 and 1993 the Board held a total of 461 discretionary parole release hearings. Of that total, 178 prisoners were granted discretionary parole for a parole rate of 39%. (Figure 2). In addition, during that three year period, the Board released another 225 prisoners following revocation of their mandatory parole.

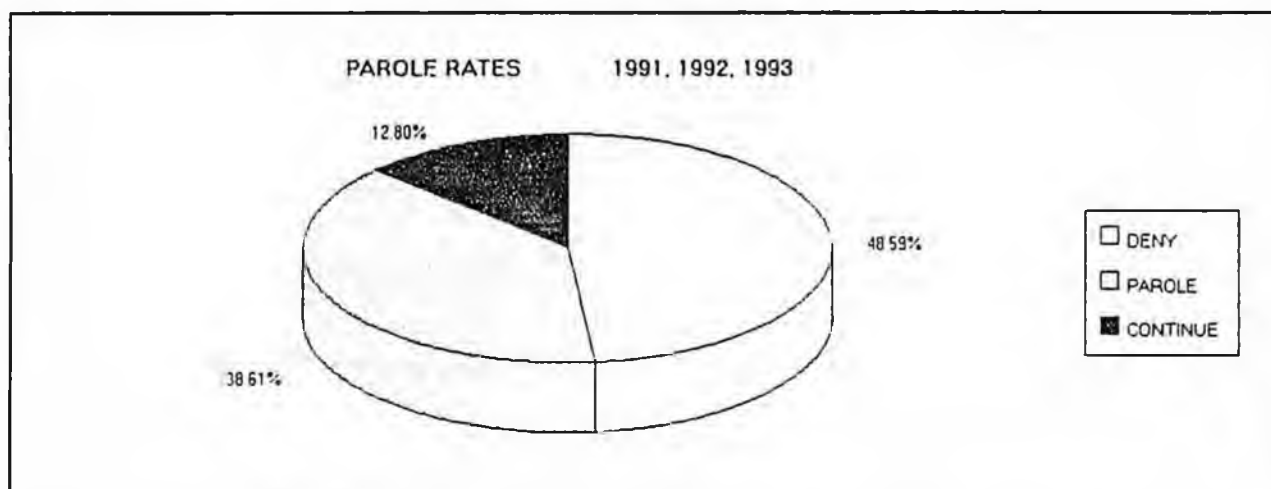


Figure #2

The Board has completed a recidivism study every year since at least the mid 1970's. This was traditionally a one year follow up of prisoners released to discretionary parole. In 1988, the study was expanded to follow the parolee for more than one year. Success is measured by the parolee's ability to complete the followup period on supervision without having been revoked by the Board.

Failure is also divided into four categories based on the nature of the violation. If the violation was for a condition of parole that was not a violation of a law or local ordinance, such as consuming alcohol or failing to report a change of residence, the violation is considered to be a **technical** or **conditions** violation. If parole is revoked as a result of a conviction for a **misdemeanor** or **felony** while on supervision, the violation is noted accordingly. A parolee who does not report to the parole office as instructed and is unable to be located by the parole officer is coded as an **absconder**. If multiple violations occur, the most serious one is the one coded.

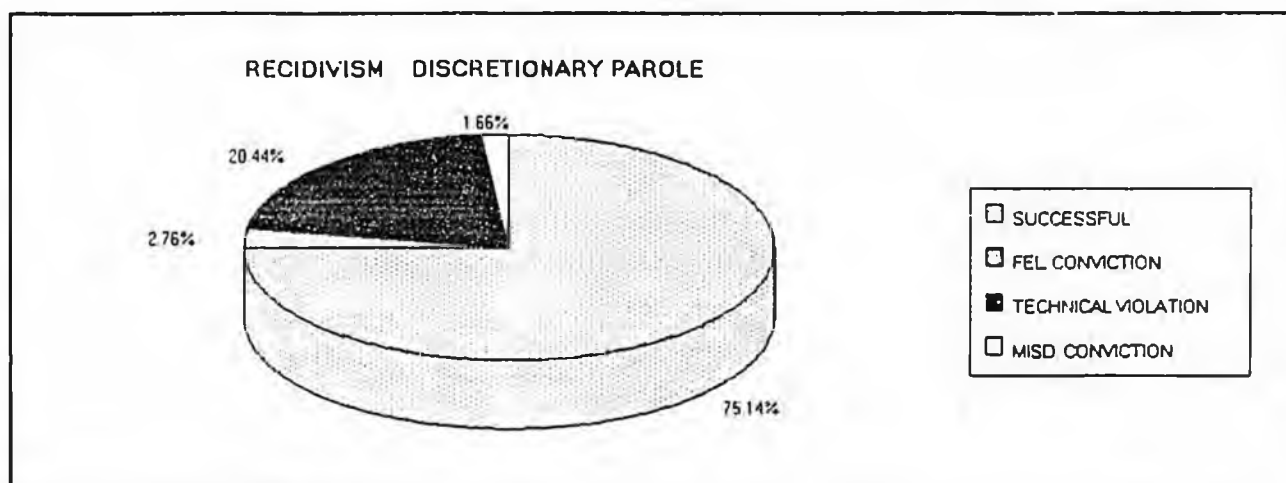


Figure #3

The Board is very proud of its consistently low felony revocation rate. A felony revocation rate of 10% is acceptable and expected in many jurisdictions across the United States. The Alaska Board of Parole has consistently had a felony violation rate of 5% or less. A follow-up of the prisoners released to discretionary parole during the years 1989, 1990, 1991 and 1992 indicates a felony violation rate of 5 out of 182, or 3%. (Figure #3).

The combined violation rate for discretionary parolees during that period of time is 25%. However, many of those prisoners were ordered back to prison for only a short period of time and then released to supervision again at a later date. This low felony and misdemeanor revocation rate is an indication the field parole officer is doing a good job of monitoring cases to assure the parolee is removed from the community at the first sign of serious supervision violations and before a new crime is committed.

Mandatory Parole

The Department of Corrections currently releases over 500 prisoners each year who are to be supervised on mandatory parole for the period of time their sentence was reduced for good behavior in the institution. This number has increased considerably as the prison population has increased. In 1986, less than 300 prisoners were released to mandatory parole supervision. At the present time, the Department is supervising about 700 mandatory parolees.

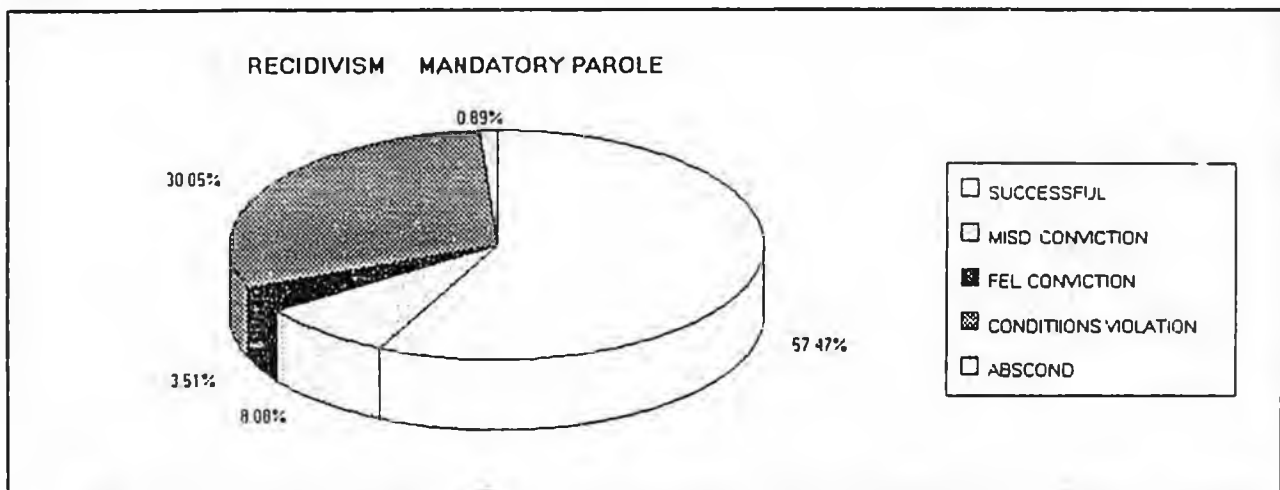


Figure #4

During the years 1989, 1990, 1991 and 1992, it is estimated 1907 prisoners were released to mandatory parole supervision. This estimate is based on the number of cases submitted to the Board so they could set conditions prior to release. As Figure #4 indicates, 811 of them were returned to prison. This is a violation rate of 43%. This violation rate is nearly eighteen (18%) percentage points higher than prisoners released to discretionary parole. In addition, on the average these prisoners were not as closely supervised as discretionary parolees who are often required to participate in residential programs, halfway houses or the Intensive Supervision Program. This revocation rate for mandatory parolees could increase considerably if they were supervised as closely as discretionary parolees.

Risk Factors

The parole guidelines model developed in 1981 and the subsequent revisions to that model have always included a risk score sheet. The current risk factors were adopted in 1989 and provide for a scoring range of 0 to 49. The lower the score, the lower the risk to reoffend. Risk scores are divided into four categories as follows:

A = 0-6 B = 7-14 C = 15-29 D = 30-49

During the years 1990, 1991, 1992, and 1993, the parole rate for prisoners in category A was 52%; the parole rate for category B was

48%; the parole rate for category C was 33%; and the parole rate for category D was 23%. (Figure #5). This is a good indication the Board is paying a great deal of attention to an applicant's risk to the community at the time parole is granted.

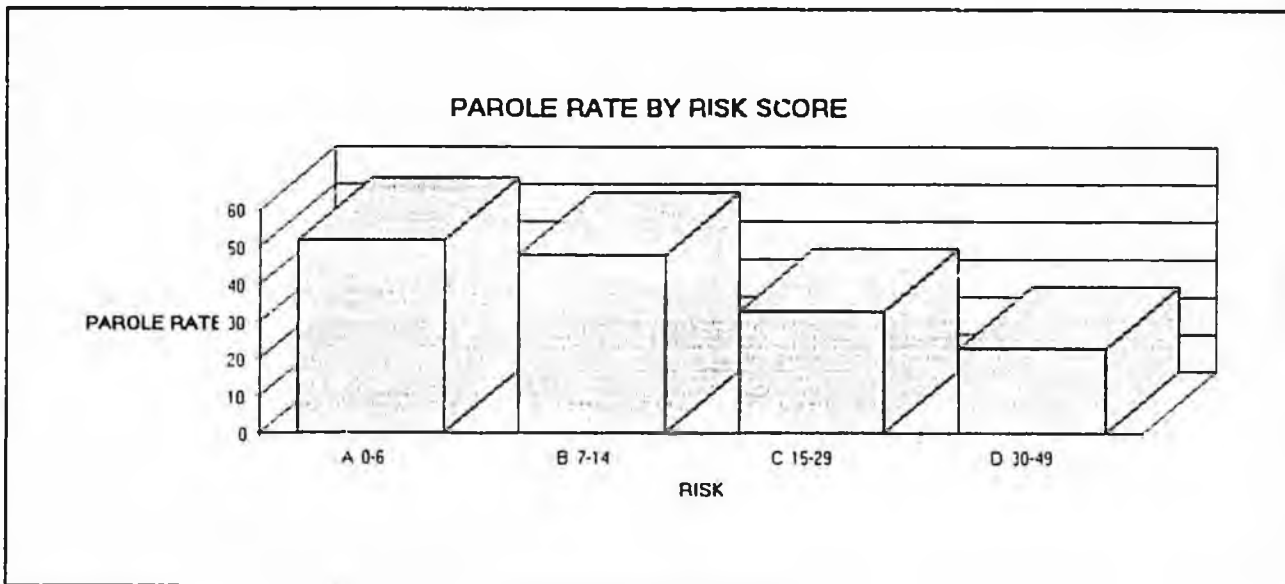


Figure #5

Information obtained from risk scores for prisoners appearing in revocation hearings during the years from 1988 to 1993 further support the validity of the scores and the Board's reliance on these scores. Of the 1350 prisoners revoked during that six year period, only 7% were in the two best risk categories (A & B). (Figure #6). Nearly all of the parolees violated during those years (93%) had a risk score of 15 or higher.

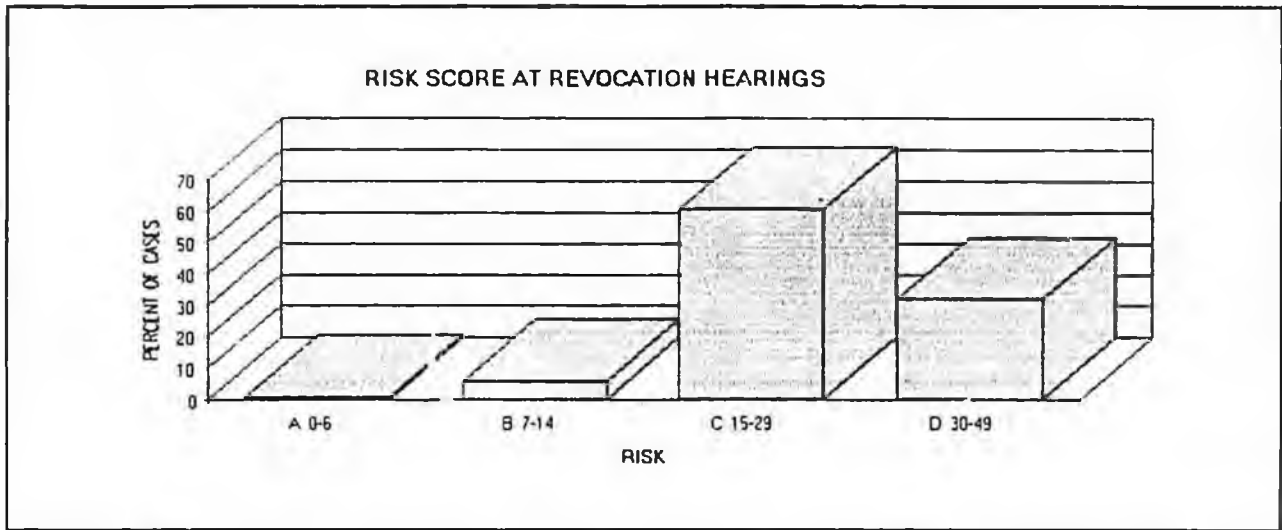


Figure #6

Parole Guidelines

The Board has utilized numerical guidelines for releasing prisoners since 1981. See 22 AAC 20.142. The guidelines are designed for non-presumptively sentenced offenders eligible for discretionary parole. Many other states have guidelines models, including the U.S. Parole Commission. One of the goals in utilizing a guidelines system is to limit the number of cases where a decision is made outside of the suggested guidelines range. In some cases the Board will release a prisoner below the minimum range by making a formal finding of mitigating factors; or the Board will deny parole and thus require a prisoner to serve a term above the guidelines by making a formal finding of aggravating factors. As Figure #7 indicates, the Alaska Board of Parole is finding mitigation in about 7% of the cases appearing before them and is making a finding of aggravation in about 10% of the cases appearing before them.

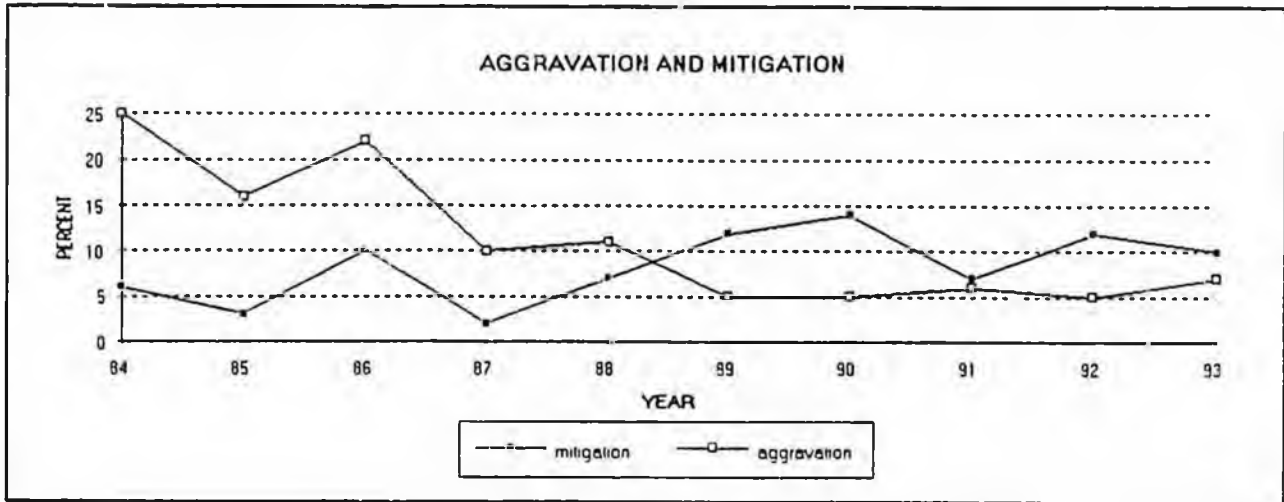


Figure #7

The remaining 83% of decisions are made within the guidelines range and this high percentage of conformity to the guidelines is an indication the Board is making a conscious effort to apply the discretion they have in a fair and equitable manner.

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 422

Revision Date: February 23, 1994
Title: "An Act relating to custody and visitation rights."
Sponsor: Representative Bunde
Requestor: Representative Bunde

Department Affected: Department of Law
BRU: Prosecution
Component: All
COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX

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

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

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX

POSITIONS:

FULL-TIME	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: _____

ANALYSIS: (Attach a separate page if necessary.)
Please see the attached analysis.

Prepared by: Richard I. Pegues, Director
Division: Administrative Services Division

Phone: 465-3672
Date: February 23, 1994

Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law

Date: February 23, 1994

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 422

ANALYSIS CONTINUATION:

Section 1 of this bill amends AS 11.41 to provide that a person commits the crime of custodial interference in the third degree if, being a relative of a child under 18 years of age or a relative of an incompetent person and knowing that the person has no right to do so, the person intentionally takes, entices, or keeps that child or incompetent person from a lawful custodian.

Custodial interference in the third degree would also apply to a person being a lawful custodian of a child under 18 years of age and knowing that the person has no legal right to do so, the person takes, entices, or keeps the child with the intent of denying access to the child by another person during a time when the other person has the legal right under court order to be with the child. And, this provision would also apply to a person who fails to comply with an order to allow visitation with the child by another person after being found in contempt for failure to comply with a visitation order, or a person who has engaged in a pattern of intentional violation of court orders to allow visitation by another person with the child.

Affirmative defenses to the crime are provided in the bill including: the defendant's purpose was to protect the child or the defendant from imminent physical harm; the complainant has failed for a protracted period of time to exercise the complainant's rights to physical custody or access to the child, or failed to give any notice to the defendant or a desire to resume exercise of the complainant's right to physical custody or access; the acts giving rise to the charges were consented to by the complainant; and the defendant, after providing or making a good faith to provide notice to the person entitled to access to the child, failed to provide access due to reasons that a reasonable person would believe were directly related to the welfare of the child.

Custodial interference in the third degree would be a class B misdemeanor, except that a person previously convicted of the same offense would be guilty of a class A misdemeanor upon conviction for a second or additional offense.

Current state law provides for the crimes of custodial interference in the first degree and custodial interference in the second degree. The latter crime requires that a person being a relative, keeps a child or incompetent person from a lawful custodian for a protracted period of time. The former crime includes the same elements and the person causes the victim to be removed from the state.

Section 2 of this bill amends the state's child custody laws, AS 25.20, to provide for a comprehensive child visitation schedule between a custodial parent and a visiting parent. The schedule includes visitation on alternating weekends, school summer vacation, school spring vacation, Mother's Day and Father's Day weekends, Wednesday for school age children, and Christmas and Thanksgiving vacations. The schedule is also specific as to travel distance between parents, the day of week and the hour of the day when visitation periods are to begin and end, as may be appropriate for the various specified vacations, Wednesdays, weekends, and three-day weekends.

This section also provides that a court shall include as a condition to a custody or visitation order requirement that a party intending to relocate the temporary or permanent residence of a child shall give advance written notice of the intention to either the court or the other party, or both, at least 60 days before the intended relocation.

Heretofore, courts have had wide latitude to fashion child custody and visitation schedules, taking into account the welfare of a child and the circumstances of the parents. However, under the bill, courts would be required to fashion a visitation schedule as similar as possible to that set out in the bill in a manner that would least likely cause harm or detriment to a child after consideration of the circumstances, finances of each parent, and the age and need of the child.

In view of the specific visitation requirements set out in the bill, which go to the very hour when a visitation will begin and end, and where even a minor delay would be a criminal offense, the department is concerned that its criminal prosecutors will be dragged into civil domestic relations disputes between the parents of dependent children.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 422

ANALYSIS CONTINUATION:

is not unusual for people left unhappy and embittered after a failed marriage to seek to punish their former spouses, and they often use their own children for this purpose. This bill could encourage that to happen.

There are currently about 1,600 divorces, dissolutions, and annulments each year in Alaska that involve dependent children, and for which the provisions of this bill would apply. The bill would also apply to past child custody orders if application of the visitation schedule proposed in the bill results in an increase of visitation time of at least 25 percent in an existing child custody order.

We cannot say exactly how many child custody orders will fall within the bill's provisions immediately, but it will certainly be several thousand within a few years. Of this number, the complaints of custodial interference in the third degree may number in the hundreds within a few years. The Department of Law's prosecutors, who are already trying to deal with substantial increases in violent crime during a time of reduced resources, cannot afford to become involved in disputes that are, for the most part, civil and personal in nature. Because of the uncertainty of the number of potential complaints, we cannot determine an accurate fiscal impact, but it could become substantial in a short time.



Alaska State Legislature
House of Representatives
 COMMITTEE ON HEALTH, EDUCATION
 AND SOCIAL SERVICES

DATE: 3-18-94

PLACE: Capitol Room 106

SUBJECT OF MEETING:
 *HB 291: CONSUMER PROTECTION INTERN PROGRAM
 — BILLS HELD (NETZ)
 HB 488: RESTRICT STUDENT LOANS TO ALASKA SCHOOLS
 HB 422: CHILD CUSTODY; VISITATION RIGHTS
 * INDICATES FIRST PUBLIC HEARING

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
GHERMIE GORU	Alaska Women's Lobby	P.O. Box 22156 Juneau	99802		463-6744	<input checked="" type="radio"/>	<input type="radio"/>	HB 422
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
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						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	

H/HESS ROLL CALL FORM

BILL HB 791 DATE 3/18/94
 TAPE 94-File B NUMBER 089
 SUBJECT OF VOTE TO PASS HB 791 OUT OF COMMITTEE WITH
INDIVIDUAL RECOMMENDATIONS

MEMBER	YEA	NAY	ABS
Rep. Cynthia Toohey	—	✓	—
Rep. Con Bunde	✓	—	—
Rep. Gary Davis	✓	—	—
Rep. Al Vezey	✓	—	—
Rep. Pete Kott	✓	—	—
Rep. Harley Olberg	—	—	—
Rep. Bettye Davis	—	—	—
Rep. Irene Nicholia	—	—	—
Rep. Tom Brice	—	—	—
TOTAL	<u>4</u>	<u>1</u>	—

+++++

BILL CSHB 422 DATE 3/18/94
 TAPE 94-File B NUMBER 130
 SUBJECT OF VOTE TO PASS CSHB 422 OUT OF COMMITTEE
WITH INDIVIDUAL RECOMMENDATIONS

MEMBER	YEA	NAY	ABS
Rep. Con Bunde	✓	—	—
Rep. Gary Davis	✓	—	—
Rep. Al Vezey	✓	—	—
Rep. Pete Kott	✓	—	—
Rep. Harley Olberg	—	—	—
Rep. Bettye Davis	—	—	—
Rep. Irene Nicholia	—	—	—
Rep. Tom Brice	—	—	—
Rep. Cynthia Toohey	—	✓	—
TOTAL	<u>4</u>	<u>1</u>	—

8-LS1606K
Lauterbach
3/16/94

CS FOR HOUSE BILL NO. 422(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE BUNDE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to custody and visitation rights."

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

3 * Section 1. AS 11.41 is amended by adding a new section to read:

4 Sec. 11.41.340. CUSTODIAL INTERFERENCE IN THE THIRD DEGREE.

5 (a) A person commits the crime of custodial interference in the third degree if

6 (1) being a relative of a child under 18 years of age or a relative of an
7 incompetent person and knowing that the person has no legal right to do so, the person
8 intentionally takes, entices, or keeps that child or incompetent person from a lawful
9 custodian; or

10 (2) being a lawful custodian of a child under 18 years of age and
11 knowing that the person has no legal right to do so, the person

12 (A) fails to comply with an order to allow visitation with the
13 child by another person after being found in contempt for failure to comply
14 with a visitation order; or

1 (B) has engaged in a pattern of intentional violation of court
2 orders to allow visitation by another person with the child.

3 (b) The defendant has an affirmative defense to conviction under (a) of this
4 section if the defendant shows by clear and convincing evidence that

5 (1) the defendant's purpose was to protect the child or the defendant
6 from imminent physical harm, the belief in the existence of the imminent physical
7 harm was reasonable, and the defendant sought the assistance of law enforcement
8 personnel, a public agency, or the court of any state before, or within a reasonable
9 time after, committing the acts giving rise to the charges;

10 (2) the complainant had, before the defendant committed the acts giving
11 rise to the charge, failed for a protracted period of time to exercise the complainant's
12 rights to physical custody or access to the child, failed to give reasonable notice to the
13 defendant of a desire to resume exercise of the complainant's rights to physical
14 custody or access, and neither failure was the result of the defendant's denial of access
15 to the complainant or denial to the complainant of knowledge of the whereabouts of
16 the defendant;

17 (3) the acts giving rise to the charges were consented to by the
18 complainant; or

19 (4) the defendant, after providing or making a good faith effort to
20 provide notice to the person entitled to access to the child, failed to provide access to
21 the child due to reasons that a reasonable person would believe were directly related
22 to the welfare of the child, and allowed access to the child in accordance with the
23 court order within a reasonable period of time.

24 (c) Custodial interference in the third degree is a class B misdemeanor except
25 that a person convicted under this section after previously being convicted under this
26 section or under a law in another jurisdiction with substantially similar elements is
27 guilty of a class A misdemeanor.

28 * Sec. 2. AS 25.20 is amended by adding new sections to read:

29 Sec. 25.20.102. NOTICE OF RELOCATION. (a) The court shall include as
30 a condition of a custody or visitation order a requirement that a party intending to
31 relocate the temporary or permanent residence of a child shall give advance written

1 notice of the intention to the court and the other party at least 30 days before the
2 intended relocation. The notice must be in the form and contain the information that
3 the court considers necessary under the circumstances.

4 (b) Notwithstanding (a) of this section, a party is not required to give 30 days'
5 notice of an intent to relocate a child to temporary residence in a shelter or safe home
6 that is part of a domestic violence or sexual assault program, as defined in
7 AS 18.66.900. However, the relocating party shall notify the other party of the
8 relocation within 24 hours after entering the shelter or safe home unless

9 (1) the other party is the alleged perpetrator of the domestic violence
10 or sexual assault causing the relocation; or

11 (2) the acceptance policy of the shelter or safe home prohibits the
12 relocating party from divulging the location of the shelter or safe home.

13 (c) Notwithstanding (a) of this section, a party is not required to give 30 days'
14 advance notice of relocation, but is required to give notice as soon as possible, upon
15 relocating a child

16 (1) due to eviction by a landlord;

17 (2) for the purpose of obtaining medical care for the party or a member
18 of the party's immediate family for an emergency life-threatening condition as certified
19 by a physician; or

20 (3) for the purpose of visiting a relative who is in an emergency life-
21 threatening condition as certified by a physician.

22 Sec. 25.20.104. MINIMUM VISITATION SCHEDULE. (a) Except as
23 provided in (b) and (c) of this section, in a proceeding in which child custody is
24 awarded to one parent and visitation rights are awarded to the other parent, including
25 a dissolution proceeding under AS 25.24.200(a) but excluding a dissolution proceeding
26 under AS 25.24.200(b), the court shall award the visiting parent the following
27 visitation rights:

28 (1) 29.5 percent of the days and nights of the year, with specific days
29 and nights determined by the parents, except as provided in (2) - (4) of this subsection;

30 (2) the Thanksgiving period every other year;

31 (3) the school Christmas vacation period occurring before 9:00 o'clock

1 in the morning on December 25th in the years in which the visiting parent has
2 visitation during the Thanksgiving vacation period;

3 (4) the school Christmas vacation period occurring after 9:00 o'clock
4 in the morning on December 25th in the years in which the visiting parent does not
5 have visitation during the Thanksgiving vacation period.

6 (b) The court may vary from the requirements under (a) of this section if, after
7 consideration of the age, circumstances, and needs of the child, the court finds that
8 adherence to the requirements would cause harm or detriment to the child. The court
9 may vary from the requirements under (a)(3) - (4) of this section upon agreement of
10 the parents or upon a finding that the travel required between the residences of the
11 parent would make the schedule in (a)(3) - (4) of this section impracticable. If the
12 court makes a finding of impracticability, the court shall award the visiting parent the
13 entire school Christmas vacation period in the years when the visiting parent does not
14 have Thanksgiving visitation rights under (a)(2) of this section. A variation under this
15 subsection must be based solely on evidence in the record. The court shall find the
16 facts specially and include an explanation of its reasoning for ordering a variance
17 under this subsection.

18 (c) The court shall decrease the percentage specified in (a)'1) of this section
19 at the request of the parent with visitation rights.

20 (d) In this section,

21 (1) "school Christmas vacation period" means from 6:00 o'clock in the
22 evening on the last day of school before the beginning of the school Christmas
23 vacation period until 8:00 o'clock in the evening on the day before the resumption of
24 the school year, if a child is not in school, "school Christmas vacation period" means
25 the vacation period of the public school system where the custodial parent resides;

26 (2) "Thanksgiving period" means from 6:00 o'clock in the evening on
27 the Wednesday before Thanksgiving until 8:00 o'clock in the evening on the following
28 Sunday;

29 (3) "visiting parent" means the parent who does not have physical
30 custody of the child according to a court order.

31 * Sec. 3. AS 25.20.110 is amended by adding a new subsection to read:

1 (c) Intentional noncompliance with a court order to allow visitation with a
2 child, a finding of contempt for noncompliance with a court order to allow visitation
3 with a child, or a conviction of custodial interference in the third degree under
4 AS 11.41.340 constitutes a rebuttable presumption that there has been a change in
5 circumstances justifying a modification under (a) of this section if the modification is
6 in the child's best interests.

7 * Sec. 4. AS 25.20.115 is amended to read:

8 Sec. 25.20.115. ATTORNEY FEE AWARDS IN CUSTODY AND
9 VISITATION MATTERS. Except as provided in AS 25.20.140(e), in [IN] an action
10 to modify, vacate, or enforce that part of an order providing for custody of a child or
11 visitation with a child, the court may, upon request of a party, award attorney fees and
12 costs of the action. Except as provided in AS 25.20.140(e), in [IN] awarding
13 attorney fees and costs under this section, the court shall consider the relative financial
14 resources of the parties and whether the parties have acted in good faith.

15 * Sec. 5. AS 25.20.140 is amended by adding new subsections to read:

16 (d) In addition to monetary damages under (b) of this section, the court may

17 (1) order that the parent with visitation rights be given additional
18 visitation time with the child equal to or more than the amount of time missed because
19 of the other parent's noncompliance with visitation orders; if the custodial parent has
20 previously, within three years, been found in contempt for noncompliance with an
21 order allowing visitation, the additional amount of visitation time ordered under this
22 paragraph shall be equal to at least twice the amount of time missed because of the
23 noncompliance;

24 (2) award to the parent with visitation rights reasonable expenses
25 incurred by the parent to locate or return a child and an additional sum in liquidated
26 damages in the amount of \$100; however, if the custodial parent has previously, within
27 three years, been found in contempt for noncompliance with an order to allow
28 visitation, the liquidated damages under this paragraph shall be \$250.

29 (e) If the court finds that an action under this section was brought in bad faith,
30 the court shall order the moving party to pay to the nonmoving party all costs, full
31 reasonable attorney fees, and liquidated damages of \$100.

1 * Sec. 6. AS 25.24.210(e) is amended to read:

2 (e) If the petition is filed by both spouses under AS 25.24.200(a), the petition
3 must state in detail the terms of the agreement between the spouses concerning the
4 custody of children, child support, visitation, spousal maintenance and tax
5 consequences, if any, and fair and just division of property, including retirement
6 benefits. Agreements on visitation rights must meet the requirements of
7 AS 25.20.104. Agreements on spousal maintenance and property division must fairly
8 allocate the economic effect of dissolution and take into consideration the factors listed
9 in AS 25.24.160(a)(2) and (4). In addition, the petition must state

10 (1) the respective occupations of the petitioners;

11 (2) the income, assets, and liabilities of the respective petitioners at the
12 time of filing the petition;

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

14 (4) the name, date of birth, and current marital, educational, and
15 custodial status of each child born of the marriage or adopted by the petitioners who
16 is under the age of 19;

17 (5) whether the wife is pregnant;

18 (6) whether either petitioner requires medical care or treatment;

19 (7) whether a domestic violence complaint has been filed during the
20 marriage by a member of the household;

21 (8) whether either petitioner has received the advice of legal counsel
22 regarding a divorce or dissolution;

23 (9) other facts and circumstances that the petitioners believe should be
24 considered;

25 (10) that the petition constitutes the entire agreement between the
26 petitioners; and

27 (11) any other relief sought by the petitioners.

28 * Sec. 7. AS 25.24.230(b) is amended to read:

29 (b) If the petition is filed under AS 25.24.200(a) and is subject to
30 AS 25.24.220(h), the court may grant the spouses a fina' decree of dissolution and
31 shall order other relief as provided in this section if the court, upon consideration of

1 the information contained in the petition and the testimony of the spouse or spouses
2 at the hearing, finds that

3 (1) the spouses understand fully the nature and consequences of their
4 action;

5 (2) the written agreements between the spouses concerning child
6 custody, child support, and visitation comply with the requirements of AS 25.20.104
7 and are in the best interest of the children of the marriage, constitute the entire
8 agreement of the parties on child custody, child support, and visitation, and, as
9 between the spouses, are just;

10 (3) the written agreements between the spouses concerning spousal
11 maintenance and tax consequences, if any, division of property, including retirement
12 benefits, and allocation of obligations are just and constitute the entire agreement
13 between the parties;

14 (4) the spousal maintenance and division of property fairly allocate the
15 economic effect of dissolution and take into consideration the factors listed in
16 AS 25.24.160(a)(2) and (4);

17 (5) each spouse entered the agreement voluntarily and free from the
18 coercion of another person; and

19 (6) the conditions in AS 25.24.200(a) have been met.

20 * Sec. 8. MODIFICATION OF EXISTING ORDERS. The enactment of AS 25.20.104
21 under sec. 2 of this Act constitutes a change in circumstances requiring modification of an
22 order under AS 25.20.110(a) that was made before the effective date of this Act if

23 (1) a parent requests modification;

24 (2) application of AS 25.20.104 would result in an increase of visitation time;

25 and

26 (3) the modification is in the best interests of the child.

8-LS1606E-
Lauterbach
3/11/94

CS FOR HOUSE BILL NO. 422()
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE BUNDE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to custody and visitation rights."

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

3 * Section 1. AS 11.41 is amended by adding a new section to read:

4 Sec. 11.41.340. CUSTODIAL INTERFERENCE IN THE THIRD DEGREE.

5 (a) A person commits the crime of custodial interference in the third degree if

6 (1) being a relative of a child under 18 years of age or a relative of an
7 incompetent person and knowing that the person has no legal right to do so, the person
8 intentionally takes, entices, or keeps that child or incompetent person from a lawful
9 custodian; or

10 (2) being a lawful custodian of a child under 18 years of age and
11 knowing that the person has no legal right to do so, the person

12 (A) takes, entices, or keeps the child with the intent of denying
13 access to the child by another person during a time when the other person has
14 the legal right under court order to be with the child;

1 (B) fails to comply with an order to allow visitation with the
2 child by another person after being found in contempt for failure to comply
3 with a visitation order; or

4 (C) has engaged in a pattern of intentional violation of court
5 orders to allow visitation by another person with the child.

6 (b) The defendant has an affirmative defense to conviction under (a) of this
7 section if the defendant shows by clear and convincing evidence that

8 (1) the defendant's purpose was to protect the child or the defendant
9 from imminent physical harm, the belief in the existence of the imminent physical
10 harm was reasonable, and the defendant sought the assistance of law enforcement
11 personnel, a public agency, or the court of any state before, or within a reasonable
12 time after, committing the acts giving rise to the charges;

13 (2) the complainant had, before the defendant committed the acts giving
14 rise to the charge, failed for a protracted period of time to exercise the complainant's
15 rights to physical custody or access to the child, failed to give any notice to the
16 defendant of a desire to resume exercise of the complainant's rights to physical
17 custody or access, and neither failure was the result of the defendant's denial of access
18 to the complainant or denial to the complainant of knowledge of the whereabouts of
19 the defendant;

20 (3) the acts giving rise to the charges were consented to by the
21 complainant; or

22 (4) the defendant, after providing or making a good faith effort to
23 provide notice to the person entitled to access to the child, failed to provide access to
24 the child due to reasons that a reasonable person would believe were directly related
25 to the welfare of the child, and allowed access to the child in accordance with the
26 court order within a reasonable period of time.

27 (c) Custodial interference in the third degree is a class B misdemeanor except
28 that a person convicted under this section after previously being convicted under this
29 section or under a law in another jurisdiction with substantially similar elements is
30 guilty of a class A misdemeanor.

31 * Sec. 2. AS 25.20 is amended by adding new sections to read:

1 Sec. 25.20.102. NOTICE OF RELOCATION. The court shall include as a
2 condition of a custody or visitation order a requirement that a party intending to
3 relocate the temporary or permanent residence of a child shall give advance written
4 notice of the intention to the court and the other party at least 60 days before the
5 intended relocation. The notice must be in the form and contain the information that
6 the court considers necessary under the circumstances.

7 Sec. 25.20.104. MINIMUM VISITATION SCHEDULE. (a) Except as
8 provided in (b) and (c) of this section, in a proceeding in which child custody is
9 awarded to one parent and visitation rights are awarded to the other parent, the court
10 shall award the visiting parent at least the following visitation rights:

11 (1) 29.5 percent of the days and nights of the year, with specific days
12 and nights determined by the parents, except as provided in (2) - (4) of this subsection;

13 (2) the Thanksgiving period every other year;

14 (3) the school Christmas vacation period occurring before 9:00 o'clock
15 in the morning on December 25th in the years in which the visiting parent has
16 visitation during the Thanksgiving vacation period;

17 (4) the school Christmas vacation period occurring after 9:00 o'clock
18 in the morning on December 25th in the years in which the visiting parent does not
19 have visitation during the Thanksgiving vacation period.

20 (b) The court may vary from the requirements under (a) of this section if, after
21 consideration of the age, circumstances, and needs of the child, the court finds that
22 adherence to the requirements would cause harm or detriment to the child. A variation
23 under this subsection must be based solely on evidence in the record. The court shall
24 find the facts specially and include an explanation of its reasoning for ordering a
25 variance under this subsection.

26 (c) The court shall decrease the percentage specified in (a)(1) of this section
27 at the request of the parent with visitation rights.

28 (d) In this section,

29 (1) "school Christmas vacation period" means from 6:00 o'clock in the
30 evening on the last day of school before the beginning of the school Christmas
31 vacation period until 8:00 o'clock in the evening on the day before the resumption of

1 the school year; if a child is not in school, "school Christmas vacation period" means
2 the vacation period of the public school system where the custodial parent resides;

3 (2) "Thanksgiving period" means from 6:00 o'clock in the evening on
4 the Wednesday before Thanksgiving until 8:00 o'clock in the evening on the following
5 Sunday;

6 (3) "visiting parent" means the parent who does not have physical
7 custody of the child according to a court order.

8 * Sec. 3. AS 25.20.110 is amended by adding a new subsection to read:

9 (c) Intentional noncompliance with a court order to allow visitation with a
10 child, a finding of contempt for noncompliance with a court order to allow visitation
11 with a child, or a conviction of custodial interference in the third degree under
12 AS 11.41.340 constitutes a rebuttable presumption that there has been a change in
13 circumstances justifying a modification under (a) of this section if the modification is
14 in the child's best interests.

15 * Sec. 4. AS 25.20.115 is amended to read:

16 Sec. 25.20.115. ATTORNEY FEE AWARDS IN CUSTODY AND
17 VISITATION MATTERS. Except as provided in AS 25.20.140(e), in [IN] an action
18 to modify, vacate, or enforce that part of an order providing for custody of a child or
19 visitation with a child, the court may, upon request of a party, award attorney fees and
20 costs of the action. Except as provided in AS 25.20.140(e), in [IN] awarding
21 attorney fees and costs under this section, the court shall consider the relative financial
22 resources of the parties and whether the parties have acted in good faith.

23 * Sec. 5. AS 25.20.140 is amended by adding new subsections to read:

24 (d) In addition to monetary damages under (b) of this section, the court may

25 (1) order that the parent with visitation rights be given additional
26 visitation time with the child equal to or more than the amount of time missed because
27 of the other parent's noncompliance with visitation orders; if the custodial parent has
28 previously, within three years, been found in contempt for noncompliance with an
29 order allowing visitation, the additional amount of visitation time ordered under this
30 paragraph shall be equal to at least twice the amount of time missed because of the
31 noncompliance;

1 (2) award to the parent with visitation rights reasonable expenses
2 incurred by the parent to locate or return a child and an additional sum in liquidated
3 damages in the amount of \$100; however, if the custodial parent has previously, within
4 three years, been found in contempt for noncompliance with an order to allow
5 visitation, the liquidated damages under this paragraph shall be \$250.

6 (e) If the court finds that an action under this section was brought in bad faith,
7 the court shall order the moving party to pay to the nonmoving party all costs, full
8 reasonable attorney fees, and liquidated damages of \$100.

9 * Sec. 6. MODIFICATION OF EXISTING ORDERS. The enactment of AS 25.20.104
10 under sec. 2 of this Act constitutes a change in circumstances requiring modification of an
11 order under AS 25.20.110(a) that was made before the effective date of this Act if application
12 of AS 25.20.104 would result in an increase of visitation time of at least 25 percent and the
13 modification is in the best interests of the child.

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 16, 1994

SUBJECT: Changes in CSHB 422(HES) (Work Order No. 8-LS1606(K))

TO: Representative Con Bunde
ATTN: Pattie Swenson

FROM: Terri Lauterbach 
Legislative Counsel

Enclosed is the draft version of CSHB 422(HES) that you requested. This memorandum will explain the changes in this CS, compared to the "E" version of the bill that the HESS committee considered on Monday and last Friday.

Section 1. There were concerns expressed in testimony that the penalties in section 1 could apply to a one-time failure to allow visitation or to a situation where visitation was denied out of concern for the safety of the children. To address that concern, the language at page 1, lines 12 - 14, of the "E" version has been deleted from the HES CS. That language would have applied the penalties when a person

takes, entices, or keeps the child with the intent of denying access to the child by another person during a time when the other person has the legal right under court order to be with the child.

Under the HES CS, criminal penalties could still be applied in cases where visitation is denied after a previous finding of contempt by a court or if there is a pattern of intentional violation of court orders to allow visitation.

There was also a concern by a witness about the type of notice that must be given by a noncustodial parent who wants to resume visitation rights after a long period of failing to exercise visitation rights. On page 2, line 12, of the previous CS, the term was "any notice." In the HES CS, this has been changed to "reasonable notice" (page 2, line 12). The "reasonableness" of the notice given would be determined by a court (or jury) when the custodial parent presents this defense in a prosecution.

Section 2.

Sec. 25.20.102. NOTICE OF RELOCATION. The notice requirement of this section has been changed from 60 days' notice to 30 days' notice and exceptions have been provided in (b) and (c) for shelters, evictions, emergency medical needs, and the need to visit relatives with emergency medical conditions.

Sec. 25.20.104. MINIMUM VISITATION SCHEDULE. The ambiguity of the previous CS as to whether the minimum schedule is applicable in dissolution cases has been clarified. The HES CS provides that the minimum schedule is applicable to dissolutions except in cases where a spouse is absent and cannot be located after reasonable efforts. This exception means that 29.5 percent visitation rights would not have to be awarded to a parent who has abandoned the family.

The parties in a dissolution where both parents are present could still agree to visitation that is less than 29.5 percent, but this clarification ensures that the parent with visitation rights has the right to 29.5 percent if that parent wants it.

The phrase "at least" has been deleted from the last line of the lead-in language in subsection (a). Since this section covers only situations where custody is awarded to one parent and visitation rights to the other parent, the concept of visitation above 29.5 percent has no meaning. (Above 29.5 percent would be shared custody, not visitation rights.) Therefore, the phrase "at least" had no meaning. Removing the phrase does not limit the court's discretion to award shared custody in appropriate circumstances. Shared custody is not governed by this minimum visitation schedule.

The other change in this section concerns the Christmas visitation schedule. There was some concern that splitting every Christmas vacation in half was not always best. Therefore, subsection (b) provides that the parents may agree to a different Christmas visitation schedule for any reason they want to. It also provides that, even without an agreement of the parents, a court may award alternate Christmas vacations to the visiting parent upon a finding that travel considerations make an annual split impracticable.

Sections 3 - 5. No changes.

Sections 6 - 7. These sections are new to the bill. They implement the clarification described under section 2 in this memorandum as to the applicability of the minimum visitation schedule to dissolution proceedings.

Section 6 states that parental agreements in a dissolution that is filed by both parents must comply with AS 25.20.104. Section 7 requires the court, before approving a dissolution, to make a finding that the custody/visitation agreement complies with AS 25.20.104. This will not require that all dissolution proceedings result in 29.5

Representative Con Bunde
March 16, 1994
Page 3

percent visitation rights. Since AS 25.20.104 includes a provision that a visiting parent may request less than 29.5 percent visitation rights, a visiting parent may also make that request in a dissolution proceeding. Therefore, a visitation schedule of less than 29.5 percent can still comply with AS 25.20.104.

Section 8. This section is changed so that there is no longer a threshold requirement that a visitation modification under this bill result in a 25% increase in visitation time. In the HES CS, a modification is justified if the minimum schedule in AS 25.20.104 would result in any increase in the visitation time.

This section is also clarified by the addition of paragraph (1). It is my understanding that the committee's intent is that modifications under the new minimum schedule will only occur if a parent requests a modification. If parents with old orders are happy with their visitation percentage, there is no need for them to go to court for a change. Section 6 was only intended to help unhappy parents who are seeking to expand their visitation rights. The new language in paragraph (1) allows this result and clarifies that not all orders will automatically be changed by this new law.

I hope this explains the new CS in sufficient detail. Please let me know if I can be of further assistance.

TML:mi
94-061.mai

Enclosure

ASSOCIATION FOR CHILDREN FOR ENFORCEMENT OF SUPPORT

Anchorage Chapter

P. O. Box 92910, Anchorage, AK 99509, 274-2010

March 18, 1994

Dear HESS Committee Members:

I speak for thousands of custodial parents (mostly women) and children around Alaska: this DADS VENGEANCE bill should remain and die in committee. You are not seriously considering Rep. Davis' bill requiring dads to match rights with responsibilities...requiring them to make use of the visitation they wanted. What about Rep. Martin's bill making it a crime to help someone avoid paying child support. If their bills are not good enough to leave this committee - then certainly this piece of DADS VENGEANCE legislation should not either.

Despite minor improvements to ^{CSHB422}~~CSHB~~ since the last hearing, this bill continues to be a "DADS VENGEANCE" bill - making women criminals while "dads" continue to impudently refuse to pay child support. Contrary to emotional testimony, enforcement of the criminal non-support law rarely occurs. Ask the Dept. of Law how many non-custodial parents have been jailed for not paying child support - and you will learn that it rarely, if ever, occurs despite the fact that there are thousands who do not pay their support.

I have heard legislators and others state that the criminal sanctions won't be enforced, so "don't worry about it." That is a smokescreen! Any law can be enforced if someone chooses to do so.

RE: Work draft. p2, lines 10-16: Dad can stay out of his children's lives for years, but if he chooses, then your bill allows him to return and give "reasonable notice" and resume his "rights" as a father, but never having had to face up to his "responsibilities" of being a father. Meanwhile, mom disagrees with his definition of "reasonable notice" - she is still arrested and must argue what was "reasonable" in court.

Additionally, the legislature is not equipped with the expertise or knowledge to determine what kind of visitation is in the best interests of the child - by requiring a minimum amount of visitation. Only the courts can get to the truth in custody and visitation matters - they hear

GLENDA J. STRAUBE

1318 N Street
Anchorage, AK 99501
(H) 278-0840
(FAX) 272-2030

March 15, 1994

Members of the House HESS Committee
Alaska State Legislature

RE: CSHB 422 - Custody and Visitation Rights

Dear Committee Member:

I urge you not to pass out of committee this "dads" bill. I call it such because a "dads" group was responsible for the original work on this bill. The same "dads" group which fights to decrease child support payments and weaken child support laws. They almost accomplished this in the original bill by requiring enough visitation hours so that their child support payments would decrease. Thank you for seeing through that trick and making those necessary changes.

My testimony is not aimed at protecting myself or any selfish reason....my children are grown. I will not be personally affected by this bill. But I have had experience with the issue of visitation. By the way, I believe strongly that, in most cases, children should have access to their parents. But this bill goes way beyond that. Since most custodial parents are moms, I will use that term throughout to indicate custodial parents, and dads to indicate those with visitation rights.

This bill is strictly aimed at placing all power in the hands of dads, while making moms criminals. You may say that this won't happen if the moms behave and allow all the visitation granted by this bill, but you have structured this bill so that if a mom has good reason to believe that her child(ren) will be in danger -- she will first be arrested in front of the children, taken to jail, and face 90 days in jail and a \$1,000 fine. Meanwhile, she must find a lawyer and the burden of proof is on her shoulders. But, never mind, because the damage is already done.

Let me give you an example. There was only one time I denied my children's dad visitation and it was at their insistence. They had told me that their dad was drinking alot and that they had been in two different one-car accidents with him and they were scared to death. I informed him

Public Testimony - CSHB422

Glenda J. Straube

Page 2

that I just couldn't let them go with him because neither the kids nor I wanted them to face the possibility that the next accident would be fatal. Their dad was very angry and threatened me. Thereafter, he and his wife used that one time denial to continuously tell everyone that I was always keeping the kids from him. The truth was that this occurred only once. But I did tell him that unless he could stop drinking and driving he could not take them with him, but could visit them in a more structured environment.

If this proposed law was in effect, he could have called the police and had me arrested. (He was never drunk when he came to pick them up, so the police would have had to let him take the children.) Meanwhile, my children would be traumatized watching mom carted off in a police car. I was one of the working poor at the time (too poor to afford a lawyer and too much money to get a public defender), like many single mom with kids - especially since most don't see any child support payments. I would then be forced to defend myself (by clear and convincing evidence) that I didn't want to place my children's life in jeopardy. And how would I prove that? My word against his? There were no records of the accidents (he drove away from them)...the kids couldn't, shouldn't or wouldn't testify for me (they would have been with their dad during my incarceration). So, I'm found guilty and sentenced to 90 days in jail.

Now you can say this won't happen, but that's simply bull! You should not be proposing or passing laws which you either think won't be enforced or for which you try and convince the public they won't be enforced. You say "don't worry about it," but in reality there's a lot to be worried about.

Remember the recent case of some nutty guy who wrote his own obituary for the Anchorage Daily News so everyone would think he was dead - and then he left the state. This is the same guy for whom a police officer in Eagle River or the Valley was intervening on behalf of with the mother of his child -- to convince her to let the child go with this man. Under this law, he can now force such a thing. She would have gone to jail and this loony guy would have the child? And are you willing to personally hold yourselves responsible for allowing this to happen? And if my children had died in a car accident with their dad, after you forced me to hand them over....what would you have said to me to make up for that incredible loss?

To sum it up, this is outrageous legislation aimed at making moms criminals - and taking the kids away from their custodial parent while that parent tries to defend themselves. How can you be willing to pass onerous laws aimed at putting these moms once again under the thumbs

Public Testimony - CSHB422

Glenda J. Straube

Page 3

of the dads, yet you laugh at the thought of Terry Martin's bill which would make it a crime to knowingly help someone avoid paying child support.

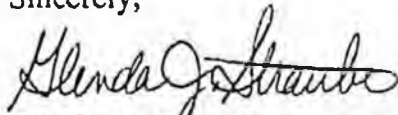
You are placing all the rights in the hands of the dads, with no accompanying responsibilities. You may laugh at Rep. Bettye Davis' bill which would require dads to make use of their visitation, but once again it shows that you wish to give them all the rights - with no responsibilities.

You would make moms criminals for protecting their children or for being set-up by a vengeful dad, while the state refuses to enforce existing criminal sanctions against people (primarily dads) who purposefully deprive their children of support as a way to be vengeful to the ex-spouse or girlfriend.

You would make mom a criminal for refusing to let her kids go with a drug addict...because she doesn't have the money to go to court and change mandatory visitation and he doesn't have a needle sticking out of his arm so mom can't prove he's a drug addict.

In closing, everyone screams that their aren't enough police to deal with violent crime right now, yet you are willing to have them continue mediating domestic disagreements....you will now have them using their precious time arresting moms. You're willing to see them put moms in jail, but you can't even get police to put stalkers in jail.

Sincerely,



Glenda J. Straube

Around the Country

Texas

False Allegations to be Prosecuted

The Texas Department of Protective and Regulatory Services (DPRS) plans to begin prosecuting family members who make false abuse reports, the first state known to announce such a plan.

Janice Caldwell, executive director of the agency, said the plan is designed to concentrate limited resources on serious cases. She said some abuse reports are little more than an effort to get the agency involved in child custody disputes. Making a false claim on child abuse is illegal in Texas, but state law requires people to report "suspected abuse."

Ms. Caldwell said false reports must be prosecuted if the agency is to handle the growing number of child abuse reports. During fiscal 1992, DPRS investigated 107,276 reports of suspected child abuse and neglect—18 percent more than the previous year.

An editorial in the Houston Chronicle September 1, 1993 supported Ms. Caldwell's plan, as have attorneys and child experts from around the country.

CRC General Counsel Mike Oddenino, Arcadia, CA., wrote to Ms. Caldwell that "...children who are not actually abused by an individual are truly abused when they wrongly become the subject of an investigation stemming from a false accusation. Of course, who can measure the grief an adult experiences when falsely charged with what is certainly the most heinous of crimes."

convictions, it would be considered a misdemeanor.

The law, which amends the Illinois Criminal Code, Section 10-5.5, says "Every person who, in violation of the visitation provisions of a court order relating to child custody, detains or conceals a child with the intent to deprive another person of his or her rights to visitation shall be guilty of unlawful visitation interference."

The bill was signed into law by Governor Jim Edgar on July 20, 1993.

Ann Danner, CRC coordinator in Illinois, credits CRC activist Jeff Strang who worked with CRC Illinois affiliates (Family Illinois) to educate legislators about the needs of children regarding enforcement of visitation.

"We hope this law will set a precedent for other states to follow," said Danner.

She said the next step is to work with police and states attorney's offices in enforcing this new law.

Illinois

Illinois has passed a law that makes visitation interference a crime. If a parent denies access (visitation), the police will be able to issue the denying parent a citation to appear in court on a petty offense. The consequence would be a fine, but after three

New Directory of Organizations Now Available

Copies of CRC's new "Parenting International Directory," the fifth edition of its directory, is available in hard copy (updated annually) and on IBM 5 1/4" and 3 1/2" disks (updated semi-annually). The cost is \$12.00 for either format for CRC members, and \$15.00 for non-members.

The directory features:

- * a state by state listing, in zip code order, of parenting groups within a state;
- * a special section that lists national organizations involved in parenting issues;
- * a list of abbreviations of terms used in the directory.

Because CRC does a great deal of networking, and constantly updates its data base, the directory can be relied on for accuracy.

The directory can be a valuable resource in making referrals around the country to and from your organization.

Order your copy now from CRC.

Child Support Bills

Continued from page 9

* expand the Parent Locator System to include visitation orders. At present, the Parent Locator System can only be used to find the location of parents who owe financial child support, and in parental kidnapping cases.

The bill implements many of the recommendations of the Interstate Child Support Commission's report which was issued in 1992.

The Senate Finance Committee, which has jurisdiction over the bill, can be reached by phone at (202) 224-4515.

CRC's View

CRC has decided to oppose S. 689 and H.R. 1600, following consultation with our state chapter coordinators, because increased government regulation of only the financial child support aspects are worsening the problem for children.

CRC's position is based partly on the following:

• "From a federal budget perspective, Child Support Enforcement is an expensive disappointment," says a report issued in June, 1992 by Republican House members E. Clay Shaw, Nancy L. Johnson and Fred Grandy.

• A report provided by the General Accounting Office at the request of Congresswomen Marge Roukema and Barbara Kennelly and Senator Bill Bradley, released January 9, 1992 stated that 66 percent of mothers with a child support award who did not receive payment from the fathers say it is because the fathers were unable to pay. This data is not reflected in the legislation.

TCN: 40507 DATE & TIME: 03/15/94 15:45 TO 17:00 STATUS:7 STATS: IN

*** UNDER SUMMARY ***

SPONSOR: HB# HOUSE HEALTH, EDUCATION AND SOCIAL SERV CHAIRS: TOCHET
PURPOSE: PUB PUBLIC HEARING LEGISLATIVE BURDE
CONTACT: LYNN TEL#: (907)463-6825
CHAIRING SITE: JUNEAU CAPITOL CAP106

SPONSOR REMARKS(PUB): TESTIMONY:Y ALLOWED 2 MINUTE LIMIT
TESTIMONY WILL BE TAKEN WITH A 2 MINUTE LIMIT. MODERATORS TO STRICTLY ENFORCE.
TOP REQUESTED ON 03/15/94 AND HAS 3 UPDATES

*** AGENDA ***

1 HB 422 CHILD CUSTODY AND VISITATION RIGHTS

*** PARTICIPATING LIOS ***

ANC ANCHORAGE 715 N 4TH. \$200 LOCATION STAFF
FBX FAIRBANKS 119 N CUSHMAN ST LOCATION STAFF
JNU JUNEAU CAPITOL CAP106 LOCATION STAFF
MAT MATSU 165 E PARKS HWY. LOCATION STAFF

*** VOLUNTEER & OFFNET SITES ***

222 OFF OFFNET 1 ANCHORAGE STEPHANI HOBRIE (907)349-5826

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2 KARLY HUNTINGTON TSFY, HB 422
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3 JIN ARNESEN TSFY, HB 422
1800 SHORE DR ANCHORAGE AK 99515 (907)344-7707
4 STEVE CULVER TSFY, HB 422
1441 NAJELLA ANCHORAGE AK 99515 (907)345-4836
5 RUSS BLONE TSFY, HB 422
PO BOX 241936 ANCHORAGE AK 99523 (907)349-4051
6 GARY MAXWELL TSFY, HB #22
PO BOX 92083 ANCHORAGE AK 99509 (907)274-7358
7 KEKI BASLER TSFY, HB 422
5800 COLLEGE DR ANCHORAGE AK 99504 (907)338-1824
8 MICHELLE JANSEN TSFY, HB 422
PO BOX 242481 ANCHORAGE AK 99524 (907)248-4818
9 DIANA ALCANTRA TSFY, HB 422
17421 TEKLANIKA EAGLE RIVER AK 99577 (907)696-4446

PARTICIPANTS IN: FAIRBANKS

FBX

1 FAITH TAYE TSFY, HB 422
717 9TH AVE. FAIRBANKS AK 99701 (907)452-6770

PARTICIPANTS IN: JUNEAU

JNU

1 TO OBSERVE OBSV. ALL ITEMS
2 TO OBSERVE OBSV. ALL ITEMS
3 TO OBSERVE OBSV. ALL ITEMS
4 TO OBSERVE OBSV. ALL ITEMS
5 TO TESTIFY TSFY. ALL ITEMS
6 TO TESTIFY TSFY. ALL ITEMS
7 TO TESTIFY TSFY. ALL ITEMS

TCN: 40507 DATE & TIME: 03/15/94 15:45 TO 17:00 STATUS:7 STATS: IN

PARTICIPANTS IN: JUNEAU

JNU

8 TO TESTIFY TSFY. ALL ITEMS

9 TO TESTIFY TSFY. ALL ITEMS
10 TO TESTIFY TSFY. ALL ITEMS

PARTICIPANTS IN: MATSU MAT
1 MS TRACY BRISKILL TSFY. HB 422
POB 375731 AK 99687 (907)373-1448
2 MS JANNY STEELE WAZILLA TSFY. HB 422
POB 979535 AK 99687 (907)373-3261
3 MR BRIAN STEELE WAZILLA OSBY. HB 422
POB 979535 AK 99687 (907)373-3261

PARTICIPANTS IN: OFFNET 1 ZZZ OF1
1 STEPH RCBRIDE TSFY. HB 422
AK (907)1000-0000

1
8-LS1606E.1 ✓
Lauterbach
3/12/94

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE BUNDE

TO: CSHB 422() Draft 8-LS1606E

Page 3, line 10:

Delete "at least"

2

8-LS1606E.2 ✓
Lauterbach
3/12/94

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE BUNDE

TO: CSHB 422() Draft 8-LS1606E

Page 3, line 22, after "child.":

Insert "The court may vary from the requirements under (a)(3) - (4) of this section upon agreement of the parents or upon a finding that the travel required between the residences of the parents would make the schedule in (a)(3) - (4) of this section impracticable. If the court makes a finding of impracticability, the court shall award the visiting parent the entire school Christmas vacation period in the years when the visiting parent does not have Thanksgiving visitation rights under (a)(2) of this section."

#3

8-LS1606E.3 ✓
Lauterbach
3/12/94

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE BUNDE

TO: CSHB 422() Draft 8-LS1606E

Page 5, line 12:

Delete "of at least 25 percent"

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE TOOHEY

TO: CSHB 422() Draft 8-LS1606E

Page 3, line 1, after "RELOCATION.":

Insert "(a)"

Page 3, after line 6:

Insert a new subsection to read:

"(b) Notwithstanding (a) of this section, a party is not required to give 60 days' notice of an intent to relocate a child to temporary residence in a shelter or safe home that is part of a domestic violence or sexual assault program, as defined in AS 18.66.900. However, the relocating party shall notify the other party of the relocation within 24 hours after entering the shelter or safe home unless

(1) the other party is the alleged perpetrator of the domestic violence or sexual assault causing the relocation; or

(2) the acceptance policy of the shelter or safe home prohibits the relocating party from divulging the location of the shelter or safe home."

A M E N D M E N T #5

OFFERED IN THE HOUSE

BY REPRESENTATIVE B.DAVIS

TO: CSHB 422() Draft 8-LS1606E

Page 3, line 1, after "RELOCATION.":

Insert "(a)"

Page 3, line 4:

Delete "60"

Insert "30"

Page 3, after line 6:

Insert new subsections to read:

"(b) Notwithstanding (a) of this section, a party is not required to give 30 days' notice of an intent to relocate a child to temporary residence in a shelter or safe home that is part of a domestic violence or sexual assault program, as defined in AS 18.66.900. However, the relocating party shall notify the other party of the relocation within 24 hours after entering the shelter or safe home unless

(1) the other party is the alleged perpetrator of the domestic violence or sexual assault causing the relocation; or

(2) the acceptance policy of the shelter or safe home prohibits the relocating party from divulging the location of the shelter or safe home.

(c) Notwithstanding (a) of this section, a party is not required to give 30 days' advance notice of relocation, but is required to give notice as soon as possible, upon relocating a child

(1) due to eviction by a landlord;

(2) for the purpose of obtaining medical care for the party or a member of the party's immediate family for an emergency life-threatening condition as certified by a physician; or

(3) for the purpose of visiting a relative who is in an emergency life-threatening condition as certified by a physician."

A M E N D M E N T #6

OFFERED IN THE HOUSE

BY REPRESENTATIVE B.DAVIS

TO: CSHB 422() Draft 8-LS1606E

Page 1, line 10, after "(2)":

Insert "except as provided in (b) of this section,"

Page 2, after line 5:

Insert a new subsection to read:

"(b) A person may not be convicted under (a)(2) of this section for an act or omission that occurred before the person was ordered to participate in mediation under AS 25.20.085 for a dispute over visitation rights involving the same child whose visitation schedule underlies the allegations under (a)(2) of this section."

Reletter the following subsections accordingly.

Page 2, after line 30:

Insert new bill sections to read:

** Sec. 2. AS 25.20.080(a) is amended to read:

(a) At any time within 30 days after a petition for child custody is filed under AS 25.20.060 or a petition to enforce visitation rights is filed, the court may order the parties to submit to mediation. Each party shall have the right to challenge peremptorily one mediator appointed.

* Sec. 3. AS 25.20.080(c) is amended to read:

(c) If the mediator determines that mediation efforts are unsuccessful, the mediator shall terminate mediation and notify the court that mediation efforts have failed. The custody or visitation proceeding, as applicable, shall proceed in the usual manner.

* Sec. 4. AS 25.20.080(d) is amended to read:

(d) Upon submission of the parties to mediation under this section, a pending child custody or visitation proceeding shall be stayed for a period of 30 days or until the court is notified that mediation efforts have failed. All court orders made during the pending [CUSTODY] proceeding remain in effect during the period of mediation."

Renumber the following bill sections accordingly.

Page 5, line 10:

Delete "sec. 2"

Insert "sec. 5"



House of Representatives

SPONSOR STATEMENT
CSHB 422

“An Act relating to custody and visitation rights.”

The divorce rate has risen rapidly since the mid 1960's. The nation has experienced many social problems that can be directly related to a child lacking a relationship with two parents. Children of divorced parents have the right to maintain a relationship with both parents, and gain the benefits that each has to offer.

The amount of child visitation ordered by a court is the greatest concern to many parents. The amount of visitation ordered by the court is directly related to the amount of child support a non-custodial parent will have to pay. This bill is not an opportunity to lower child support payments. It is an opportunity for non-custodial parents to gain access to their children and to have an ongoing relationship with them.

This proposed legislation provides minimum visitation guidelines for parents who do not have shared custody or joint custody of their children. Present statutes do not include any type of minimum visitation guidelines. This hole in the statutes often results in the children being placed in the center of an emotional argument.

CSHB 422 contains some improvements. The significant changes include flexibility for visitation times, and the ability of a parent to enforce court ordered visitation has been strengthened.

Section 1 of HB 422 and CSHB 422 are identical. This section enumerates the circumstances in which a person can be charged with custodial interference in the third degree. Additionally, this section clarifies when custodial interference in the third degree is a class B misdemeanor or a class A misdemeanor.

Both versions of HB 422 include a provision for notice of relocation. The CS requires the court and the visiting parent to be notified 60 days in advance of the custodial parents move. The notice must contain the information the court considers necessary.

The original form of HB 422 provides visitation guidelines based on the age of the children, their geographical location, and the time of year or day of the week. CSHB 422 has deleted any reference to the age of a child. All children should have access to both parents regardless of age.

The original HB 422 set minimum visitation guidelines for weekends, holidays, and school vacations. These references are deleted in the CS in favor of a more flexible schedule based on percentage of time (29.5%). In addition, a visiting parent has the right to decrease the amount of visitation time if desired. The reason 29.5% visitation is used is to avoid any decrease in the child support payment. If a child is with the visiting parent more than 30% of the time the payment of child support is calculated differently, and the payment is usually decreased.

Both the HB 422 and CSHB 422 address intentional noncompliance with a court order to allow visitation in section 3. The CS includes custodial interference with visitation as a change in circumstance that will allow a parent to modify a visitation order. Usual reasons for modification of a visitation order are financial problems or illness of a child. Custodial interference will be a new consideration.

Section 4 of both versions of this legislation remain the same. Attorney fee awards may be awarded after consideration of the financial resources of the parties.

Section 5 of HB 422 and CSHB 422 are the same in their intent. CSHB 422 allows the visiting parent to be awarded at least twice the amount of visitation time that has been denied because of custodial interference, as well as monetary damages. This section will be a deterrent to people who would deny access to children without good reason.

The passage of this legislation will be a step forward for children. Parents are divorced, children are not. The intent of this legislation is to exclude children as a tool in negotiations during and after a divorce. They deserve the attention of both parents in a consistent manner. I urge your positive support of this proposed legislation.

8-LS1606E-
Lauterbach
3/11/94

CS FOR HOUSE BILL NO. 422()
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE BUNDE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to custody and visitation rights."

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

3 * Section 1. AS 11.41 is amended by adding a new section to read:

4 Sec. 11.41.340. CUSTODIAL INTERFERENCE IN THE THIRD DEGREE.

5 (a) A person commits the crime of custodial interference in the third degree if

6 (1) being a relative of a child under 18 years of age or a relative of an
7 incompetent person and knowing that the person has no legal right to do so, the person
8 intentionally takes, entices, or keeps that child or incompetent person from a lawful
9 custodian; or

10 (2) being a lawful custodian of a child under 18 years of age and
11 knowing that the person has no legal right to do so, the person

12 (A) takes, entices, or keeps the child with the intent of denying
13 access to the child by another person during a time when the other person has
14 the legal right under court order to be with the child;

1 (B) fails to comply with an order to allow visitation with the
2 child by another person after being found in contempt for failure to comply
3 with a visitation order, or

4 (C) has engaged in a pattern of intentional violation of court
5 orders to allow visitation by another person with the child.

6 (b) The defendant has an affirmative defense to conviction under (a) of this
7 section if the defendant shows by clear and convincing evidence that

8 (1) the defendant's purpose was to protect the child or the defendant
9 from imminent physical harm, the belief in the existence of the imminent physical
10 harm was reasonable, and the defendant sought the assistance of law enforcement
11 personnel, a public agency, or the court of any state before, or within a reasonable
12 time after, committing the acts giving rise to the charges;

13 (2) the complainant had, before the defendant committed the acts giving
14 rise to the charge, failed for a protracted period of time to exercise the complainant's
15 rights to physical custody or access to the child, failed to give any notice to the
16 defendant of a desire to resume exercise of the complainant's rights to physical
17 custody or access, and neither failure was the result of the defendant's denial of access
18 to the complainant or denial to the complainant of knowledge of the whereabouts of
19 the defendant;

20 (3) the acts giving rise to the charges were consented to by the
21 complainant; or

22 (4) the defendant, after providing or making a good faith effort to
23 provide notice to the person entitled to access to the child, failed to provide access to
24 the child due to reasons that a reasonable person would believe were directly related
25 to the welfare of the child, and allowed access to the child in accordance with the
26 court order within a reasonable period of time.

27 (c) Custodial interference in the third degree is a class B misdemeanor except
28 that a person convicted under this section after previously being convicted under this
29 section or under a law in another jurisdiction with substantially similar elements is
30 guilty of a class A misdemeanor.

31 * Sec. 2. AS 25.20 is amended by adding new sections to read:

1 Sec. 25.20.103. NOTICE OF RELOCATION. The court shall include as a
2 condition of a custody or visitation order a requirement that a party intending to
3 relocate the temporary or permanent residence of a child shall give advance written
4 notice of the intention to the court and the other party at least 60 days before the
5 intended relocation. The notice must be in the form and contain the information that
6 the court considers necessary under the circumstances.

7 Sec. 25.20.104. MINIMUM VISITATION SCHEDULE. (a) Except as
8 provided in (b) and (c) of this section, in a proceeding in which child custody is
9 awarded to one parent and visitation rights are awarded to the other parent, the court
10 shall award the visiting parent at least the following visitation rights:

11 (1) 29.5 percent of the days and nights of the year, with specific days
12 and nights determined by the parents, except as provided in (2) - (4) of this subsection;

13 (2) the Thanksgiving period every other year;

14 (3) the school Christmas vacation period occurring before 9:00 o'clock
15 in the morning on December 25th in the years in which the visiting parent has
16 visitation during the Thanksgiving vacation period;

17 (4) the school Christmas vacation period occurring after 9:00 o'clock
18 in the morning on December 25th in the years in which the visiting parent does not
19 have visitation during the Thanksgiving vacation period.

20 (b) The court may vary from the requirements under (a) of this section if, after
21 consideration of the age, circumstances, and needs of the child, the court finds that
22 adherence to the requirements would cause harm or detriment to the child. A variation
23 under this subsection must be based solely on evidence in the record. The court shall
24 find the facts specially and include an explanation of its reasoning for ordering a
25 variance under this subsection.

26 (c) The court shall decrease the percentage specified in (a)(1) of this section
27 at the request of the parent with visitation rights.

28 (d) In this section,

29 (1) "school Christmas vacation period" means from 6:00 o'clock in the
30 evening on the last day of school before the beginning of the school Christmas
31 vacation period until 8:00 o'clock in the evening on the day before the resumption of

1 the school year, if a child is not in school, "school Christmas vacation period" means
2 the vacation period of the public school system where the custodial parent resides;

3 (2) "Thanksgiving period" means from 6:00 o'clock in the evening on
4 the Wednesday before Thanksgiving until 8:00 o'clock in the evening on the following
5 Sunday;

6 (3) "visiting parent" means the parent who does not have physical
7 custody of the child according to a court order.

8 * Sec. 3. AS 25.20.110 is amended by adding a new subsection to read:

9 (c) Intentional noncompliance with a court order to allow visitation with a
10 child, a finding of contempt for noncompliance with a court order to allow visitation
11 with a child, or a conviction of custodial interference in the third degree under
12 AS 11.41.340 constitutes a rebuttable presumption that there has been a change in
13 circumstances justifying a modification under (a) of this section if the modification is
14 in the child's best interests.

15 * Sec. 4. AS 25.20.115 is amended to read:

16 Sec. 25.20.115. ATTORNEY FEE AWARDS IN CUSTODY AND
17 VISITATION MATTERS. Except as provided in AS 25.20.140(e), in [IN] an action
18 to modify, vacate, or enforce that part of an order providing for custody of a child or
19 visitation with a child, the court may, upon request of a party, award attorney fees and
20 costs of the action. Except as provided in AS 25.20.140(e), in [IN] awarding
21 attorney fees and costs under this section, the court shall consider the relative financial
22 resources of the parties and whether the parties have acted in good faith.

23 * Sec. 5. AS 25.20.140 is amended by adding new subsections to read:

24 (d) In addition to monetary damages under (b) of this section, the court may
25 (1) order that the parent with visitation rights be given additional
26 visitation time with the child equal to or more than the amount of time missed because
27 of the other parent's noncompliance with visitation orders; if the custodial parent has
28 previously, within three years, been found in contempt for noncompliance with an
29 order allowing visitation, the additional amount of visitation time ordered under this
30 paragraph shall be equal to at least twice the amount of time missed because of the
31 noncompliance;

1 (2) award to the parent with visitation rights reasonable expenses
2 incurred by the parent to locate or return a child and an additional sum in liquidated
3 damages in the amount of \$100; however, if the custodial parent has previously, within
4 three years, been found in contempt for noncompliance with an order to allow
5 visitation, the liquidated damages under this paragraph shall be \$250.

6 (e) If the court finds that an action under this section was brought in bad faith,
7 the court shall order the moving party to pay to the nonmoving party all costs, full
8 reasonable attorney fees, and liquidated damages of \$100.

9 * **Sec. 6. MODIFICATION OF EXISTING ORDERS.** The enactment of AS 25.20.104
10 under sec. 2 of this Act constitutes a change in circumstances requiring modification of an
11 order under AS 25.20.110(a) that was made before the effective date of this Act if application
12 of AS 25.20.104 would result in an increase of visitation time of at least 25 percent and the
13 modification is in the best interests of the child.

February 26, 1994

Rep. Con Bunde, House HESS Co-chair
Senator Steve Rieger, Senate HESS, chair
Other legislators



Re: HB 422 VISITATION (PARENTING) GUIDELINES LEGISLATION

Dear Legislators,

Recent newspaper articles that appeared in the Juneau Empire have attacked Rep. Con Bunde in regards to HB 422, which details the parenting arrangements for families after a separation or divorce.

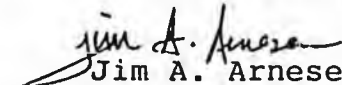
The views expressed by a small vocal minority, whose only concern is the collection of child support, does not address the more important issue of continued parenting, which will benefit both children and parents alike. Child support is not a substitute for parenting, as it is only a part of the equation.

Study after study, have indicated that the most critical aspect in the well-being and best interest of our children, relates to the continued parenting factor. While we have guidelines for child support awards, we lack appropriate guidelines for parenting arrangements (visitation). This is necessary due to the lack of uniform awards in parenting, which have unduely burdoned parents and the court system alike, in a wave of litigation. This litigation causes further hardship on all parties involved and is not in the best interest of the children.

Some factors to consider are:

- ** Parents with shared parenting arrangements pay their support in full and on time over 80-90% of the time.
- ** Parents without shared parenting, pay support less than 45% of the time, usually caused by parental interference.
- ** 80% of the children that get into trouble with the justice system come from single parent families, families where both parents are not in the picture.
- ** The importance of parenting is the single most critical aspect in the well-being and psychological health of our children and our future citizens.
- ** Terminology - "Custody" term used for prisoners
"Visitation" used in hospitals/funerals
"Parenting" - appropriate terminology

We support Rep. Con Bunde in his honorable intentions and wisdom in the introduction of this legislation for the benefit of all.


Jim A. Arnesen, President



Alaska State Legislature

House of Representatives
 COMMITTEE ON HEALTH, EDUCATION
 AND SOCIAL SERVICES

SUBJECT OF MEETING:
 * HB 422: CHILD CUSTODY AND VISITATION RIGHTS

DATE: 3/11/94

PLACE: Capitol Room 106

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
<i>Jayne Anderson</i>	<i>CVSA</i>	<i>Box 111200 Anchorage</i>	<i>99810</i>		<i>465-4356</i>	<input checked="" type="radio"/> Y <input type="radio"/> N	<i>HB 422</i>
<i>Sherris Gow</i>	<i>Alaska Women's Lobby</i>	<i>P.O. Box 850 Anchorage AK</i>	<i>99527</i>		<i>463-6744</i>	<input checked="" type="radio"/> Y <input type="radio"/> N	<i>HB 422</i>
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
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						<input type="radio"/> Y <input type="radio"/> N	

ASSOCIATION FOR CHILDREN FOR ENFORCEMENT OF SUPPORT

Anchorage Chapter

P. O. Box 92910, Anchorage, AK 99509. 274-2010

March 18, 1994

Dear HESS Committee Members:

I speak for thousands of custodial parents (mostly women) and children around Alaska: this DADS VENGEANCE bill should remain and die in committee. You are not seriously considering Rep. Davis' bill requiring dads to match rights with responsibilities...requiring them to make use of the visitation they wanted. What about Rep. Martin's bill making it a crime to help someone avoid paying child support. If their bills are not good enough to leave this committee - then certainly this piece of DADS VENGEANCE legislation should not either.

Despite minor improvements to ^{CSHB422}~~CSHB422~~ since the last hearing, this bill continues to be a "DADS VENGEANCE" bill - making women criminals while "dads" continue to impudently refuse to pay child support. Contrary to emotional testimony, enforcement of the criminal non-support law rarely occurs. Ask the Dept. of Law how many non-custodial parents have been jailed for not paying child support - and you will learn that it rarely, if ever, occurs despite the fact that there are thousands who do not pay their support.

I have heard legislators and others state that the criminal sanctions won't be enforced, so "don't worry about it." That is a smokescreen! Any law can be enforced if someone chooses to do so.

RE: Work draft, p2, lines 10-16: Dad can stay out of his children's lives for years, but if he chooses, then your bill allows him to return and give "reasonable notice" and resume his "rights" as a father, but never having had to face up to his "responsibilities" of being a father. Meanwhile, mom disagrees with his definition of "reasonable notice" - she is still arrested and must argue what was "reasonable" in court.

Additionally, the legislature is not equipped with the expertise or knowledge to determine what kind of visitation is in the best interests of the child - by requiring a minimum amount of visitation. Only the courts can get to the truth in custody and visitation matters - they hear



Alaska State Legislature

HEALTH EDUCATION & SOCIAL SERV.
JUDICIARY
FINANCE

Please enter into the record my testimony to the _____ committee name

committee on HB 422(a), dated 1-31-94
bill/subject

I AM A FULL TIME SINGLE PARENT WITH CUSTODY OF MY TWO TEEN AGE BOYS, AND I URGE YOU TO PASS HB 422 FOR THE SAKE OF ALL CHILDREN IN THE STATE OF ALASKA.

TOO OFTEN, CHILDREN ARE USED AS PAWNS OR WEAPONS BY THE CUSTODIAL PARENT, AND THE VICTIM IS THE CHILD, DEPRIVED OF THE CHANCE TO LOVE & BE LOVED BY THE NON-CUSTODIAL PARENT. I BELIEVE HB 422 WILL GIVE THAT PARENT A TOOL TO GAIN ACCESS TO THEIR CHILDREN.

NO LAW IS PERFECT ALL THE TIME FOR ALL THE PEOPLE, BUT HB 422 WILL UNDOUBTEDLY BE A VERY IMPORTANT MEASURE FOR THE CHILDREN IN THIS STATE.

Signed: [Signature] STEPHEN STOLL
Testifier

Representing (Optional)
1001 TURK CIRC. WASILLA 99654

Address
907 373 3447

Phone No.

October 28, 1993



TO: ALL LEGISLATORS,

FROM: Jim A. Arnesen, President
Alaska Family Support Group, Inc.
P.O. Box 111691-1691
Anchorage, Ak 99511
(907) 344-7707 Fax 344-9540

RE: PROPOSED LEGISLATION (enclosed)

Dear Legislator,

Please find enclosed, proposed legislation and information relating thereto.

The focus of our group is to promote positive changes to the family law system. I believe the proposals enclosed will benefit parents and children at very small cost, if any. While one of the proposed bills is a major addition, the other three are small in comparison.

The first proposal has to do with Visitation Guidelines for divorcing parents and other non-married parents. Rather than include the four pages in this packet, please refer to the latest newsletter we sent to you. You will find the full proposal on pages 6-10 of the Fall issue of our newsletter.

All of the proposals are family oriented and are designed to rectify some of the problems that frequently come up. The cause of much of the ongoing litigation tying up our court system dockets, with the resultant increase in costs to our court system and parents can be addressed through the proposals.

Briefly stated, here is a short summary;

MINIMUM VISITATION GUIDELINES: Similar to child support guidelines, these are a guide to follow in awarding child visitation. They set a standard to be followed with the best interest's of the child in mind, as well as, enforcement provisions and penalties.

CHILD REGISTRATION BILL: This short proposal would require parents to register their child in schools, day care facilities, etc. under the true name of the child. This would help to alleviate the problems with "missing children", parental abductions, and related failure to adhere to visitation schedules.

AFSG P.O. BOX 111691, ANCHORAGE, AK 99511-1691 (907) 344-7707 274-7358

ALASKA FAMILY SUPPORT GROUP - JIM ARNESEN

October 28, 1993
Legislative Proposals
Page two

WORKER'S COMPENSATION LEGISLATION: The proposal would rectify the discriminatory approach presently applied, wherein only married parents or parents that claim the exemption on their tax returns receive the additional funds for dependents. The bill specifically will allow for parents that are supporting their children through child support to receive the same amounts as other parents, because in such cases those parents are deemed to be supporting dependents, and are entitled to the same amount.

WAGE GARNISHMENT LIMIT BILL: This bill would prohibit garnishing wages to the point of not allowing an obligor enough monies upon which to subsist. Even obligors need funds to live on, and some states recognize this by imposing garnishment limits.

All of the proposals represent positive steps to correcting the many areas of concern that affect children and their parents.

It is my hope that you will seriously consider these proposals and introduce them yourselves, or support them if you are not in a position to introduce them.

If you have any questions, feel free to write or call me.

Respectfully,



Jim A. Arnesen
President

Enclosures: Introductions to the proposals, proposed legislation, proposed changes to statutory language.

cc: all Legislators

Dear Legislators,

Re: MINIMUM VISITATION GUIDELINES LEGISLATION
(A proposal based upon the Texas Model)

There exists a dire need for visitation guidelines and the enforcement of visitation rights. It is conservatively estimated that over 10,000 children in Alaska are denied a relationship with their "other" parent, due to custodial interference, every year. This is atrocious !

On the one hand, we have repressive enforcement of child support obligations, calculated through formulas specified in our Child Support Guidelines. And we all are aware of the consequences if we fail to pay.

So why don't we have visitation guidelines and enforcement as well ? It makes perfect sense to do so. The U.S. Census Bureau statistics show:

- * Fathers w/joint custody pay 90.2% of the child support owed
- * Fathers w/good visitation pay 79.1% of the child support owed
- * Fathers w/neither (above) pay 44.5% of the child support owed

The statistics tell us a story. That when a parent has a relationship with their children, child support gets paid. The big push the last few years has been in the area of child support enforcement, but it has done little to correct the problem of non-payment. In fact, the problem is growing and will get worse. Support compliance is related to visitation !

The answer is to do what other states are doing. Create visitation guidelines and enforce visitation ! Michigan enforces visitation with the same vengence and vigor as support. Texas recently enacted minimum visitation guidelines with enforcement provisions. New Jersey prosecutes custodial interference seriously, and has penalties of up to 5 years, which have been imposed on violaters. For some, such violations constitute basis for a change in custody. The parent most likely to encourage visitation and an ongoing relationship with the other parent is the one that should have custody.

In the latest newsletter we sent to you, you can find the proposed MINIMUM VISITATION GUIDELINES, on pages 6-10. There is also an article describing Michigan's Visitation Program which is administered through their "Friend of the Court" system.

I will expect that those legislators that can introduce this important legislation will do so, and others will support this much needed legislation!!!

Thank you, Jim A. Arnesen, Pres. Alaska Family Support Group

Study Finds Connection Between Support and Visitation

The "complex interconnection between child support and visitation problems, especially in usual, maternal custody situations" has been confirmed by a report issued by Jessica Pearson, director for the Center for Policy Research, Denver, Colorado.

The report was based on interviews with 700 couples and a study of five visitation programs (Wayne County, Michigan; Maricopa County, Arizona; Lee County, Florida; Wyandotte County, Kansas; and Los Angeles, California).

The report concluded such things as:

- * "the dramatically different complaints residential and nonresidential parents make about visitation";
- * "unspecified visitation orders should be avoided";
- * "quality enforcement programs and ancillary services (are needed) to deal with the many safety concerns of residential parents"; and

* "modest improvement in child support payment patterns" (were reported), along with "a significant drop in access relitigation in Kansas, but no change in child support relitigation."

The five sites that were studied offer different types of visitation programs, including expedited complaint procedures, supervised visitation, warning letters, telephone monitoring of visitation, mediation, and group education.

The 700 couples who were studied used these programs in 1989 and 1990.

The 193 page report, which includes a copy of all data collection instruments, is available from the Center for Policy Research, 1720 Emerson Street, Denver, CO 80218 for \$15.00 a copy.

The study was based on a grant from the State Justice Institute, Alexandria, Virginia.

Texas

Access Enforcement

A change in Court Rule 308a in Texas encourages the courts to investigate any charge of denial of access in much the same manner that the courts investigate child support violations — by the appointment of an attorney. Court rules affect the everyday behavior of judges and do not require legislative approval.

Jimmy Boyd of the Texas Children's Rights Coalition, attributes this emphasis on access enforcement in the court rules to:

1. Passage of S.B. 188 — the minimum access/visitation bill. This new law, passed by the legislature in 1989, is the first time that any legislature in the U.S. has set minimum access (visitation) standards. Under the guideline in S.B. 188, a judge must give a parent about 33 percent of the time with the child on a year-round basis. A judge may give more visitation than this, but he can not go below that amount, without good reason. Because S.B. 188 creates a rebuttable presumption, the judge must state the reason for any variation.

2. Passage of S.B. 826 — the Texas "Friend of the Court" bill which provides for the enforcement of visitation orders using an attorney ad litem system. The court is expected to assess attorney's fees against the person who

violates the visitation order.

The court rule, 308a (Suits Affecting the Parent-Child Relationship) states:

"When the court has ordered child support or possession of or access to a child and it is claimed that the order has been violated, the person claiming that a violation has occurred shall make this known to the court. The court may appoint a member of the bar to investigate the claim to determine whether there is reason to believe that the court order has been violated. If the attorney in good faith believes that the order has been violated, the attorney shall take the necessary action as provided under Chapter 14, Family Code. On a finding of a violation, the court may enforce its order as provided in Chapter 14, Family Code.

"Except by order of the court, no fee shall be charged by or paid to the attorney representing the claimant. If the court determines that an attorney's fee should be paid, the fee shall be adjudged against the party who violated the court's order. The fee may be assessed as costs of court, or awarded by judgment, or both."

New Jersey

Access Law Strengthened

A law that toughens New Jersey's child custody, visitation, and parental kidnapping provisions took effect in November, 1990.



Assemblywoman
Marlene Ford

The law raises interference with visitation to a crime of the third degree, punishable by up to five years in prison and \$7,500 in a fine.



Assemblyman
John Doyle

The interference can occur by a person who takes or detains a minor child in order to conceal him and thereby deprive the child's parent,

guardian or lawful custodian of custody or visitation.

In addition to the penalties, a person who is convicted of any offense under this law is required to make restitution of all reasonable expenses and costs including counsel fees incurred by the other parent securing the child's return.

"The laws are clear. No parent has the right to cut off another parent from their child," said Governor Jim Florio, in signing the bill.

The New Jersey Council for Children's Rights supported this bill, and thanks the sponsors, Assemblywoman Marlene Lynch Ford, and Assemblyman John Paul Doyle.

Second Class Citizens



By Jim Arnesen

Non-custodial parents are treated as "second class citizens" by the legislature, the courts and society, with results that discriminate against them. A few examples of the glaring inequities faced by non-custodial parents are presented here.

Legal representation is biased in favor of custodial parents. We constantly hear of cases where free legal services are offered to mothers (usually custodial parent), but not to fathers (usually non-custodial parent). While I do not wish to inflame the gender issue, these are cases of gender discrimination that are prevalent here in Alaska and around the country. Accused criminals are afforded free legal representation and proper due process, but not law-abiding non-custodial parents.

Another common discrimination occurs when a non-custodial parent has to apply for Unemployment or Worker's Compensation Insurance. For married persons, an additional amount is awarded for each dependent in the home, to assist in the support of dependents.

On the other hand, the additional amount for dependents for unmarried parents is not allowed unless the unmarried parent is the parent that claims the dependent on their tax return. Usually, non-custodial parents are not able to do that, even though they support their children through child support payments. All parents that are supporting children should be afforded the same and equal treatment.

When married parents go to the bank to finance a purchase, whether it be a home, car, boat, etc., the amount of monies expended for the support of their children is not a consideration for qualifying purposes. They usually receive the loans applied for. There is no implied "child support."

But when a non-custodial parent goes to the bank for the same financing,

they are frequently disqualified due to the "child support" payments they have to make. The child support payments are considered a debt that reduces the ability to repay the loan. Additionally, the recipient of child support is able to use the support payments as if it were income in the review of a loan. Support of children, should be considered similarly for both married and unmarried parents.

Married parents are not legally required to send their children to college. While many children do go on to college, most find it necessary to obtain financing for educational advancement. Sometimes the parents will pay for, or assist in the matter, when they can afford to do so.

In the case of non-custodial parents, however, there are cases where they can be ordered to pay for college education. In most of these cases, the custodial parent's income is rarely considered, and the burden falls squarely upon the non-custodial parent. It does appear discriminatory, in that only divorced parents are ordered to send their children to college. This should apply equally to all parents or none at all!

A quick look at the Child Support

Guidelines will show that, in most cases, only the non-custodial parent's income is considered in determining the amount of child support. In too many cases, the child support guidelines are followed too strictly, not allowing enough flexibility for the circumstance involved. Both parent's incomes should always be considered!

The most common complaint is parental interference in visitation matters. While the courts and the Child Support Enforcement agencies vigorously enforce monetary support, very little is ever done to enforce parental support (visitation orders). Visitation should be enforced just as vigorously as child support. Parental support is equally important, if not more, than child support!

The list goes on. The Civil Rights Movement of the 1960s and the Women's Movement of the 1970s delivered equality to many. However, non-custodial parents did not benefit. There are many other situations where non-custodial parents are faced with discrimination. This is why we are organized. Our legislative proposals attempt to remedy some of these problems. You can become part of the solution by assisting in our efforts!

New Jersey Mom Cited in Child Custody Case

A 31-year old Elizabeth woman was indicted on charges of interference with custody after she disappeared with her 18-month old son. Union County Assistant Prosecutor Brian Gillet said the case was referred to the Child Abuse Unit in March 1992 by the Family Court after the husband complained that his wife had taken their son.

Investigation of the case showed the defendant obtained an order from the Family Court granting her custody of the then one-month old son, in January 1991. Under the terms of the order, the father was permitted to have custody of his son on the first and third weekend of every month and one day during a week.

When the father went to pick up his son on Dec. 6, 1991, he found the wife was gone, her telephone disconnected and that she had quit her employment.

In April of 1992, Superior Court Judge Mac Hunter awarded the father full custody of his son, but the child's whereabouts remain unknown.

The first count of the indictment covers the period of Dec. 6, 1991 to April 13, 1992, and the second count covers the time the mother kept her son from his father from April to present.

The woman could receive up to five years in prison on each count. Interference with Custody is a third degree offense with mandatory jailing.

FORUM

Visitation boosts payments

Visitation is a key factor in achieving a high level of child-support collections. This factor is sadly disregarded by our state and the Child Support Enforcement Division.

Michigan, which has enforced visitation since 1919, enjoys the highest level of collections in the country, currently at 77 percent. It enforces visitation with the same vengeance as monetary child support. It recognizes the correlation between monetary support and visitation, and its parents and children benefit.

In stark contrast, Alaska, which does not actively enforce visitation, can boast only a meager 16 percent collection rate. CSED refuses to get involved in any visitation matter. Its use of enforcement procedures without considering the merits of visitation enforcement is doomed to failure.

The U.S. Census Bureau came out with statistics that clearly show the correlation between visitation and support:

Parents with joint custody pay 90.2 percent of the support on time.

Parents with good visitation pay 79.1 percent of the support on time.

Parents with neither of the above pay 44.5 percent of the support.

Payment of monetary child support is directly correlated to parental support (visitation). The lack of, or interference with, visitation is crucially more important or equal to a child's overall needs, as is child support. More than 10,000 Alaska children are denied access to a parent each year. Should we continue to emphasize child-support compliance, and ignore the important parenting aspects that will produce beneficial results for all?

— Jim A. Arnesen, president
Alaska Family Support Group

SUBJECT STATUTES - SUPPORT AND VISITATION ENFORCEMENT ACT	SECTION 9000 DATE 12-01-86
PREPARED BY STATE COURT ADMINISTRATIVE OFFICE	CHAPTER 1 PAGE 9079

SUPPORT AND VISITATION ENFORCEMENT ACT, MCL 552.601 to 552.650

AN ACT to supplement statutes which provide for the enforcement of support and visitation orders with respect to divorce, separate maintenance, paternity, child custody, and spouse support; to prescribe the powers and duties of the circuit court and friend of the court; to prescribe certain duties of certain employers and other sources of income; to provide for penalties and remedies; and to repeal certain acts and parts of acts.

552.601. Short title

Sec. 1. This act shall be known and may be cited as the "support and visitation enforcement act".

552.602. Definitions

Sec. 2. As used in this act:

(a) "Employer" means any individual, sole proprietorship, partnership, association, or private or public corporation, the United States or any federal agency, this state or any political subdivision of this state, any other state or a political subdivision of another state, or any other legal entity which hires and pays an individual for his or her services.

(b) "Friend of the court act" means Act No. 294 of the Public Acts of 1982, being sections 552.501 to 552.535 of the Michigan Compiled Laws.

(c) "Income" means any of the following:

(i) Commissions, earnings, salaries, wages, and other income due or to be due in the future from his or her employer and successor employers.

(ii) Any payment due or to be due in the future from a profit-sharing plan, pension plan, insurance contract, annuity, social security, unemployment compensation, supplemental unemployment benefits, and worker's compensation.

(iii) Any amount of money which is due to the payer under a support order as a debt of any other individual, partnership, association, or private or public corporation, the United States or any federal agency, this state or any political subdivision of this state, any other state or a political subdivision of another state, or any other legal entity which is indebted to the payer.

(d) "Office of child support" means the office of child support established in section 2 of Act No. 174 of the Public Acts of 1971, being section 400.232 of the Michigan Compiled Laws.

(e) "Office of the friend of the court" means the agency created in section 3 of the friend of the court act, being section 552.503 of the Michigan Compiled Laws.

SUBJECT STATUTES - SUPPORT AND VISITATION ENFORCEMENT ACT (cont'd.)	SECTION 9000 DATE 12-01-86
PREPARED BY STATE COURT ADMINISTRATIVE OFFICE	CHAPTER 1 PAGE 9080

(f) "Order of income withholding" means an order entered by the circuit court providing for the withholding of a payer's income to enforce a child support order pursuant to this act.

(g) "Payer" means a person who is ordered by the circuit court to pay support.

(h) "Political subdivision" means a county, city, village, township, educational institution, school district, or special district or authority of the state or of a local unit of government.

(i) "Recipient of support" means the following:

(i) The spouse, if the support order orders support for the spouse.

(ii) The custodial parent or guardian, if the support order orders support for a minor child.

(iii) The state department of social services, if support has been assigned to the department.

(j) "Referee" means a person who is designated as a referee pursuant to the friend of the court act.

(k) "Source of income" means an employer or successor employer or any other individual or entity that owes or will owe income to the payer.

(l) "Support" means either of the following:

(i) The payment of money for a child or a spouse ordered by the circuit court, whether the order is embodied in an interim, temporary, permanent, or modified order or judgment. Support may include payment of the expenses of medical, dental, and other health care, child care expenses, and educational expenses.

(ii) The payment of money ordered by the circuit court under the paternity act, Act No. 205 of the Public Acts of 1956, being sections 722.711 to 722.730 of the Michigan Compiled Laws, for the necessary expenses incurred by or for the mother in connection with her confinement or of other expenses in connection with the pregnancy of the mother.

(m) "Support order" means any order entered by the circuit court for the payment of support, whether or not a sum certain.

552.604. Provisions for order of income withholding; notice; effective date

Sec. 4. (1) After July 1, 1983, each support order entered or modified by the circuit court shall provide for an order of income withholding.

SUBJECT STATUTES - SUPPORT AND VISITATION ENFORCEMENT ACT (cont'd.)	SECTION 9000 DATE 12-01-86
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(3) An order of commitment under section 35 shall separately state both of the following:

(a) The amount of arrearage under the support order.

(b) The amount to be paid in order to be released from the order of commitment.

(4) A commitment shall continue until the amount ordered to be paid under subsection (2) (b) or (3) (b) is paid but shall not exceed 45 days for the first adjudication of contempt of 90 days for any subsequent adjudication of contempt.

(5) The court may further direct that any portion or all of the earnings of the payer in the facility or institution shall be paid to and applied for support until the payer has complied with the order of the court, until the payer is released pursuant to this section from an order of commitment, or until the further order of the court. If it appears that the state or county department of social services, or a local office of the state department of social services, has contributed towards the support of the minor child or children during the period of noncompliance with the order of the court, the court, in the contempt proceedings, may order all or part of any lump sum payment to the office of the friend of the court or county clerk to be paid to that department or local office not to exceed the amount of the contribution made by that department or local office. The court may order the money paid to the person or persons entitled to the money in weekly or monthly installments by the office of the friend of the court or county clerk to the extent that the court considers installments necessary for support.

¹Section 552.633 or 552.635.

552.639. Violation of terms of commitment; escape

Sec. 39. (1) If a payer is committed to jail under section 33 (b) or 35 (2)¹ and violates the conditions of the court, the court shall commit the payer to the county jail without the privilege provided under section 33 (b) or 35 (2) for the balance of the period of the commitment imposed by the court.

(2) If a payer is committed to jail under section 33 (b) or 35 (2) and fails to return to the place of confinement within the time prescribed, the payer shall be considered to have escaped from custody and shall be guilty of a misdemeanor, punishable by imprisonment for not more than 1 year.

¹Section 552.633(b) or 552.635(2).

SUBJECT STATUTES - SUPPORT AND VISITATION ENFORCEMENT ACT (cont'd.)	SECTION 9000 DATE 12-01-86
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552.641. Visitation violations; sanctions

Sec. 41. (1) Except as provided in subsection (2), the friend of the court shall do 1 or more of the following in a dispute concerning visitation of a minor child:

(a) Apply a makeup visitation policy established under section 42.¹

(b) Commence civil contempt proceedings under section 44.¹

(c) Petition the court for a modification of existing visitation provisions to ensure visitation, unless contrary to the best interests of the child. A written report and recommendation shall accompany the petition.

(2) The friend of the court shall not invoke any option under subsection (1) if the parties resolve their dispute through an informal joint meeting or through domestic relations mediation as provided under section 11 or 13³ of the friend of the court act.

¹Section 552.642.

²Section 552.644.

³Section 552.511 or 552.513.

557.642. Makeup visitation policy for wrongful denial of visitation

Sec. 42. (1) Not later than 180 days after the enactment date of this amendatory act, each circuit shall formulate a makeup visitation policy under which a noncustodial parent who has been wrongfully denied visitation is able to make up the visitation at a later date. The policy shall not apply until it is approved by the chief circuit judge or only circuit judge of the circuit.

(2) Before a makeup visitation policy is applied in a particular case, the office of the friend of the court shall send to both parties a notice, by ordinary mail to the person's last known address, that the policy will be applied in their case.

(3) A makeup visitation policy formulated and approved under this section shall include all of the following:

(a) Makeup visitation shall be the same type and duration of visitation as the visitation that was denied, including but not limited to weekend visitation for weekend visitation, holiday visitation for holiday visitation, weekday visitation for weekday visitation, and summer visitation for summer visitation.

(b) Makeup visitation shall be taken within 1 year after the wrongfully denied visitation occurred.

SUBJECT STATUTES - SUPPORT AND VISITATION ENFORCEMENT ACT (cont'd.)	SECTION 9000 DATE 12-01-86
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(c) The time of the makeup visitation shall be chosen by the noncustodial parent.

(4) Beginning upon approval of a makeup visitation policy formulated pursuant to subsection (1), the office of the friend of the court shall keep an accurate record of alleged visitation arrears and the noncustodial parent shall give to the office written notice of an alleged, wrongfully denied visitation within 7 days of alleged denial.

(5) Beginning upon approval of a makeup visitation policy formulated pursuant to subsection (1), if a wrongfully denied visitation is alleged and the friend of the court determines that action should be taken under section 41 (1) (a),¹ the following shall apply:

(a) The office of the friend of the court shall give to the custodial parent within 5 days after receipt of the notice of denied visitation under subsection (4) a notice, which shall contain the following statement in bold-face type of not less than 12 points:

"FAILURE TO RESPOND IN 7 DAYS TO THE OFFICE OF THE FRIEND OF THE COURT SHALL BE CONSIDERED AS AN AGREEMENT THAT VISITATION WAS WRONGFULLY DENIED AND THAT OFFICE WILL ADJUST THE ACCOUNT OF VISITATION ARREARS ACCORDINGLY."

(b) If the custodial parent makes a timely reply contesting the alleged wrongful denial of visitation, a hearing shall be held by a referee or a circuit judge after notice is given to both parties.

(c) The referee or judge shall determine whether visitation was wrongfully denied.

(d) If the hearing provided under subdivision (b) is held before a referee, either party shall be entitled to a de novo hearing before a circuit court judge as provided in section 7 (5) of the friend of the court act, being section 552.507 of the Michigan Compiled Laws.

(e) After a final determination that visitation was wrongfully denied, the office of the friend of the court shall adjust the visitation arrears account accordingly.

(f) The noncustodial parent shall give to the office of the friend of the court and custodial parent a written notice of makeup visitation at least 1 week before a makeup weekday or weekend visitation or at least 30 days before a makeup holiday or makeup summer visitation.

¹Section 552.641(1)(a).

SUBJECT STATUTES - SUPPORT AND VISITATION ENFORCEMENT ACT (cont'd.)	SECTION 9000 DATE 12-01-86
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552.644. Contempt action for visitation violations; sanctions

Sec. 44. (1) If the office of the friend of the court determines that action should be taken under section 41 (1) (b),¹ the office of the friend of the court shall commence a civil contempt proceeding to resolve a dispute concerning visitation of a minor child by filing with the circuit court a petition for an order to show cause why either parent who has violated a visitation order should not be held in contempt.

(2) If the court finds that either parent has violated a visitation order, the court shall find that parent in contempt and may do 1 or more of the following:

(a) Require additional terms and conditions consistent with the court's visitation order.

(b) After notice to both parties and a hearing, if requested by a party, on any proposed modification of visitation, modify the visitation order to meet the best interests of the child.

(c) Order that makeup visitation be provided for the noncustodial parent to take the place of wrongfully denied visitation.

(d) Order the parent to pay a fine of not more than \$100.00.

(e) Commit the parent to the county jail.

(f) Commit the parent to the county jail with the privilege of leaving the jail, during such hours as the court determines and under such supervision as the court considers necessary, for the purpose of allowing the parent to go to and return from his or her place of employment.

(3) A commitment under subsection (2) (e) or (f) shall not exceed 45 days for the first finding of contempt or 90 days for any subsequent finding of contempt.

(4) A parent committed under subsection (2) (e) or (f) shall be released if the court has reasonable cause to believe that the parent will comply with the visitation order.

¹Section 552.641(1)(b).

552.646. Commitment of visitation violator

Sec. 46. (1) If a custodial parent is committed to jail under section 44 (2) (e)¹ and violates the conditions of the court, the court shall commit the person to the county jail without the privilege provided under section 44 (2) (e) for the balance of the period of commitment imposed by the court.

SUBJECT STATUTES - SUPPORT AND VISITATION ENFORCEMENT ACT (cont'd.)	SECTION 9000 DATE 12-01-86
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(2) If a custodial parent is committed to jail under section 44 (2) (e) and fails to return to the place of confinement within the time prescribed, the custodial parent shall be considered to have escaped from custody and shall be guilty of a misdemeanor, punishable by imprisonment for not more than 1 year.

¹Section 552.644(2)(e).

552.648. Repealer

Sec. 48. Act No. 239 of the Public Acts of 1913, being sections 552.201 to 552.203 of the Compiled Laws of 1970, is repealed.

552.649. Contingent effectiveness

Sec. 49. This act shall not take effect unless the following bills of the 81st Legislature are enacted into law:

- (a) House Bill No. 4870.
- (b) House Bill No. 4873.
- (c) House Bill No. 5257.

552.650. Effective date

Sec. 50. Except as provided in section 49, this act shall take effect July 1, 1983.

SUBJECT STATUTES - UNIFORM CHILD CUSTODY JURISDICTION ACT	SECTION 9000 DATE 12-01-86
PREPARED BY STATE COURT ADMINISTRATIVE OFFICE	CHAPTER 1 PAGE 9096

UNIFORM CHILD CUSTODY JURISDICTION ACT, MCL 600.641 to 600.673

Table of Jurisdictions Wherein Act Has Been Adopted

For text of Uniform Act, and variation notes and annotation materials for adopting jurisdictions, see Uniform Law Annotated, Master Edition, Volume 9.

Jurisdiction	Statutory Citation
Alabama	Code 1975, 30-3-20 to 30-3-44.
Alaska	AS 25.30.010 to 25.30.910.
Arizona	A.R.S. 8-401 to 8-424.
Arkansas	Ark. Stats. 34-2701 to 34-2725.
California	West's Ann. Cal. Civ. Code 5150 to 5174.
Colorado	C.R.S. 14-13-101 to 14-13-126.
Connecticut	C.G.S.A. 46b-90 to 46b-114.
Delaware	13 Del.C. 1901 to 1925.
Dist. of Columbia	D.C. Code 1981, 16-4501 to 16-4524.
Florida	West's F.S.A. 61.1302 to 61.1348.
Georgia	O.C.G.A. 19-9-40 to 19-9-64.
Hawaii	HRS 583-1 to 583-26.
Idaho	IC 32-1101 to 32-1126.
Illinois	S.H.A. ch. 40, 2101 to 2126.
Indiana	West's A.I.C. 31-1-11.6-1 to 31-1-11.6-25.
Iowa	I.C.A. 598A.1 to 598A.25.
Kansas	K.S.A. 38-1301 to 38.1326.
Kentucky	KRS 403.400 to 403.630.
Louisiana	LSA-R.S. 13:1700 to 13:1724.
Maine	19 M.R.S.A. 801 to 825.
Maryland	Code, Family Law, 9-201 to 9-224.
Massachusetts	M.G.L.A. c. 209B, 1 to 14.
Michigan	M.C.L.A. 600.651 to 600.673.
Minnesota	M.S.A. 518A.01 to 518A.25.
Mississippi	Code 1972, 93-23-1 to 93-23-47.
Missouri	V.A.M.S. 452.440 to 452.550.
Montana	MCA 40-7-101 to 40-7-125.
Nebraska	R.R.S. 1943, 43-1201 to 43-1225.
Nevada	N.R.S. 125A.010 to 125A.250.
New Hampshire	RSA 458-A:1 to 458-A:25.
New Jersey	N.J.S.A. 2A:34-28 to 2A:34-52.
New Mexico	NMSA 1978, 40-10-1 to 40-10-24.
New York	McKinney's Domestic Relations Law, 75-a to 75-z
North Carolina	G.S. 50A-1 to 50A-25.
North Dakota	NDCC 14-14-01 to 14-14-26.

SUBJECT STATUTES - UNIFORM CHILD CUSTODY JURISDICTION ACT (cont'd.)	SECTION 9000 DATE 12-01-86
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Jurisdiction	Statutory Citation
Ohio	R.C. 3109.21 to 3109.37.
Oklahoma	10 Okl. St. Ann. 1601 to 1628.
Oregon	ORS 109.700 to 109.930.
Pennsylvania	42 Pa.C.S.A. 5341 to 5366.
Rhode Island	Gen. Laws 1956, 15-14-1 to 15-14-26.
South Carolina	Code 1976, 20-7-782 to 20-7-830.
South Dakota	SDCL 26-5A-1 to 26-5A-26.
Tennessee	T.C.A. 36-1301 to 36-1325.
Texas	V.T.C.A. Family Code 11.51 to 11.75.
Utah	U.C.A. 1953, 78-45c-1 to 78-45c-26.
Vermont	15 V.S.A. 1031 to 1051.
Virginia	Code 1950, 20-125 to 20-146.
Washington	West's RCWA 26.27.010 to 26.27.910.
West Virginia	Code, 48-10-1 to 48-10-26.
Wisconsin	W.S.A. 822.01 to 822.25.
Wyoming	W.S. 1977, 20-5-101 to 20-5-125.

600.651. Purposes; short title

Sec. 651. (1) The general purposes of sections 651 to 673¹ are to:

(a) Avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being.

(b) Promote cooperation with the courts of other states so that a custody decree or judgment is rendered in that state which can best decide the case in the interest of the child.

(c) Assure that litigation concerning the custody of a child take place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state.

(d) Discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child.

(e) Deter abductions and other unilateral removals of children undertaken to obtain custody awards.

SUBJECT STATUTES - UNIFORM CHILD CUSTODY JURISDICTION ACT (cont'd.)	SECTION 9000 DATE 12-01-86
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(f) Avoid relitigation of custody decisions of other states in this state insofar as feasible.

(g) Facilitate the enforcement of custody decrees or judgments of other states.

(h) Promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child.

(i) Make uniform the law of those states which substantially conforms to sections 651 to 673.

(2) Sections 651 to 673 shall constitute the "uniform child custody jurisdiction act" and shall be construed to promote the general purposes stated in this section.

¹Sections 600.651 to 600.673.

600.652. Definitions

Sec. 652. As used in sections 651 to 673:¹

(a) "Contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child.

(b) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights. Custody determination does not include a decision relating to child support or other monetary obligation of a person.

(c) "Custody proceeding" includes proceedings in which a custody determination is 1 of several issues, such as an action for divorce or separation, and includes child neglect and dependency proceedings.

(d) "Decree or judgment" or "custody decree or judgment" means a custody determination contained in a judicial decree or order made in a custody proceeding, and includes an initial decree or judgment and a modification decree or judgment.

(e) "Home state" means the state in which the child immediately preceding the time involved lived with his or her parents, a parent, or a person acting as parent, for at least 6 consecutive months, and in the case of a child less than 6 months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of the named persons are counted as part of the 6-month or other period.

(f) "Initial decree or judgment" means the first custody decree or judgment concerning a particular child.

SUBJECT	SECTION 9000	DATE 12-01-86
STATUTES - CONSUMER CREDIT PROTECTION ACT		
PREPARED BY	CHAPTER 2	PAGE 9109
STATE COURT ADMINISTRATIVE OFFICE		

SEC. 303 OF TITLE III, CONSUMER CREDIT PROTECTION ACT, 15 USC 1673

15 USCS 1673. Restriction on garnishment

Sec. 1673. (a) ~~Maximum~~ allowable garnishment. Except as provided in subsection (b) and in section 305 [15 USCS 1675], the maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment may not exceed

- (1) 25 per centum of his disposable earnings for that week, or
- (2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 [29 USCS 206(a)(1)] in effect at the time the earnings are payable,

whichever is less. In the case of earnings for any pay period other than a week, the Secretary of Labor shall by regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (2).

(b) Exceptions. (1) The restrictions of subsection (a) do not apply in the case of-

(A) any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords substantial due process, and which is subject to judicial review.

(B) any order of any court of the United States having jurisdiction over cases under chapter 13 of title 11 of the United States Code [11 USCA 1301 et seq.]

(C) any debt due for any State or Federal tax.

(2) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed-

(A) where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is used), 50 per centum of such individual's disposable earnings for that week; and

(B) where such individual is not supporting such a spouse or dependent child described in clause (A), 60 per centum of such individual's disposable earnings for that week;

except that, with respect to the disposable earnings of any individual for any workweek, the 50 per centum specified in clause (A) shall be deemed to be 55 per centum and the 60 per centum specified in clause (B) shall be deemed to be 65 per centum, if and to the extent that such earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.

SUBJECT STATUTES - CONSUMER CREDIT PROTECTION ACT (cont'd.)	SECTION 9000 DATE 12-01-86
PREPARED BY STATE COURT ADMINISTRATIVE OFFICE	CHAPTER: 2 PAGE 9110

(c) Execution or enforcement of garnishment order or process prohibited. No court of the United States or any State, and no State (or officer or agency thereof), may make, execute, or enforce any order or process in violation of this section.

(May 29, 1986, P. L. 90-321, Title III, 303, 82 Stat. 163; May 23, 1977, P. L. 95-30, Title V, 501(e)(1)-(3), 91 Stat. 161; Nov. 6, 1978, P. L. 95-598, Title III, 312(a), 92 Stat. 2676.)

NOTICE PURSUANT TO N.J.S. 2C:13-4 AS AMENDED

NEW JERSEY
STATUTES

This Order provides for certain provisions relating to custody and visitation of minor children. You are hereby advised that it is a crime of the third degree to interfere with the custody or visitation of a minor child. The maximum sentence which could be imposed for violation of this statute is imprisonment from three (3) to five (5) years and a fine of up to Seven Thousand Five Hundred (\$7,500.00) Dollars.

You are further advised that the presumption of non-imprisonment which normally applies to a first offense for a crime of the third degree, does not apply in cases where a party is found guilty of interfering with custody or visitation.

You are further advised that if the child is taken, detained, enticed or concealed outside the United States; then interference with custody or visitation is a crime of the second degree, for which you are subject to imprisonment for a period of not less than five (5) nor more

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than ten (10) years, as well as a fine of up to One Hundred Thousand (\$100,000.00) Dollars.

NOV-16-1993 13:33 FROM

TO

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2C:13-2. Criminal restraint

Notes of Decisions

Admissibility of evidence 1
Involuntary servitude 3
Sentence and punishment 2

1. Admissibility of evidence

In prosecution for sexual assault, burglary, kidnapping, criminal restraint, terroristic threats, criminal coercion, and aggravated assault, trial court did not err by admitting out-of-court and in-court identification of defendant by victim. *State v. Frey*, 191 N.J. Super. 326, 476 A.2d 884 (A.D. 1984).

2. Sentence and punishment

Circumstances of defendant's kidnapping of and aggravated sexual assault upon victim and of de-

endant's prior record warranted imposition of ten-year mandatory minimum parole ineligibility periods in conjunction with concurrent sentences of 20 years each to adult diagnostic and treatment center. *State v. Chapman*, 93 N.J. 532, 472 A.2d 559 (1984).

3. Involuntary servitude

Federal agent's action of assisting in apprehending fugitive's girl friend and restraining her for period of five to six hours before releasing her unharmed, in attempt to make her reveal fugitive's whereabouts could not be described as criminal restraint by holding another in condition of involuntary servitude, as State failed to show coerced or forced labor or service. *State v. Marchand*, 227 N.J. Super. 52, 345 A.2d 819 (A.D. 1988) certification granted 113 N.J. 384, 550 A.2d 485, affirmed 114 N.J. 569, 553 A.2d 1122.

2C:13-3. False imprisonment

Law Review Commentaries

Implied culpability terms in an offense definition. "Gap filler" provisions. (1982) 13 Rutgers L.J. 773.

2C:13-4. Interference with custody

Custody of children. A person, including a parent, guardian or other lawful custodian, is guilty of interference with custody if he:

(1) Takes or detains a minor child with the purpose of a. recalling the minor child and thereby depriving of the child's other parent of custody or visitation of the minor child; or

(2) After being served with process or having actual knowledge of an action affecting marriage or custody but prior to the issuance of a temporary or final order determining custody and visitation rights to a minor child, takes, detains, entices or conceals the child within or outside the State for the purpose of depriving, the child's other parent of custody or visitation, or to evade the jurisdiction of the courts of this State;

(3) After being served with process or having actual knowledge of an action affecting the protective services needs of a child pursuant to Title 9 of the Revised Statutes in an action affecting custody, but prior to the issuance of a temporary or final order determining custody rights of a minor child, takes, detains, entices or conceals the child within or outside the State for the purpose of evading the jurisdiction of the courts of this State; or

(4) After the issuance of a temporary or final order specifying custody, visitation or joint custody rights, takes, detains, entices or conceals a minor child from the other parent in violation of the custody or visitation order.

Interference with custody is a crime of the third degree but the presumption of non-imprisonment set forth in subsection e. of N.J.S. 2C:44-1 for a first offense of a crime of the third degree shall not apply. However, if the child is taken, detained, enticed or concealed outside the United States, interference with custody is a crime of the second degree.

b. Custody of committed persons. A person is guilty of a crime of the fourth degree if he knowingly takes or entices any committed person away from lawful custody when he is not privileged to do so. "Committed person" means, in addition to anyone committed under judicial warrant, any orphan, neglected or delinquent child, mentally defective or insane person, or other dependent or incompetent person

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entrusted to another's custody by or through a recognized social agency or otherwise by authority of law.

c. It is an affirmative defense to a prosecution under subsection a. of this section, which must be proved by clear and convincing evidence, that:

(1) The actor reasonably believed that the action was necessary to preserve the child from imminent danger to his welfare. However, no defense shall be available pursuant to this subsection if the actor does not, as soon as reasonably practicable but in no event more than 24 hours after taking a child under his protection, give notice of the child's location to the police department of the municipality where the child resided, the office of the county prosecutor in the county where the child resided, or the Division of Youth and Family Services in the Department of Human Services;

(2) The actor reasonably believed that the taking or detaining of the minor child was consented to by the other parent, or by an authorized State agency; or

(3) The child, being at the time of the taking or concealment not less than 14 years old, was taken away at his own volition and without purpose to commit a criminal offense with or against the child.

d. It is an affirmative defense to a prosecution under subsection a. of this section that a parent having the right of custody reasonably believed he was fleeing from imminent physical danger from the other parent, provided that the parent having custody, as soon as reasonably practicable:

(1) Gives notice of the child's location to the police department of the municipality where the child resided, the office of the county prosecutor in the county where the child resided, or the Division of Youth and Family Services in the Department of Human Services; or

(2) Commenced an action affecting custody in an appropriate court.

e. The offenses enumerated in this section are continuous in nature and continue for so long as the child is concealed or detained.

f. (1) In addition to any other disposition provided by law, a person convicted under subsection a. of this section shall make restitution of all reasonable expenses and costs, including reasonable counsel fees, incurred by the other parent in securing the child's return.

(2) In imposing sentence under subsection a. of this section the court shall consider, in addition to the factors enumerated in chapter 44 of Title 2C of the New Jersey Statutes:

(a) Whether the person returned the child voluntarily; and

(b) The length of time the child was concealed or detained.

g. As used in this section, "parent" means a parent, guardian or other lawful custodian of a minor child.

Amended by L. 1982, c. 199, § 1, eff. Dec. 15, 1982; L. 1990, c. 204, § 1, eff. Nov. 14, 1990.

Assembly Judiciary Law and Public Safety Committee Statement

Assembly, No. 2847—L. 1990, c. 101

The Assembly Judiciary, Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 2847.

This bill would revise the law concerning the criminal offense of interfering with custody of a minor child.

Currently, N.J.S. 2C:13-4 provides that a person commits a crime of the fourth degree if he knowingly takes or entices a child under the age of 18 from the custody of the parent, guardian or other lawful custodian of the child, when the person has no privilege to do so, or when he does so in violation of a court order. However, this provision only protects the custody rights of a parent who has obtained custody pursuant to a court order. It does not deal with the problem of parental kidnappings which take place before a legal order is entered.

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This bill would address the issue by providing that a person, including a parent, guardian, or other lawful custodian, commits the crime of interfering with custody if he:

(1) Takes or detains a minor child in order to conceal him and thereby deprive the child's parent, guardian, or lawful custodian of custody or visitation, or

(2) After being served with process or having actual knowledge of an action affecting marriage or custody but prior to the issuance of a temporary or final order determining custody or visitation rights to a minor child, takes or conceals the child for the purpose of depriving the other parent, guardian or lawful custodian of custody or visitation, or to evade the court's jurisdiction; or

(3) After being served with process or having actual knowledge of an action affecting the protective services needs of a minor child pursuant to Title 9 of the New Jersey Statutes in an action affecting custody, but prior to a final order determining custody rights, takes or conceals the child to evade the court's jurisdiction; or

(4) After the issuance of a temporary or final order specifying custody or visitation rights, takes or conceals a minor child from the other parent, guardian or lawful custodian in violation of the order.

The bill would also upgrade the crime of interfering with custody, making it a crime of the third degree. A crime of the third degree is punishable by term of imprisonment of three to five years, or a fine up to \$7,600, or both. In addition to these penalties, a person convicted of violating the law would be required to make restitution of all reasonable expenses and costs, including reasonable counsel fees, incurred by the other parent in securing the child's return.

The committee amended the bill to provide that the presumption of non-imprisonment for a first offender who commits a crime of the third degree shall not apply to the third degree crime of interference with custody. If the child is taken, detained, enticed or concealed outside the United States then the crime is increased to a crime of the second degree. The committee also set an outside limit of 24 hours as a "reasonably practicable" time for the time in which a parent must act by giving notification to the proper authorities in order for the affirmative defense in subsection c. of N.J.S. 2C:13-4 to be available.

Senate Judiciary Committee Statement

Assembly, No. 1183—L.1982, c. 195

Presently, interference with custody is graded as a crime of the fourth degree if the person who interferes is not the child's parent or equivalent relation and if the person acts knowingly or with reckless disregard for the child's safety. In all other circumstances, interference with custody is graded as a disorderly persons offense. These other circumstances include the common situation where the noncustodial parent removes the child from the parent with legal custody to another state. Extradition from the other state is not possible because extradition is only permissible for indictable offenses and disorderly persons offenses are nonindictable offenses. To remedy the problem of extradition in those circumstances, Assembly Bill No. 1183 would classify interference with custody under all circumstances as a crime of the fourth degree.

Historical and Statutory Notes

1982 Legislation

The 1982 amendment deleted provisions in the former fourth paragraph of subsec. a which classified the offense as a crime of the fourth degree where the actor was a parent or equivalent rela-

tion acting with knowledge that conduct would cause serious alarm, and classifying the offense in all other cases as a disorderly persons offense.

1990 Legislation

L. 1990, c. 104, § 1, added subsec. a and entitled former subsec. a which defined offense as

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knowingly taking or enticing a child under age 18 from custody of parent, guardian or other lawful custodian, without privilege to do so, or in violation of court order, provided affirmative defense that the actor believed the child to be in danger or that the child, at least 10 years old, was taken with the child's consent and without criminal purpose, created a presumption of knowledge of the child's age, and designated the offense as a crime of the fourth degree, and added subsec. c to g.

2C:13-5. Criminal coercion

Notes of Decisions

1. Admissibility of evidence

In prosecution for sexual assault, burglary, kidnapping, criminal restraint, terroristic threats,

Notes of Decisions

Indictment and Information 2

2. Indictment and Information

Interference with custody count of indictment would be dismissed absent evidence before grand jury that defendant had knowledge of custody order at time he took child from mother. State v. Butlerston, 234 N.J. Super. 606, 561 A.2d 312 (L. 1988)

criminal coercion, and aggravated assault, trial court did not err by admitting out-of-court and in-court identifications of defendant by victim. State v. Frey, 194 N.J. Super. 326, 476 A.2d 824 (A.D. 1984)

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CONSULT GENERAL INDEX POCKET PART

COPIES OF THIS INDEX ARE AVAILABLE FROM THE NEW JERSEY LEGISLATURE

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INTRODUCTION TO A BILL CONCERNING MINIMUM VISITATION GUIDELINES AND ENFORCEMENT

Divorce in its simplest terms can be separated into three areas of possible contention between parents. These are (1) financial consideration, (2) custody of children and (3) visitation by the noncustodial parent. Children are often the real victims of all three and are frequently held "hostage" by the custodial parent depriving them of the emotional security of a two-parent family. It truly goes against the nature of parenthood to depend upon the cleverness of an attorney, the honesty of an angered spouse and the discretions of the court system to be assured reasonable visitation to your own children.

"Visitation rights are essential legal rights of both the child and the parents involved in a divorce. The right of the noncustodial parent and their child or children to have access to each other after divorce is a fundamental, joint right of the parent and child with a basis in constitutional case law, which has held that the rights to raise, have access to, and care for one's own children are more precious than property rights, are essential; and that the right to be with one's children is a natural right with a higher moral claim than any economic right. In the past, the right of visitation has virtually always been raised on behalf of the parent; however, the child's right to visitation is also protected by constitutional law."¹

Much of the anger, frustration, and futility felt by the noncustodial parent as well as the expense incurred in their efforts to obtain visitation could very well be removed by specific action of our legislature. By following the enlightened example of Texas in which the Texas legislature set minimum guidelines for visitation, rather than allowing terms of visitation to be set by the arbitrary decisions of the courts would accomplish this very thing.

Regarding visitation, generally the guidelines adopted by the Texas legislature provide that, among other things, noncustodial parents are to have the first, third, and fifth weekends of the month from after school on Friday to Monday morning, Wednesday evening from after school until 8:00 pm and in alternating years, a week at spring break, a week at Thanksgiving, and a week before and after Christmas which every other year includes Christmas day. There is also a provision for four weeks in the summer. This is an extensive bill and contains many other substantial parts. A bill similar to the Texas bill would go far to alleviate fears of either parent concerning visitation. The knowledge of both parents prior to separation and divorce that specific laws apply which would guarantee the noncustodial parent certain minimum visitation would remove one area of possible contention. Both parents have the parental right of access to their children and they should know what this is before decisions are made which will influence their life.

The major considerations of this Bill which the NJCCR is submitting for your consideration are as follows.

The noncustodial parent has visitation:

- The first, third and fifth weekend of each month starting after school Friday until Monday morning or a time frame as mutually agreed by the parties and put into an order
- Every Wednesday from after school until school the following day. The weekend of Father's Day if the visiting parent is the father or the weekend of Mother's Day if the visiting parent is the mother
- For one half the school spring break
- Alternating Christmas vacation periods until 8:00 pm on the day prior to the resumption of the school year
- The school Thanksgiving vacation period on alternating years
- On alternating holidays
- 45 consecutive days during summer vacation period or at the election of the visiting parent, two separate periods of consecutive days which total 45 days.

This is considered an extremely important bill by NJCCR and along with financial considerations, lays the cornerstone for a program designed to eliminate many of the problems associated with divorce and child custody.

¹An overview of access (visitation) research. Anna D. Keller, "Children in divorced family systems: New approaches." Presentations at NJCCR's Fourth Annual Conference, October 13-15, 1989.

THIS ACT concerning the visitation rights of children and parents shall be known, and may be cited as the "Minimum Standards of Visitation Rights and Enforcement Act." This act revises parts of the statutory laws R.S. 9:2-4 and R.S. 2C:13-4.

The Legislature finds and declares that it is in the public policy of this State to assure minor children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, and that it is in the public interest to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy. The Legislature also finds and declares that a parent's right to the preservation of his/her relationship with his/her child (ren) derives from the fact that the parent's achievement of a rich and rewarding life is likely to depend significantly on his or her ability to participate in the rearing of his or her child(ren). A child's corresponding right to protection from interference in the relationship derives from the psychic importance to him or her being raised by loving, responsible, reliable adults. "No bond is more precious and none should be more zealously protected by the law as the bond between parent and child."

MINIMUM STANDARDS OF VISITATION RIGHTS

1. Purposes and Limitations:

(A) **Minimum Standards** --- The standards provided for in this subtitle are intended to guide the courts of this State in determining the minimum period of time for child visitation. Nothing herein shall be construed as limiting the courts of this State from establishing visitation schedules which would provide a greater amount of visitation than that provided for in this subtitle.

(B) **Child Five Years of Age or Older** --- The standards for child visitation provided for in this subtitle shall apply to a child five years of age or older.

(C) **Child Less Than Five Years of Age** --- If a child is less than five years of age, the court shall consider the standards provided for in this subtitle and shall establish a visitation schedule as similar as possible to that provided for by such standards in a manner consistent with the age, circumstances and needs of the child.

(D) **Family With Multiple Children** ---

(1) If the parents have more than one child and all the children of the family are five years of age or older, the standards provided for in this subtitle shall apply.

(2) If the parents have more than one child and one or more of the children of the family is less than five years of age, the court shall consider the standards provided for in this subtitle and shall establish a visitation schedule as similar as possible to that provided for by such standards in a manner consistent to the family, after consideration of the ages, circumstances, and needs of all the children of the family.

2. Definitions:

(A) In this subtitle the following terms have the meanings indicated:

(1) Parent — "Parent" means the natural or adoptive parent of a child.

(2) Custodial Parent --- "Custodial Parent" means:

(A) the parent who has been awarded the sole custody of a child by a court of competent jurisdiction; or

(B) in cases where joint legal custody has been awarded to both parents, that parent who is deemed to have physical custody of the child.

(3) Visiting Parent --- "Visiting parent" means:

(A) the parent who has been awarded the right of visitation with a child by a court of competent jurisdiction; or

(B) in cases where joint legal custody has been awarded to both parents, that parent who is having access to the child.

(4) Parental Rights --- "Parental rights" mean the sum total of the rights of the parent or parents in and to the child as well as the rights of the child in and to the parent or parents. The following are "parental rights" protected to varying degrees by constitution: physical possession of child, which, in case of custodial parent, includes day-to-day care and companionship of child; right to discipline child, which includes right to inculcate in child parent's moral and ethical standards; right to control and manage minor child's earnings; right to control and manage minor child's property; right to be supported by adult child; right to have child bear parent's name; and right to prevent adoption of child without parents' consent. These definitions apply to both parents, not just custodial or noncustodial parents.

(5) Weekend --- "Weekend" means:

(A) in the case of parents who reside 50 miles or less apart, from 6:00 pm Friday until the beginning of the school day on Monday or at the election of the visiting parent from the end of the school day on Friday until the beginning of the school day on Monday.

(B) in the case of parents who reside more than 50 miles but less than 100 miles apart, from 6:00 pm Friday until 8:00 pm Sunday or at the election of the visitation parent from the end of the school day on Friday until 8:00 pm Sunday.

(C) in the case where a weekend period of visitation coincides with a school holiday during the regular school term, or with a Federal, State or local holiday during the school summer vacation period, the weekend period shall extend until 6:00 pm Monday on a Monday holiday or shall begin at 6:00 pm Thursday for a Friday holiday, as applicable.