

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

7818 HOUSE HEALTH EDUCATION & SOCIAL SERVICES

(5) School Summer Vacation Period -- "School Summer Vacation Period" means the period of time from 6:00 pm on the last day of the spring school term until 8:00 pm on the day prior to the beginning of the fall school term.

(6) School Spring Vacation Period -- "School Spring Vacation Period" means the period of time from 6:00 pm on the last day of school prior to the school spring vacation until 8:00 pm on the day before school resumes.

(7) School Thanksgiving Vacation Period -- "School Thanksgiving Vacation Period" means from 6:00 pm on the Wednesday before Thanksgiving until 8:00 pm on the following Sunday.

(8) Standards -- "Standards" means the minimum visitation periods as noted in minimum visitation, weekends and weekdays and vacation and holiday visitation sections following.

(9) School Christmas Vacation Period -- "School Christmas Vacation Period" means from 6:00 pm on the last day of school prior to the beginning of the school Christmas vacation period until 8:00 pm on the day prior to the resumption of the school year.

3. Minimum Visitation --- Weekends and Weekdays:

In any custody or visitation proceeding the court shall establish, at a minimum, the following visitation schedule:

(A) the first, third, and fifth weekend of each month;

(B) 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;

(C) each Wednesday evening from end of the school day until school the following morning; and

(D) the vacation and holiday visitation schedule.

4. Vacation and Holiday Visitation:

(A) In addition to the weekend and weekday visitation periods provided for, the court shall also provide for the following periods of visitation during vacations and holidays:

(1) 45 continuous days during the school summer vacation period or, at the election of the visiting parent, two separate periods of consecutive days which total 45 days;

(2) Either one half of the school spring (Easter) vacation period every year or the entire school spring vacation period every other year at the election of the visiting parent;

(3) The school Thanksgiving vacation period every other year; and

(4) The school Christmas vacation period as provided for in subsection (b).

(B) Special Rule for School Christmas Vacation Period --

(1) In those years which the child is with the custodial parent for the Thanksgiving vacation period, the child shall be with the visiting parent from 6:00 pm on the last day of school prior to the beginning of the school Christmas vacation period until 8:00 pm on the day prior to the resumption of the school year;

(2) In those years which the child is with the visiting parent during the Thanksgiving vacation period, the child shall be with the custodial parent from 6:00 pm on December 26th until 8:00 pm on the day prior to the resumption of the school year.

(3) In any case where the parents do not observe Christmas due to religious beliefs, the court, at the request of either of the parents, may make alternative arrangements with regard to the school Christmas vacation period.

5. Parents Who Reside More Than 100 Miles Apart:

If the parents reside more than 100 miles apart and distance and travel time considerations are found by the court to make the standards provided for in their subtitle unworkable, the court shall establish a visitation schedule as similar as possible to that provided for by such standards in a manner that would least likely cause harm or detriment to the child after consideration of the circumstances, and finances of each parent and the age and needs of the child.

6. Variations From Standards:

(A) The court may vary from the standards provided for by this subtitle if after consideration of the age, circumstances and needs of the child the court finds that adherence to such standards would cause harm or detriment to the child.

(B) Any such variation shall be based solely on the evidence presented on the record and the court shall issue written findings of facts and an explanation of its reasoning in varying from the standards provided for in their subtitle.

7. General Terms:

(A) An election to be made by a visiting parent as provided for in this subtitle, shall be made in such manner and at such time as the court deems appropriate under the circumstances.

(B) The court may impose conditions as to travel between the residences of the parents and methods of transferring children at designated times and places as the court may deem necessary and proper under the circumstances of the case.

8. Modifications of Orders:

(A) Subject to the provisions of paragraph (b) of the section, the adoption of the standards provided for in this subtitle may be grounds for requesting a modification of a child visitation order based on a material change in circumstances;

(B) The adoption of the standards provided in this subtitle may not be grounds for requesting a modification of a child visitation award based on a material change in circumstances unless the use of the standards provided for in this subtitle would result in an increase of visitation time of 25 percent or more.

ENFORCEMENT OF VISITATION

Section I:

1. The performance of parental functions and the duty to provide child support are distinct responsibilities in the care of a child. If a party fails to comply with a provision of a decree or temporary order of injunction, the obligation of the other party to make payments for support or maintenance or to permit contact with child is not suspended.

2.

(A) A motion may be filed to initiate a contempt action to coerce a parent to comply with an order establishing residential provisions for a child. If the court finds there is reasonable cause to believe the parent has not complied with the order, the court may issue an order to show cause why the relief requested should not be granted.

(B) If, based on all the facts and circumstances, the court finds after hearing that the parent has not complied with the order establishing residential provisions for the child, the court shall find the parent in contempt of court. Upon a finding of contempt, the court shall order:

(1) The noncomplying parent to provide the moving party additional time with the child. The additional time shall be equal to the time missed with the child, due to the parent's noncompliance;

(2) The parent to pay, to the moving party, all court costs and reasonable attorneys' fees incurred as a result of the noncompliance, and any reasonable expenses in locating or returning a child; and

(3) The parent to pay, to the moving party, a civil penalty of not less than the sum of one hundred dollars.

(4) The court may also order the parent to be imprisoned in the county jail, if the parent is presently able to comply with the provisions of the court-ordered plan and is presently unwilling to comply. The parent may be imprisoned until he or she agrees to comply with the order, but in no event for more than one hundred eighty days.

3. On a second failure within three years to comply with a residential provision of a court-ordered parenting plan, a motion may be filed to initiate contempt of court proceedings according to the procedure set forth in subsection 2(a) and 2(b) of this section. On a finding of contempt under this subsection, the court shall order:

(A) The noncomplying parent to provide the other parent or party additional time with the child. The additional time shall be twice the amount of the time missed with the child, due to the parent's noncompliance;

(B) The noncomplying parent to pay, to the other parent or party, all court costs and reasonable attorney's fees incurred as a result of the noncompliance, and any reasonable expenses incurred in locating or returning a child; and

(C) The noncomplying parent to pay, to the moving party, a civil penalty of not less than two hundred fifty dollars.

(D) The court may also order the parent to be imprisoned in the county jail, if the parent is presently able to comply with the provisions of the court-ordered plan and is presently unwilling to comply. The parent may be imprisoned until he or she agrees to comply with the order but in no event more than one hundred eighty days.

4. For purposes of subsections (1), (2), and (3) of this section, the parent shall be deemed to have the present ability to comply with the establishing residential provision unless he or she establishes otherwise by clear and convincing evidence. The parent shall establish a reasonable excuse for failure to comply with the residential provision of a court-ordered plan by clear and convincing evidence.

5. Any monetary award ordered under subsections (1), (2), and (3) of this section may be enforced, by the party to whom it is awarded, in the same manner as a civil judgment.

6. Subsections (1), (2), and (3) of this section authorize the exercise of the court's power to impose remedial sanctions for contempt of court and is in addition to any other contempt power the court may possess.

7. Upon motion for contempt of court under subsections (1) through (3) of this section, if the court finds the motion was brought without reasonable basis, the court shall order the moving party to pay to the nonmoving party, all costs, reasonable attorney's fees, and a civil penalty of not less than one hundred dollars.

Section II:

1. A relative of a person is guilty of custodial interference in the third degree if, with the intent to deny access to such person by a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person the relative takes, entices, retains, detains, or conceals the person from a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person.

2. A parent of a child is guilty of custodial interference in the third degree if:
 - (A) The parent takes, entices, retains, detains, or conceals the child, with the intent to deny access, from the other parent having the lawful right to time with the child pursuant to a court-ordered plan; or
 - (B) The parent has not complied with the residential provisions of a court-ordered plan after a finding of contempt under section 1 (3) of this act; or
 - (C) If the court finds that the parent has engaged in a pattern of willful violations of the court-ordered residential provisions.
3. Nothing in (B) of this subsection prohibits conviction of custodial interference in the third degree under (A) or (C) of this subsection in absence of findings of contempt.
4. The first conviction of custodial interference is a misdemeanor. The second or subsequent conviction of custodial interference in the third degree is a class C felony.

Section III:

1. The court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree that a substantial change has occurred in the circumstances of the child or the parents and that the modification is necessary so as not to be to the detriment of the child. In applying these standards, the court shall retain the residential schedule established by the decree unless:
 - (A) The parents agree to the modification;
 - (B) The child has been integrated into the family of the petitioner with the consent of the other parent.
 - (C) The child's present environment is detrimental to the child's physical, mental or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child; or
 - (D) The court has found the nonmoving parent in contempt of court at least twice within three years because the parent failed to comply with the residential time provisions in the court-ordered plan, or the parent has been convicted of custodial interference in the third degree.
2. A conviction of custodial interference in the third degree under Interference with Custody (2C:13-4(a)) or Contempt of Court (9:2-4 or 2A:10-1 et. seq.) shall constitute a substantial change of circumstances for the purpose of this section.
3. If the court finds that a motion to modify a prior decree has been brought in bad faith, the court shall assess the attorney's fees and court costs of the nonmoving parent against the moving party.

4. If there is a continuing pattern of visitation interference and the court has found the non-moving party in contempt more than three (3) times, the moving party may institute child abuse and cruelty proceedings under 9:6-1 et. seq.

Cruelty of the child will occur under continuing visitation interference and will consist in any of the following acts:

(A) inflicting upon a child unnecessary suffering or pain, either mental or physical by restraining the child unlawfully from seeing his/her other parent;

(B) habitually tormenting, vexing or afflicting a child by continuous or frequent denial of visitation or alienation of noncustodial parents;

(C) any willful act of omission or commission whereby unnecessary pain and suffering, whether mental or physical, is caused or permitted to be inflicted on a child through the denial of frequent and continuing contact with the noncustodial parent; or

(D) exposing a child to unnecessary hardship, fatigue or mental or physical strains that may tend to injure the health or physical or moral well-being of such child by denial of frequent and continuing contact with noncustodial parent or of alienation of the children by one parent against the other parent.

If the court finds that child abuse and/or cruelty have indeed occurred under the above definitions, the court shall consider it to be a change of circumstance and may bring criminal charges against the defendant and/or reverse custody of the child(ren) to the parent who has been interfered against.

Section IV:

1. All court orders containing parenting plan provisions or orders of contempt, entered pursuant to Section I of this act, shall include the following language:

WARNING: VIOLATION OF THE RESIDENTIAL PROVISIONS OF THIS ORDER WITH ACTUAL KNOWLEDGE OF ITS TERMS IS PUNISHABLE BY CONTEMPT OF COURT, AND MAY BE A CRIMINAL OFFENSE (2C:13-4[a]). VIOLATION OF THIS ORDER MAY SUBJECT A VIOLATOR TO ARREST.

Section V:

1. Any reasonable expenses incurred in locating or returning a child shall be assessed against a convicted defendant under Interference with Custody (2C:13-4a) or Contempt of Court (9:2-4 or 2A:10-1 et. seq.).

2. In any prosecution of custodial interference in the third degree, it is a complete defense, if established by the defendant by clear and convincing evidence, that:

(A) The defendant's purpose was to protect the child, or himself or herself from imminent physical harm, that the belief in the existence of the imminent physical harm was reasonable, and that the defendant sought the assistance of the police, sheriff's office,

protective agencies, or the court of any state before committing the acts giving rise to the charges or within a reasonable time thereafter;

(B) The complainant had, prior to the defendant committing the acts giving rise to the crime, for a protracted period of time, failed to exercise his or her rights to physical custody or access to the child under an order granting visitation rights, provided that such failure was not the direct result of the defendant's denial of access to such person;

(C) The acts giving rise to the charges were consented to by the complainant; or

(D) The offender, after providing or making a good faith effort to provide notice to the person entitled to access to the child, failed to provide access to the child due to reasons that a reasonable person would believe were directly related to the welfare of the child, and allowed access to the child in accordance with the court order within a reasonable period of time. The burden of proof that the denial of access was reasonable is upon the person denying access to the child.

3. Consent of a child less than sixteen years of age does not constitute a defense to an action.

Section VI:

1. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NOTIFICATION PRIOR TO RELOCATION OF CHILD

Amends Title 9:2-2 (Child Custody and Visitation) of the the New Jersey Statutes by adding the following section:

Sec. 17. Notification prior to relocation of child

In any custody or visitation proceeding, the court shall include as a condition of any custody or visitation order a requirement that advance written notice be made to either the court, the other party, or both, by any party intending to relocate the temporary and/or permanent residence of a child within 60 days prior to the intended relocation. The court may require that such notice be in such form and contain such information as the court may deem necessary and proper under the circumstances of the case.

CHILD ENROLLMENT IDENTIFICATION BILL

AN ACT relating to the identification required for enrollment in public schools; providing criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW JERSEY:

Identification Required for Enrollment:

1. No later than the 30th day after a parent or other person with custody of a child enrolls the child in a public school, the parent or other person or the school district in which the child most recently attended school shall furnish to the school district:

(A) the child's birth certificate or another document suitable as proof of the child's identity; and

(B) a copy of the child's records from the school the child most recently attended if the child has been previously enrolled in a school in this state or another state.

2. If a child is enrolled under a name other than the child's name as it appears in the identifying document or records, the school district shall notify the missing children and missing persons information clearinghouse of the child's name as shown on the identifying document or records and the name under which the child is enrolled. The information in the notice is confidential and may be released only to a law enforcement agency.

3. If the information required by Subsection 1 of this section is not furnished to the district within the time provided by that subsection, the district shall notify the police department of the city or sheriff's department of the county in which the district is located and request a determination of whether the child has been reported as missing.

4. The State Board of Education may adopt rules necessary to the implementation and enforcement of this section, including rules providing for the types of documents that are suitable for identification purposes under this section.

5. When accepting a child for enrollment, the school district shall inform the parent or other person enrolling the child that presenting a false document or false records under this section is an offense under Section _____ and that enrollment of the child under false documents subjects the person to liability for tuition or costs under Section _____ of this code.

6. A person commits an offense if the person enrolls a child in a public school and fails to furnish an identifying document or record relating to the child on the request of a law enforcement agency conducting an investigation in response to a notification under Subsection 3 of this section. An offense under this subsection is a crime of the fourth degree.

To: Legislative members

From: Daniel Anderson
P.O.Box 92674
Anch, Ak 99509-2674
(907) 248-3470

I would like to ask you to support the proposed legislative changes brought forward by Jim Arnesen, President of the Alaska Family Support Group October 28 1993 .

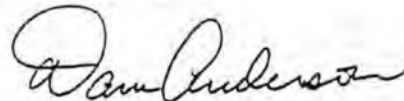
These proposed changes are a positive step in changing a system in need of repair, the goal is keep it "ALL FOR THE KIDS". That is the mission statement of the Courts , C.S.E.D, and all other agency so let's make changes to support that.

I also believe other issues are still in need of addressing, one would be the ease as to which one can deal with these agencies concerning the children. Improving a little at a time is like a giant step forward.

Please support and help make this effort, some of the changes stated here are thing that no one ever knows about or hears about unless they happen to you or some one close.

I personally am a father of two children that my ex-wife is going to do what ever it takes to keep me from the kids. To date I have not had the backing of the system to change that. It's a battle that I no longer can fight because I can not win. She just gets told to cooperate and once out of court laughs because I still can not see them. Even with a court order for a given day, if she's not home or will not answer the door visitation is over. Call the police and they will not enforce that order either. Is that in the interest of the children

ALL FOR THE KIDS, lets help make it that way please.



03/04/94
16:56:06

PUBLIC OPINION MESSAGE SYSTEM
MEMBER OFFICE BUN Bunde

POMS100
LHSCZAN

From: Ms. Ruth E. Talley
9221 Arlene St #H8

Anchorage

AK 99515

Tel: 248-9206

NON CONSTITUENT

Bill# HB 422 Title: CHILD CUSTODY AND VISITATION RIGHTS
Subject

SUPPORTS THIS LEGISLATION

Message: PLEASE HELP PASS HB 422, MINIMUM VISITATION GUIDELINE LAW. IT WILL
MAKE A GOOD LAW. (CHILD CUSTODY AND VISITATION RIGHTS)

Entered By: LIOCCRI on 3/4/94 PomID 7270 Distribution 9
MSG:
Enter Next Message PF4 Menu PF6 WasteBasket PF7 Previous POM PF10 BigWaste

03/09/94
16:21:30

PUBLIC OPINION MESSAGE SYSTEM
MEMBER OFFICE BUN Bunde

POMS100
LHSCZAN

From: Ms. Keri L. Basler
5800 College Dr

Anchorage AK 99504 Tel: 208-1824

NON CONSTITUENT

Bill# HB 422 Title: CHILD CUSTODY AND VISITATION RIGHTS
Subject

SUPPORTS THIS LEGISLATION

Message: AND HB 354: I AM A CUSTODIAL MOTHER WHO BELIEVES THE INTENTION OF
THESE TWO BILLS ARE A POSITIVE WHEN IT COMES TO THE BEST INTERESTS OF CHILDREN.

PLEASE PROTECT THE CHILDRENS' RIGHTS TO BOTH PARENTS. WE NEED TO STOP
ALLOWING THE LAWS TO TEAR FAMILIES APART. HELP US KEEP FAMILIES TOGETHER.
(CHILD CUSTODY AND VISITATION RIGHTS)

Entered By: LIOCBBN on 3/ 9/94 PomID 7828 Distribution 60
MSG:

Enter Next Message PF4 Menu PF6 WasteBasket PF7 Previous POM PF10 BigWaste

10 years for first degree sexual assault, with the sexual assault sentence made consecutive to the kidnapping sentence, was not excessive. *Wilson v. State*, 670 P.2d 1149 (Alaska Ct. App. 1983).

The court's imposition of consecutive sentences for the two kidnappings and one robbery arising out of the same transaction does not violate double jeopardy. *Walker v. Endell*, 828 F.2d 1378 (9th Cir. 1987), cert. denied, U.S. , 109 S. Ct. 309, 102 L.Ed.2d 328 (1988).

Composite sentence of 12 years for kidnapping, first-degree physical assault, and first-degree sexual assault not too lenient. See *Garrison v. State*, 762 P.2d 465 (Alaska Ct. App. 1988).

Sentence found excessive. — See *Hintz v. State*, 627 P.2d 207 (Alaska 1981).

Composite sentence of 41 years for convictions of sexual assault in the first degree, kidnapping, three counts of assault in the third degree and one count of assault in the fourth degree was excessive;

the defendant should not have received a sentence in excess of 30 years. *Patterson v. State*, 689 P.2d 146 (Alaska 1984).

Applied in *Nukapigak v. State*, 645 P.2d 215 (Alaska Ct. App. 1982); *Bidwell v. State*, 656 P.2d 592 (Alaska Ct. App. 1983); *Inker v. State*, 655 P.2d 1324 (Alaska Ct. App. 1983); *Reynolds v. State*, 664 P.2d 621 (Alaska Ct. App. 1983); *Barry v. State*, 675 P.2d 1292 (Alaska Ct. App. 1984).

Quoted in *Howell v. State*, 728 P.2d 1220 (Alaska Ct. App. 1986).

Stated in *Walker v. Endell*, 850 F.2d 470 (9th Cir. 1987).

Cited in *Nukapigak v. State*, 663 P.2d 943 (Alaska 1983); *Johnson v. State*, 665 P.2d 566 (Alaska Ct. App. 1983); *Nylund v. State*, 716 P.2d 387 (Alaska Ct. App. 1986); *Newsom v. State*, 726 P.2d 561 (Alaska Ct. App. 1986); *Ervin v. State*, 761 P.2d 124 (Alaska Ct. App. 1988); *Robison v. State*, 763 P.2d 1357 (Alaska Ct. App. 1988); *White v. State*, 773 P.2d 211 (Alaska Ct. App. 1989).

Sec. 11.41.320. Custodial interference in the first degree. (a) A person commits the crime of custodial interference in the first degree if the person violates AS 11.41.330 and causes the victim to be removed from the state.

(b) Custodial interference in the first degree is a class C felony. (§ 3 ch 166 SLA 1978)

NOTES TO DECISIONS

Protracted period. — Retention of child in another state for over a year satisfied the "protracted period" requirement. *Gerlach v. State*, 699 P.2d 358 (Alaska Ct. App. 1985).

Necessity defense unavailable. — The trial court did not err in denying defendant the right to rely on a necessity defense in prosecution for custodial interference in the first degree. *Gerlach v. State*, 699 P.2d 358 (Alaska Ct. App. 1985).

Collateral references. — Fiction of loss of services as condition of action for abduction of child, 72 ALR 847.

Kidnapping or other criminal offense by taking or removal of child by, or under

Sentence upheld. — Sentence of five years with three years suspended for custodial interference in the first degree, followed by a five-year suspended imposition of sentence for theft in the second degree, was not excessive, where defendant had seized his children in direct defiance of a court order and it was deemed necessary to impose a substantial suspended sentence in order to deter him from future criminal violations. *Sundelin v. State*, 766 P.2d 1184 (Alaska Ct. App. 1989).

authority of, parent or one in loco parentis, 20 ALR4th 823.

Validity, construction and application of statutes or ordinances regulating sexual performance by child, 21 ALR4th 239.

Sec. 11.41.330. Custodial interference in the second degree.

(a) A person commits the crime of custodial interference in the second 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 legal right to do so, the person takes, entices, or keeps that child or incompetent person from a lawful custodian with intent to hold the child or incompetent person for a protracted period.

(b) Custodial interference in the second degree is a class A misdemeanor. (§ 3 ch 166 SLA 1978)

NOTES TO DECISIONS

Protracted period. — See note under *State*, 699 P.2d 358 (Alaska Ct. App. same catchline, AS 11.41.320, *Gerlach v.* 1985).

Sec. 11.41.370. Definitions. In AS 11.41.300 — 11.41.370, unless the context requires otherwise,

(1) "lawful custodian" means a parent, guardian, or other person responsible by authority of law for the care, custody, or control of another;

(2) "relative" means a parent, stepparent, ancestor, descendant, sibling, uncle, or aunt, including a relative of the same degree through marriage or adoption;

(3) "restrain" means to restrict a person's movements unlawfully and without consent, so as to interfere substantially with the person's liberty by moving the person from one place to another or by confining the person either in the place where the restriction commences or in a place to which the person has been moved; a restraint is "without consent" if it is accomplished

(A) by acquiescence of the restrained person, if the restrained person is under 16 years of age or is incompetent and the restrained person's lawful custodian has not acquiesced in the movement or confinement; or

(B) by force, threat, or deception. (§ 3 ch 166 SLA 1978)

Cross references. — For definition of terms used in this title, see AS 11.81.900.

NOTES TO DECISIONS

Defense that victim was defendant's relative. — The new criminal code, which states in AS 11.41.300(b)(1) that it is an affirmative defense that defendant was a relative of the victim, provides for a broader exemption from the kidnapping

statute than the absolute exemption for the abduction of a minor by his parent under former AS 11.15.260. *Crump v. State*, 625 P.2d 857 (Alaska 1981).

Cited in *Gerlach v. State*, 699 P.2d 358 (Alaska Ct. App. 1985).

NOTES TO DECISIONS

Section removes many common law disabilities. — See same catchline in note to AS 25.15.060.

And enables wife to sue her husband. — See same catchline in note to AS 25.15.060.

Collateral references. — Wife's liability for necessities, 15 ALR 833.

Liability of married woman for articles purchased by her for which husband not liable, 114 ALR 910.

Wife's liability for necessities furnished

husband, 11 ALR4th 1160.

Discrimination against credit applicant on basis of marital status under Equal Credit Opportunity Act (15 USCS §§ 1691 et seq.), 55 ALR Fed. 458.

Sec. 25.15.110. Laws imposing civil disabilities upon married persons repealed. All laws that impose or recognize civil disabilities upon a married person that are not imposed or recognized as existing as to the other spouse are repealed. For any unjust usurpation of property or natural rights a married person has the same right to appeal individually to all courts for redress that the other spouse has. § 21-2-11 ACLA 1949; am § 99 ch 127 SLA 1974)

NOTES TO DECISIONS

The statutes of Alaska remove certain disabilities which at common law attend the wife during her coverture. Decker v. Keddy, 148 F. 681 (9th Cir. 1906).

The married woman's common-law disability to bring suit was ended by a series of acts referred to as the Married Woman's Acts. The requirement that suit be brought by the husband when the wife was injured in order that redress be available was thereby ended. Schreiner v. Fruit, 519 P.2d 462 (Alaska 1974).

But the statutes do not mean that the husband is answerable to the wife for damages for failure to supply her with the necessities of life, or for any other act of failure of duty connected with or arising from the marital relation. Decker v. eddy, 148 F. 681 (9th Cir. 1906).

Wife has independent right to sue for loss of consortium. — See Schreiner v. Fruit, 519 P.2d 462 (Alaska 1974).

The basis for recovery is no longer the loss of services, but rather the injury to the conjugal relation. Therefore, the claim for relief for loss of consortium, in both husband and wife, should be given recognition in Alaska. Schreiner v. Fruit, 519 P.2d 462 (Alaska 1974).

The interest to be protected is personal to the wife, for she suffers a loss of her own when the care, comfort, companionship, and solace of her spouse is denied her. Schreiner v. Fruit, 519 P.2d 462 (Alaska 1974).

Quoted in Cramer v. Cramer, 379 P.2d 95 (Alaska 1963).

Chapter 20. Parent and Child.

Section

10. Age of majority
20. Arrival at majority upon marriage
30. Duty of parent and child to maintain each other
40. Maintenance and education of minor out of income of the minor's property
45. Legitimacy of children conceived by artificial insemination
50. Legitimation by subsequent marriage, acknowledgment in writing or adjudication
60. Petition for award of child custody
70. Temporary custody of the child

Section

80. Mediation of child custody matter
90. Factors for consideration in awarding shared child custody
100. Reasons for denial to be set out
110. Modification of child custody or visitation
115. Attorney fee awards in custody and visitation matters
120. Closure of custody proceedings and records
130. Access to records of the child
140. Action for failure to permit visitation with minor child

Collateral references. — 10 Am. Jur. 2d, Bastards, § 1 et seq.; 42 Am. Jur. 2d, Infants, §§ 1-5, 28-57; 59 Am. Jur. 2d, Parent and Child, § 1 et seq.

43 C.J.S., Infants, § 1-30; 67A C.J.S., Parent and Child, § 1 et seq.

Sec. 25.20.010. Age of majority. A person is considered to have arrived at majority at the age of 18, and thereafter has control of the person's own actions and business and has all the rights and is subject to all the liabilities of citizens of full age, except as otherwise provided by statute. (§ 20-1-1 ACLA 1949; am § 1 ch 37 SLA 1959; am § 5 ch 63 SLA 1977)

NOTES TO DECISIONS

Legislation amending several provisions of the Children's Act was part of an omnibus age-law bill which resolved ambiguities in several codes and generally harmonized all Alaska Statutes with the policy of a 19-year (now 18-year) age of majority. Davenport v. McGinnis, 522 P.2d 1140 (Alaska 1974).

This section does not carry a broad negative implication. RLR v. State, 487 P.2d 27 (Alaska 1971).

Nor imply that infants are incompetent in all things. — The age of majority statute does not imply a legislative judgment that infants are incompetent in all things; it means only that persons above the statutory age minimum are competent in all things except as otherwise provided. RLR v. State, 487 P.2d 27 (Alaska 1971); Quick v. State, 599 P.2d 712 (Alaska 1979).

Regulation prohibiting persons un-

der 19 years from knowingly consuming alcoholic beverages. — Since an administrative regulation prohibiting any person under the age of 19 years from knowingly consuming alcoholic beverages is authorized by statute [see now AS 04.06.090], the regulation comes within the "except as otherwise provided by statute" exception to this section, which gives the age of majority as 18 years. Michael v. State, 583 P.2d 852 (Alaska 1978).

Support beyond age of majority. — The legislature did not intend to provide for post-majority educational support in either an original decree or in a modification of the original decree. Dowling v. Dowling, 679 P.2d 480 (Alaska 1984).

Stated in L.A.M. v. State, 547 P.2d 827 (Alaska 1976); Lawrence v. Lawrence, 716 P.2d 142 (Alaska 1986).

Cited in Streb v. Streb, 774 P.2d 798 (Alaska 1989).

Collateral references. — Statutory change of age of majority as affecting pre-existing status or rights, 75 ALR3d 228.

Sec. 25.20.020. Arrival at majority upon marriage. A person arrives at the age of majority upon being married according to law, unless the person is under the marriageable age of consent as defined in AS 25.05.171(a), in which case the person reaches majority upon reaching the marriageable age of consent. (§ 20-1-2 ACLA 1949; am § 100 ch 127 SLA 1974)

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Cited in *R.R. v. State*, 487 P.2d 27 (Alaska 1971).

Sec. 25.20.030. Duty of parent and child to maintain each other. Each parent is bound to maintain the parent's children when poor and unable to work to maintain themselves. Each child is bound to maintain the child's parents in like circumstances. (§ 21-3-1 ACLA 1949)

Collateral references. — For persons liable for support and burial, see AS 47.25.230.

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A parent is obligated both by statute and at common law to support his or her children, even in the absence of a court order of support. *Matthews v. Matthews*, 739 P.2d 1298 (Alaska 1987).

When parent performs his duty. — The parent performs his duty when he provides for his child whatever is necessary for its suitable clothing and maintenance according to their situation and condition in life. *State v. Langford*, 90 Ore. 251, 176 P. 197 (1918), construing similar Oregon statute.

A parent's duty of support encompasses a duty to reimburse other persons who provide the support the parent owes, belongs to whomever supported the children, and is simply an action on a debt. However, when a custodial parent seeks a modification of a divorce decree which neglected to address either child custody or child support and also seeks reimbursement for past child support expenditures, he or she may join the claims, and bring both by motion in the original divorce action. *Matthews v. Matthews*, 739 P.2d 1298 (Alaska 1987).

State entitled to reimbursement for public assistance. — Although a support order which does not require the noncustodial parent to make any child support payment is not a "support order" under AS 47.23.120(a) (now AS 25.27.120(a)), the Child Support Enforcement Division (CSED) is entitled to reimbursement from the noncustodial parent for public assistance provided to the child in an amount determined by the state in accordance with a formula approved by the federal Secretary of Health and Human Services. *State, Child Support Enforcement Div. v. Gammons*, 774 P.2d 181 (Alaska 1989).

Obligation of father after divorce. — The obligation of the father is, after divorce, exactly the same as it was before dissolution of the marriage contract. *State v. Langford*, 90 Ore. 251, 176 p. 197 (1918), construing similar Oregon statute.

How obligation measured. — The obligation of the father must be measured with reference to his ability, honestly exercised, and with regard to his financial resources. *State v. Langford*, 90 Ore. 251,

176 p. 197 (1918), construing similar Oregon statute.

Mother of decedent in wrongful death action. — Mother of decedent did not have the right to receive directly the proceeds of the wrongful death action as a statutory beneficiary by virtue of this section, which requires each child to maintain his parents when they are poor and unable to work and maintain themselves. In re Estate of Pushruk, 562 P.2d 329 (Alaska 1977).

Although this section establishes a duty running between parent and child under specific factual circumstances, it does not create a right of action in the parent against a third-party tortfeasor. Nor does it establish dependency as a matter of

law. In re Estate of Pushruk, 562 P.2d (Alaska 1977).

Applicability of criminal non-support statute. — The criminal non-support statute, AS 11.51.120, does not extend beyond those individuals expressly or legally responsible for the support of a child by this section and AS 47.25.22; does not apply to step-parents regarding their actual relationship to the step-dren. *Olp v. State*, 738 P.2d 1117 (Alaska App. 1987).

Quoted in *Dowling v. Dowling*, P.2d 480 (Alaska 1984); *Streb v. Streb*, 774 P.2d 798 (Alaska 1989).

Cited in *Malekos v. Chloe Ann Sup. Ct. Op. No. 2580* (File Nos. 15817), P.2d (1982).

Collateral references. — Moral obligation to support, 17 ALR 1307; 79 ALR 1346; 8 ALR2d 787.

Liability of parent for necessities furnished child, 42 ALR 160.

Parent's duty to support, 121 ALR 176.

Statutory family allowance to minor children as affected by previous agreement or judgment for their support, 6 ALR3d 1387.

What voluntary acts of child, other than marriage or entry into military service, terminate parent's obligation to support, 32 ALR3d 1056.

Right of child to enforce provisions for his benefit in parents' separation or prop-

erty settlement agreement, 34 ALR 1357.

Liability of parent for support of institutionalized by juvenile court ALR3d 636.

Validity, construction, and applicability of statute imposing upon step-parent obligation to support child, 75 ALR3d 1159.

Constitutionality of statutory provision requiring reimbursement of public child for financial assistance to aged parents, 75 ALR3d 1159.

Child's right of action for loss of support, training, parental attention, or like, against a third person negligent in juring parent, 11 ALR 4th 549.

Sec. 25.20.040. Maintenance and education of minor out of income of the minor's property. If a minor who has a parent living has property from which income is sufficient for maintenance and education in a manner more expensive than the parent can reasonably afford, considering the situation of the parent's family and all circumstances of the case, the expenses of the minor's maintenance and education may be defrayed out of the income of the property whole or in part, as judged reasonable by the court. The expenses to be allowed accordingly in the settlement of the accounts of the minor guardian. (§ 21-3-2 ACLA 1949; am § 101 ch 127 SLA 1974)

Collateral references. — Responsibility of noncustodial divorced parent to pay for, or contribute to, costs of child's education, 99 ALR3d 322

Sec. 25.20.045. Legitimacy of children conceived by artificial insemination. A child, born to a married woman by means of artificial insemination performed by a licensed physician and consented to in writing by both spouses, is considered for all purposes the natural and legitimate child of both spouses. (§ 1 ch 122 SLA 1975)

Revisor's notes. — Formerly AS 2 C.J.S., Adoption of Persons, § 2. 20.20.010. Renumbered in 1982. Rights and obligations resulting from Collateral references. — 10 human artificial insemination. 83 ALR Am. Jur.2d, Bastards, § 1; 59 Am. Jur.2d, 4th 295. Parent and Child, § 2.

Sec. 25.20.050. Legitimation by subsequent marriage, acknowledgment in writing or adjudication. (a) A child born out of wedlock is legitimated and considered the heir of the putative parent when (1) the putative parent subsequently marries the undisputed parent of the child; (2) the putative parent acknowledges, in writing, being a parent of the child; or (3) the putative parent is judged by a superior court, upon sufficient evidence, to be a parent of the child. Acceptable evidence includes, but is not limited to, evidence that the putative parent's conduct and bearing toward the child, either by word or act, indicates that the child is the child of the putative parent. That conduct may be construed by the court to constitute evidence of parentage. When indefinite, ambiguous, or uncertain terms are used, the court may use extrinsic evidence to show the putative parent's intent.

(b) The Bureau of Vital Statistics, as custodian of the original certificates of birth of all persons born in the state, is designated as the depository for such acknowledgment and adjudication. The acknowledgment or adjudication shall be forwarded to the bureau in accordance with appropriate regulations of the bureau, and shall be noted on and filed with the corresponding original certificate of birth.

(c) In case of the birth in this state of a child out of wedlock and the legitimation of the child in accordance with this section, at the written request of the parents, or either of them or of the legal guardian, or of the person when of legal age, the Bureau of Vital Statistics shall prepare and place on file a substitute birth certificate, in accordance with the laws and regulations of the bureau pertaining to new certificates of this type.

(d) The results of a blood test, tissue-type test, protein comparison, or other scientifically accepted procedure shall be admitted and weighed in conjunction with other evidence in determining the statistical probability that the putative parent is a legal parent of the child in question. However, a scientifically accepted procedure that establishes a probability of parentage at 95 percent or higher creates a presumption of parentage that may be rebutted only by clear and convincing evidence.

(e) On request of a party in an action in which paternity is tested and to which the state is a party, the court shall order the mother, the child, and the putative father to submit to a blood tissue-type test, protein comparison, or other scientifically accepted procedure designed to determine the statistical probability that the putative parent is a legal parent of the child in question.

(f) If the child support enforcement agency is a party in an action in which paternity is contested, the agency shall request the court to order the tests and procedures described in (e) of this section. The agency may recover the costs of tests as a cost of the action, but that costs may not be recovered from a person who is a recipient under AS 47.25.310 — 47.25.420 (Aid to Families with Dependent Children). (§ 21-3-3 A.C.I.A 1949; am § 1 ch 67 SLA 1957; am § 115 SLA 1957; am § 1 ch 19 SLA 1960; am §§ 3, 4 ch 14 SLA 1989; am § 1 ch 69 SLA 1989)

Cross references. — For effect of the enactment of (e) of this section on Rule 35, Alaska Rules of Civil Procedure, see § 3, ch. 69, SLA 1989 in the Temporary and Special Acts; for provisions relating to registration of birth of a child conceived or born out of wedlock, see AS 18.60.160(d)-(f).

Effect of amendments. — The 1989 amendment, effective November 1, 1989, added subsections (e) and (f).

Opinions of attorney general. — This section allows a substitute birth certificate when there is legitimation of the child by intermarriage (providing proof is offered that the marriage was between the parents of the child), as well as by court adjudication alone. 1959 Op. Att'y Gen., No. 29.

Only the third method of legitimation is specifically vested in the court. 1962 Op. Att'y Gen., No. 13.

By implication, the Bureau of Vital Statistics has the power and duty to make its own determination of the fulfillment of the first two conditions of legitimation. 1962 Op. Att'y Gen., No. 13.

Necessarily involved in legitimation is the administrative determination of illegitimacy at the time an original birth certificate is filed. 1962 Op. Att'y Gen., No. 13.

For application of presumption of legitimacy to validity of original birth certificate, see 1962 Op. Att'y Gen., No. 13.

For right of child to legitimation procedures, see 1962 Op. Att'y Gen., No. 13.

An admission under oath or in writing

of paternity, in a foreign action, is recognized as satisfying the requirements of subdivision (a) (2) of this section if the father acknowledges his paternity child as a method of legitimation. Op. Att'y Gen., No. 13.

The bureau should recognize 1st marriages as sufficient under subdivision (a)(1) of this section to establish a subsequent intermarriage as a basis for legitimation. 1962 Op. Att'y Gen., No. 13.

For suggested standards of proof to establish that the man subsequently named as a mother is the father of her child for purposes of issuing a substitute birth certificate legitimating the child under subdivision (a) (1), see 1962 Op. Att'y Gen., No. 13.

For discussion of what constitutes sufficient written acknowledgment of paternity under subdivision (a)(2), see 19 Op. Att'y Gen., No. 13.

Erroneous entries in the original certificates of children born to mothers naming the father are significant if the mother's acknowledgment of paternity corroborating the effect of a subsequent intermarriage or written acknowledgment of paternity by the father can be established that the entry made by the mother or at her request has no other evidentiary value. 1962 Op. Att'y Gen., No. 13.

Legitimation may be effected by a man even though the acknowledged father is married to another woman, the general policy of the statute. 19 Op. Att'y Gen., No. 13.

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When acknowledgment of paternity can be filed. — Under the existing provisions of subsection (a) of this section and AS 20.16.040(a) (now AS 25.23.040(a)), an acknowledgment of paternity can be filed at any time before the entry of a decree of adoption. In re L.A.H. 597 P.2d 613 (Alaska 1979).

The filing of an adoption petition does not preclude the biological father from thereafter filing a written acknowledgment of his paternity of the subject child, thereby legitimizing him. In re L.A.H., 597 P.2d 613 (Alaska 1979).

Interpretation of the relevant statutes precludes additional consideration of the best interests of the child in determining whether a father may legitimize the

adopteo during the pendency of an adoption proceeding and so foreclose adoption absent his consent. In re L.A.H., 597 P.2d 613 (Alaska 1979).

Establishment, preclusion order on question of paternity. — The superior court had discretion to enter an establishment-preclusion order on the question of paternity, where the alleged father willfully violated the court's order by providing false evidence. Dade v. State, Child Support Enforcement Div. ex rel. Lovett, 725 P.2d 706 (Alaska 1986).

Applied in S.L.W. v. Alaska Workmen's Comp. Bd., 490 P.2d 12 (Alaska 1971).

Cited in Bunes v. Gillen, 781 P.2d 985 (Alaska 1989).

Collateral references. — 10 Am. Jur. 2d, Bastards, §§ 45-59, 74-132.

Proofs, generally, 2 Am. Jur. POF, pp. 445-453, 607-624; 14 Am. Jur. POF2d, pp. 727-763; 19 Am. Jur. POF2d, pp. 1-44.

Legitimation by subsequent marriage, 27 ALR 1121.

Paternity, legitimacy, or legitimation as determined in action for divorce, separation, or annulment upon vacating or opening decree, 65 ALR2d 1390.

Race or color of child as admissible in evidence on issue of legitimacy or paternity, or as basis of rebuttal or exception to presumption of legitimacy, 32 ALR3d 1303.

Presumption of legitimacy of child born after annulment, divorce, or separation, 46 ALR3d 158.

Propriety of exhibition of child to jury to show family resemblance or lack of it on issue of paternity, 55 ALR3d 1087.

Death of putative father as precluding action for determination of paternity or child support, 58 ALR3d 188.

Admissibility, in disputed paternity

proceedings, of evidence to rebut mother's claim of prior chastity, 59 ALR3d 659.

Statute of limitations in illegitimacy or bastardy proceedings, 59 ALR3d 685.

Long-arm statutes, obtaining jurisdiction over nonresident parent in filiation or support proceeding, 76 ALR3d 708.

Legitimation by marriage to natural father of child born during mother's marriage to another, 80 ALR3d 219.

Proof of husband's impotency or sterility as rebutting presumption of legitimacy, 84 ALR3d 495; 14 Am. Jur. POF2d, pp. 409-481.

Who may dispute presumption of legitimacy of child conceived or born during wedlock, 90 ALR3d 1032.

Right of indigent defendant in paternity suit to have assistance of counsel at state expense, 4 ALR4th 353.

Right of illegitimate child to maintain action to determine paternity, 19 ALR4th 1082.

Right to jury trial paternity proceedings, 51 ALR4th 665.

Sec. 25.20.060. Petition for award of child custody. (a) If there is a dispute over child custody, either parent may petition the superior court for resolution of the matter under AS 25.20.060 — 25.20.130. The court shall award custody on the basis of the best interests of the child. In determining the best interests of the child, the court shall consider all relevant factors including those factors enumerated in AS 25.24.150(c).

(b) Neither parent, regardless of the question of the child's legitimacy, is entitled to preference in the awarding of custody.

(c) The court may award shared custody to both parents if shared custody is determined by the court to be in the best interests of the child. An award of shared custody shall assure that the child frequent and continuing contact with each parent to the maximum extent possible. (§ 6 ch 63 SLA 1977; am § 5 ch 88 SLA 1982)

Editor's notes. — Section 1, ch. 88, SLA 1982, provides: "LEGISLATIVE INTENT. (a) The legislature finds that it is generally desirable to assure a minor child 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. While actual physical custody may not be practical or

appropriate in all cases, it is the intent of the legislature that both parents have opportunity to guide and nurture the child and to meet the needs of the child on an equal footing beyond the constraints of support or actual custody.

(b) The legislature also finds that it is in the best interests of a child to encourage parents to implement their own child-rearing agreements outside of the court setting

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Joint custody. — The mere existence of a custody agreement is not sufficient evidence of a couple's ability to cooperate to warrant joint custody. Wolf v. Wolf, 741 P.2d 1187 (Alaska 1987).

There was ample evidence in the record to support a trial court's finding that the parties could not cooperate to the extent necessary to make a joint custody arrangement work, despite the father's argument, that both his and his wife's joint concern for their son's developmental problems, a court-ordered pretrial custody arrangement, and an earlier custody agreement evinced their ability to cooperate for the benefit of the children. Wolf v. Wolf, 741 P.2d 1187 (Alaska 1987).

Abuse of discretion by trial court. — The trial court abused its discretion in not awarding both parents shared custody of their child where the evidence indicates that the only area of irreconcilable conflict between the parents concerned what form of day care would be best for their child; resolution of the day care issue does not require denial of joint-legal custody which the Alaska legislature recognizes as the favored course. Bell v. Bell, 794 P.2d 97 (Alaska 1990).

Rights of nonparents. — The policy

supporting shared parental custody applies equally when the custody disputes arise between a parent and a nonparent. Carter v. Novotny, 779 P.2d 1195 (Alaska 1989).

A nonparent who has a significant connection with the child has standing to assert a claim for custody. Bunes v. Gillen, 781 P.2d 985 (Alaska 1989).

The purpose of this section is to establish standards for the adjudication of custody disputes between parents in a nondisruptive setting. It does not imply that the superior court lacks jurisdiction to adjudicate custody disputes between a parent and a nonparent. Such disputes are civil matters over which the superior court has long-doubled subject matter jurisdiction. Bunes v. Gillen, 781 P.2d 985 (Alaska 1989).

Quoted in S.N.E. v. R.I.B., 699 P.2d 875 (Alaska 1985); McClain v. McClain, 716 P.2d 381 (Alaska 1986); McDonald v. McDonald, 718 P.2d 467 (Alaska 1986); Garding v. Garding, 767 P.2d 183 (Alaska 1989).

Cited in Miller v. Miller, 739 P.2d 1204 (Alaska 1987); House v. House, 779 P.2d 1204 (Alaska 1989).

Collateral references. — 10 Am. Jur. 2d, Bastards, §§ 60-66. Pleadings in custody litigation, 22 Am. Jur. Trials, pp. 347-516.

Modification of child support order as justified by change in circumstances, 1 Am. Jur. POF2d, pp. 1-63.

Court's power in *habeas corpus* proceedings relating to custody of child to adjudicate questions as to child's support, 17 ALR3d 764.

Award of custody of child where contest is between child's father and grandparent, 25 ALR3d 7.

Award of custody of child where contest is between child's parents and grandparents, 31 ALR3d 1187.

Modern status of maternal preference rule or presumption in child custody cases, 70 ALR3d 262.

Award of custody of child when contest is between natural parent and step-parent, 10 ALR4th 767.

Right of incarcerated mother to retain custody of infant in penal institution, 14 ALR4th 748.

Propriety of awarding joint custody of children, 17 ALR4th 1013.

Sec. 25.20.070. Temporary custody of the child. Unless it is shown to be detrimental to the welfare of the child, the child shall have, to the greatest degree practical, equal access to both parents during the time that the court considers an award of custody under AS 25.20.060 — 25.20.130. (§ 6 ch 88 SLA 1982)

Editor's notes. — For legislative intent behind the 1982 change in the child custody law, see editor's note to AS 25.20.060.

Collateral references. — Necessity of notice of application for temporary custody of child, 31 ALR3d 1378.

Sec. 25.20.080. Mediation of child custody matter. (a) At any time within 30 days after a petition for child custody is filed under AS 25.20.060 the court may order the parties to submit to mediation. Each party shall have the right to challenge peremptorily one mediator appointed.

(b) Mediation shall be conducted informally as a conference, or by telephone, or series of conferences, as determined by the mediator. The parties to the action and a court-appointed representative of the minor children shall attend.

(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 proceeding shall proceed in the usual manner.

(d) Upon submission of the parties to mediation under this section, a pending child custody 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.

(e) Costs of mediation shall be paid as ordered by the court by one party, by both parties, or by the state if both parties are indigent. (§ 6 ch 88 SLA 1982)

Sec. 25.20.090. Factors for consideration in awarding shared child custody. In determining whether to award shared custody of child the court shall consider

- (1) the child's preference if the child is of sufficient age and capable to form a preference;
- (2) the needs of the child;
- (3) the stability of the home environment likely to be offered each parent;
- (4) the education of the child;
- (5) the advantages of keeping the child in the community where child presently resides;
- (6) the optimal time for the child to spend with each parent considering
 - (A) the actual time spent with each parent;
 - (B) the proximity of each parent to the other and to the school which the child is enrolled;
 - (C) the feasibility of travel between the parents;
 - (D) special needs unique to the child that may be better met by one parent than the other;
 - (E) which parent is more likely to encourage frequent and continuing contact with the other parent;
- (7) any findings and recommendations of a neutral mediator;
- (8) any evidence of domestic violence, child abuse, or child neglect in the proposed custodial household or a history of violence between the parents;
- (9) evidence that substance abuse by either parent or other members of the household directly affects the emotional or physical well-being of the child;
- (10) other factors the court considers pertinent. (§ 6 ch 88 SLA 1982; am § 1 ch 52 SLA 1989)

Effect of amendments. — The 1989 amendment, effective August 24, 1989, re-wrote paragraph (8), added present paragraph (9), and redesignated former paragraph (9) as present paragraph (10).

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Quoted in *McClain v. McClain*, 716 P.2d 381 (Alaska 1986); *Bell v. Bell*, 794 P.2d 97 (Alaska 1990).

Sec. 25.20.100. Reasons for denial to be set out. If a parent the guardian ad litem requests shared custody of a child and the court denies the request, the reasons for the denial shall be stated on the record. (§ 6 ch 88 SLA 1982)

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Cited in *Miller v. Miller*, 739 P.2d 163 (Alaska 1987).

Sec. 25.20.110. Modification of child custody or visitation. (a) An award of custody of a child or visitation with the child may be modified if the court determines that a change in circumstances requires the modification of the award and the modification is in the best interests of the child. If a parent opposes the modification of the award of custody or visitation with the child and the modification is granted, the court shall enter on the record its reason for the modification.

(b) When making a determination relating to child custody under (a) of this section, the court shall consider the past history of the parents with respect to their compliance with the child support payment provisions of temporary or permanent support orders or agreements relating to the child or to other children. Under this subsection, the court may consider a parent's failure to pay child support only if the parent had actual knowledge of the amount of the child support obligation and had funds available for payment of support or could have obtained those funds through reasonable efforts, as determined by the court. (§ 6 ch 88 SLA 1982; am § 2 ch 130 SLA 1990)

Effect of amendments. — The 1990 amendment added subsection (b).

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Applicability of changed circumstances doctrine. — The changed circumstances doctrine applies to modifications of stipulated child custody arrangements in effect for a significant period of time. *S.N.E. v. R.L.B.*, 699 P.2d 875 (Alaska 1985).

Judicial inquiry concerns child's well-being. — When a court determines the best interests of the child under the changed circumstances doctrine, the scope of judicial inquiry is limited to facts directly affecting the child's well-being. *S.N.E. v. R.L.B.*, 699 P.2d 875 (Alaska 1985).

For a modification of custody to be justified, two circumstances must correspond: (1) the noncustodial parent must bear the burden in the modification proceeding of establishing that a change in circumstances has occurred, and (2) the modification must be in the best interests of the child. *Nichols v. Mandelin*, 790 P.2d 1367 (Alaska 1990).

Burden of proving substantial

change in circumstances is on moving parent. See *S.N.E. v. R.L.B.*, 699 P.2d 875 (Alaska 1985); *Garding v. Garding*, 767 P.2d 183 (Alaska 1989); *House v. House*, 779 P.2d 1204 (Alaska 1989).

Burden not carried. — Father failed to carry the burden of proving a substantial change in circumstances, where, apart from the father's attempt to gain sole custody, there was no evidence to support the superior court's finding that the parties had become "unable to cooperate with each other to the extent necessary to make a joint custody arrangement work." *Garding v. Garding*, 767 P.2d 183 (Alaska 1989).

The custodial parent's decision to leave the state with the children constitutes a substantial change in circumstances. *House v. House*, 779 P.2d 1204 (Alaska 1989).

Substantial change in circumstances sufficient to support transfer of custody. — Substantial change took place in the mother's circumstances, justifying transfer of custody from the father to the mother, where there was evidence in the record regarding her overall maturation, her changed marital status, her full-time employment, and her sustained control of a former drinking problem. *Nichols v. Mandelin*, 790 P.2d 1367 (Alaska 1990).

Change in circumstances insufficient to support change of custody order. — Trial court's findings of changes of circumstances which referred to fact mother's having entered into a lesbian relationship, without a specific finding as to how such relationship adversely affected the child, were insufficient to support change of custody order. *S.N.E. v. R.L.B.*, 699 P.2d 875 (Alaska 1985).

In a change of custody hearing based on alleged change of circumstances, it is impermissible to rely on any real or imagined social stigma attaching to mother's status as a lesbian. *S.N.E. v. R.L.B.*, 699 P.2d 875 (Alaska 1985).

No abuse of discretion. — Superior court did not abuse its discretion in determining that remaining in the father's custody and moving with him to California would be in the children's best interests.

Collateral references. — Putative father's right to visit illegitimate child, 15 ALR3d 887.

Right of jailed or imprisoned parent to visit from minor child, 15 ALR4th 1234.

House v. House, 779 P.2d 1204 (Alaska 1989).

Custody modification was mandated and the case was remanded further findings on the effect of changed circumstances, where the primary changed circumstance on which the father relied on appeal, i.e., the mother's desire to leave the state, was never found by a trial court to negatively affect the child's best interests or to merit a change in custody. *Lee v. Cox*, 790 P.2d 1359 (Alaska 1990).

Modification of visitation order. The change in circumstances required modification of visitation rights need not rise to the level sufficient to warrant change of custody. *Hermosillo Hermosillo*, 797 P.2d 1206 (Alaska 1990).

Actions by a custodial parent which substantially interfere with the noncustodial parent's visitation rights are sufficient to constitute a change in circumstances which may justify and require modification of the visitation order, such modification is in the best interest of the child. *Hermosillo v. Hermosillo*, 797 P.2d 1206 (Alaska 1990).

Withholding visitation rights for failure to make alimony or support payments, 4 ALR4th 1155.

Post adoption visitation by natural parent, 78 ALR4th 218.

Sec. 25.20.115. Attorney fee awards in custody and visitation matters. In an action to modify, vacate, or enforce that part of an order providing for custody of a child or visitation with a child, the court may, upon request of a party, award attorney fees and costs of the action. In awarding attorney fees and costs under this section, the court shall consider the relative financial resources of the parties and whether the parties have acted in good faith. (§ 3 ch 130 SLA 1990)

Collateral references. — Right to attorney's fees in proceeding, after absolute divorce, for modification of child custody or support order, 57 ALR4th 710.

Sec. 25.20.120. Closure of custody proceedings and records. At any stage of a proceeding involving custody of a child the court may, if it is in the best interests of the child, close the proceeding to the public or order the court records closed to the public temporarily or permanently. The court may modify or vacate an order under this section at any time. (§ 6 ch 88 SLA 1982)

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Broad gag order must be justified by compelling circumstances. — In a child custody hearing, a gag order which goes beyond assuring confidentiality of the file and anonymity of the parties must be jus-

tified by compelling circumstances and drawn as narrowly as possible to protect against particular evils. *S.N.E. v. R.L.O.*, 699 P.2d 875 (Alaska 1985).

Sec. 25.20.130. Access to records of the child. A parent who is not granted custody under AS 25.20.060 — 25.20.130 has the same access to the medical, dental, school, and other records of the child as the custodial parent. (§ 6 ch 88 S.L.A. 1982)

Sec. 25.20.140. Action for failure to permit visitation with minor child. (a) When a court order is specific as to when a custodian of a minor child must permit another person to have visitation with that child, and the custodian fails, wilfully and without just excuse, to permit visitation with the child in substantial conformance with the court order, the person entitled to visitation has a separate cause of action against the custodian for damages.

(b) The amount of damages recoverable under this section is \$200 for each failure of the custodian, wilfully and without just excuse, to permit visitation with the child for substantially the length of time and substantially in the same manner as specified in the court order. This amount may not be increased or decreased once liability has been established. The custodian is not liable for more than one failure in respect to what is, under the court order, a single continuous period of visitation. The prevailing party in an action commenced under this section is entitled to recover a reasonable attorney fee.

(c) As used in this section,

(1) "court order" means a decree, judgment, or order issued by a court of competent jurisdiction;

(2) "custodian" means a natural person who has been awarded custody, either temporary or permanent, of a minor child;

(3) "just excuse" includes illness of the child which makes it dangerous to the health of the child for visitation to take place in conformance with the court order; "just excuse" does not include the wish of the child not to have visitation with the person entitled to it. (§ 2 ch 126 S.L.A. 1977; am § 9 ch 94 S.L.A. 1980)

Revisor's notes — Formerly AS 09.55.238. Renumbered as AS 25.24.300 in 1983. Renumbered again in 1991.

Cross references. — For crime of failure to permit visitation, see AS 11.51.125.

NOTES TO DECISIONS

Full attorney fee recoverable. — The term "a reasonable attorney fee" as set out in subsection (b) means full, rather than partial, fees. *L.L.M. v. P.M.*, 754 P.2d 262 (Alaska 1988).

But only where denial of visitation unjustified. — Trial court's award of attorney's fees in an action for enforcement of visitation rights was reversed and the case was remanded, where the award was

based on the inappropriate "prevailing party" standard of Civil Rule 82, rather than on a determination that the father "willfully and without just excuse failed to permit visitation." *L.L.M. v. P.M.*, 754 P.2d 262 (Alaska 1988).

Quoted in *Carter v. Bradrick*, 644 P.2d 850 (Alaska 1982).

Cited in *Gerlach v. State*, 699 P.2d 10 (Alaska Ct. App. 1985).

Chapter 23. Adoption.

Section

- 05. Construction of chapter; rights of persons affected by adoption
- 10. Who may be adopted
- 20. Who may adopt
- 30. Venue
- 40. Persons required to consent to adoption
- 50. Persons as to whom consent and notice not required
- 60. Execution of consent; consent as power of attorney
- 70. Withdrawal of consent
- 80. Petition for adoption
- 90. Report of petitioner's expenditures
- 100. Notice of petition, investigation and hearing
- 110. Required residence of minor
- 120. Hearing
- 125. Interests of minor to be adopted
- 130. Effect of adoption decree

Section

- 140. Appeal and validation of adoption decree
- 150. Confidential nature of hearings and records in adoption proceedings
- 160. Recognition of foreign decree affecting adoption
- 170. Applications for birth certificates
- 173. Indian child adoption reports
- 175. Findings concerning persons born outside the United States
- 180. Relinquishment and termination parent and child relationships
- 185. Records and information
- 190. Adoption assistance
- 200. Investigation
- 210. Amount and duration of subsidy payments
- 220. Annual reevaluation
- 230. Regulations
- 240. Definitions

NOTES TO DECISIONS

Intervention in child custody proceedings. — Indian Child Welfare Act, 25 U.S.C. 1901-1963 (P.L. 95-608), does not limit a state court's power to allow intervention in child custody proceedings. *In re J.R.S.*, 690 P.2d 10 (Alaska 1984).

Adoption vacated where Indian tribe not allowed to intervene under Civ. R. 24(a). — See *In re J.R.S.*, 690 P.2d 10 (Alaska 1984).

Collateral references. — 2 Am. Jur. 2d, Adoption, § 1 et seq.
Proof: equitable adoption, 18 Am. Jur. POF2d, pp. 631-609.

2 C.J.S., Adoption of Persons, § 1 et seq.
Modern status of law as to equitable adoption or adoption by estoppel, 97 ALR3d 347.

Criminal liability of one arranging for

adoption of child through other than licensed child placement agency ("baby broker acts"), 3 ALR4th 468.

Validity and application of statute authorizing change in record of birthplace of adopted child, 14 ALR4th 739.

Action for wrongful adoption based on misrepresentation of child's mental or



Alaska State Legislature

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

committee on House Bill # 422 dated 2/11/94
bill/subject:

Section 25,20,104 (8) Christmas Vacation -

I believe there should be an additional option under Christmas Vacation which would allow Christmas to be alternated every other year like Thanksgiving. This would allow the visiting parent to schedule Christmas with the grandparents of the children on the visiting parents side.

Reason for Inclusion - If options are not included in law, then they tend to NOT BE MADE AVAILABLE

Signed: Dayne Clark
Testifier

Representing (Optional)

P.O. Box 2620, Soldotna, AK 99669

Address

907-262-1408

A M E N D M E N T

OFFERED IN THE HOUSE
TO: CSHB 422() Draft 8-LS1606\J

BY

Page 3, line 9, after "parent,":

Insert "including a dissolution proceeding under AS 25.24.200(a) but excluding a dissolution proceeding under AS 25.24.200(b),"

Page 5, after line 14:

Insert new bill sections to read:

" * Sec. 6. AS 25.24.200(a) is amended to read:

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

(1) incompatibility of temperament has caused the irremediable breakdown of the marriage;

(2) if there are unmarried children of the marriage under the age of 19 or the wife is pregnant, and the spouses have agreed on which spouse or third party is to be awarded custody of each minor child of the marriage and the extent of visitation in a manner that complies with the visitation requirements of AS 25.20.104, including visitation by grandparents and other persons if in the child's best interests, and support to be provided on the children's behalf, whether the payments are to be made through the child support enforcement agency and the tax consequences of that agreement;

(3) the spouses have agreed as to the distribution of all jointly owned real and personal property, including retirement

benefits, and the payment of spousal maintenance, if any, and the tax consequences resulting from these payments; the agreement must be fair and just and take into consideration the factors listed in AS 25.24.160(a)(2) and (4) so that the economic effect of dissolution is fairly allocated; and

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

* Sec. 7. AS 25.24.210(e) is amended to read:

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

(1) the respective occupations of the petitioners;

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

(3) the date and place of the marriage;

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

(5) whether the wife is pregnant;

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

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

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

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

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

(11) any other relief sought by the petitioners.

* Sec. 8. AS 25.24.230(b) is amended to read:

(b) If the petition is filed under AS 25.24.200(a) and is subject to AS 25.24.220(h), the court may grant the spouses a final decree of dissolution and shall order other relief as provided in this section if the court, upon consideration of the information contained in the petition and the testimony of the spouse or spouses at the hearing, finds that

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

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

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

(4) the spousal maintenance and division of property fairly

allocate the economic effect of dissolution and take into consideration the factors listed in AS 25.24.160(a)(2) and (4);

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

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

Renumber the following bill section accordingly.

HB

429

HOUSE COMMITTEE REPORT

(9)

Date Referred: February 2, 1994

FURTHER REFERRALS:

Date of Committee Action: 2/22/94

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 429

HOUSE BILL NO. 429

SPECIAL EDUCATION SERVICE AGENCY

"An Act relating to the special education service agency."

RECOMMENDATIONS:

be replaced with _____ the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

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

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note H+SS

zero fiscal note(s) _____

SIGNING DO PA	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
	X			X	
	✓				
	✓				
	✓				

CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 429

Revision Date: _____ Dept. Affected: Health and Social Services
 Title: "An Act relating to the special education BRU: Administrative Services
service agency." Component: Governor's Council on Disabilities
 Sponsor: Representative James and Special Education
 Requestor: _____ COMPONENT SERIAL NO. 321

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGES IN REVENUES						
----------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: _____

ANALYSIS: (Attach a separate page if necessary)

HB 429 presents no fiscal impact on the Department.

Prepared by: David Maltman, Executive Director
 Division: Governor's Council on Disabilities & Special Education

Approved by Commissioner: Margaret R. Lowe
Margaret W. Lowe, M.Ed., Ed.S.
 Agency: Department of Health & Social Services

Phone: 563-5355
 Date: 02/15/94
 Date: 2-15-94

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

DATE: 2/22/94

PLACE: Capitol Room 106

SUBJECT OF MEETING:
 * HB 312: AIDING Nonpayment of Child Support
 * HB 429: SPECIAL EDUCATION SERVICE AGENCY
 HB 559: Approval: CONSTRUCT UPGRADE IN-TAKE SCHOOLS
 HJR 47: FUNDS TO UPGRADE MILITARY BASE SCHOOLS

* INDICATES FIG.: PUBLIC HEARING

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Laurin Darr	SEI					Y N	only if necessary for
PAT MADROS	yukon-koyukuk SCH DIST		99765	474-9400		* N	359
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	

Alaska State Legislature



REPRESENTATIVE
JEANNETTE JAMES

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House District 34

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FAX (907) 465-2381

House of Representatives

SPONSOR STATEMENT

HOUSE BILL 429

February 10, 1994

House Bill 429 is intended to enhance the operation of the state's Special Education Service Agency. The agency makes special education services accessible to children with severe, unusual disabilities who need specialized services not normally found in the district. In general, SESA assures that qualified specialists are available to assist remote districts to increase their ability to deliver required services.

The legislation will repeal the requirement for the Governor's Council on Disabilities and Special Education to govern the organization. The mission of the Governor's Council is to plan, evaluate, and promote services to people with disabilities. It should not govern part of the service system that it is supposed to evaluate and critique.

Instead of the Council, SESA will create a consumer-driven governing board. The new board will include people from rural areas and representatives of organizations who use the agency's services.

There is no cost for this action, and the legislation will improve the agency's responsiveness to the public.

HB 429

"An Act relating to the special education service agency."

Background

The special education service agency is a public organization established in 1986 (sec. 2, ch. 112, SLA 1986). One of the functions of the organization was to provide "...itinerant outreach services to deaf, deaf-blind, mentally retarded, hearing impaired, blind and visually impaired, orthopedically handicapped, other health-impaired, severely emotionally disturbed, and multi-handicapped students;" (ref. AS 14.30.630(b)(1)(A)). Due to the nature of their purpose, the governing board of the special education service agency (SESA) was delegated to the Governor's Council on Disabilities and Special Education (AS 14.30.610 and AS 47.80.090(12)).

Discussion

The mission of the Governor's Council on Disabilities and Special Education (Council) is to plan, evaluate, and promote services to individuals with disabilities (defined in AS 47.80.090). The Council is currently required to govern a public organization that the Council also has to evaluate. HB 429 removes from the Council the responsibility of governing SESA. SESA will continue to exist and operate under the guidelines originally established in AS 14.30.600 -- 14.30.660. This could result in the establishment of a more consumer oriented governing board.

Position

The Department supports HB 429. Passage of the bill will remove the potential conflict of the Council having to evaluate or critique an organization that it also governs.

Margaret R. Lowe

Margaret R. Lowe, M.Ed., Ed.S.
Commissioner

2-15-94

Date

Article 9. Special Education Service Agency.

Section

600. Agency established
610. Governing board
620. Employees
630. Powers and duties

Section

640. Eligibility for service
650. Funding
660. Definition

Cross references. — For statement of legislative purpose in enacting this Article, see § 1, ch. 112, SLA 1986, in the Temporary and Special Acts.

Sec. 14.30.600. Agency established. There is established, as a public organization, the special education service agency. (§ 2 ch 112 SLA 1986)

Sec. 14.30.610. Governing board. The agency shall be governed by the Governor's Council on Disabilities and Special Education (AS 47.80.030). (§ 2 ch 112 SLA 1986)

Revisor's notes. — In 1992, under § 6, ch. 13, SLA 1992, and AS 01.05.031, "Governor's Council on Disabilities and Special Education" was substituted for "Governor's Council for the Handicapped and Gifted."

Sec. 14.30.620. Employees. Employees of the agency are not in the state service and are not subject to the State Personnel Act (AS 39.25). However, employees of the agency shall be members of either the Teachers' Retirement System (AS 14.25) or the Public Employees' Retirement System (AS 39.35). (§ 2 ch 112 SLA 1986)

state. The department shall provide for the assignment of personnel to the council to ensure that the council has the capacity to fulfill its responsibilities. The personnel shall be directly responsible to the council for performance of their duties. (§ 2 ch 165 SLA 1978; am § 46 ch 66 SLA 1991)

Effect of amendments. — The 1991 amendment added the first two sentences in subsection (b). amendment to (b) of this section takes effect upon entry of a final order dismissing *Weiss v. State of Alaska*, 4FA-82-2208

Effective date of 1991 amendment. — Under § 58, ch. 66, SLA 1991, the 1991 amendment to (b) of this section takes effect upon entry of a final order dismissing *Weiss v. State of Alaska*, 4FA-82-2208 Civ. and the expiration of any time for appeal.

Sec. 47.80.090. Responsibilities. The council shall

(1) serve as a forum by which issues and benefits regarding current and potential services to disabled and gifted persons may be discussed by consumer, public, private, professional, and lay interests;

(2) advocate the needs of disabled and gifted persons before the executive and legislative branches of the state government and before the public;

(3) advise the executive and legislative branches of the state government and the private sector on programs and policies pertaining to current and potential services to disabled or gifted persons and their families;

(4) submit periodic reports to the commissioner of health and social services, the commissioner of education, and to other appropriate departments, on the effects of current federal and state programs regarding services to disabled or gifted persons; these reports must include program performance reports to the governor, the federal government, and to state agencies as required under 20 U.S.C. 1482 and 42 U.S.C. 6024;

(5) in conjunction with the Departments of Health and Social Services and Education, develop, prepare, adopt, periodically review, and revise as necessary an annual state plan prescribing programs that meet the needs of persons with developmental disabilities as required under 42 U.S.C. 6022;

(6) review and comment to commissioners of state departments on all state plans and proposed regulations relating to programs for persons who are experiencing disabilities before the adoption of a plan or regulation; for this purpose, the appropriate departments shall submit the plans and proposed regulations to the council;

(7) recommend the priorities and specifications for the use of funds received by the state under 20 U.S.C. 1471 — 1485 and 42 U.S.C. 6000 — 6083;

(8) submit annually to the commissioner of health and social services, the commissioner of education, and the commissioner of community and regional affairs a proposed interdepartmental program budget for services to disabled or gifted persons that includes, insofar as

possible, projected revenues and expenditures for programs implemented by state agencies, local governmental agencies, and private organizations; the interdepartmental program budget is an informational supplement to the regular annual budgetary submissions of the departments to the Office of the Governor;

(9) provide information and guidance for the development of appropriate special educational programs and services for exceptional children as defined in AS 14.30.350;

(10) monitor and evaluate budgets or other implementation plans and programs for disabled and gifted persons to assure nonduplication of services and encourage efficient and coordinated use of federal, state, and private resources in the provision of services; members of the council, with the approval of the council, have access to information in the possession of state agencies subject to disclosure restrictions imposed by state or federal confidentiality or privacy laws;

(11) perform other duties required under applicable federal laws or AS 14.30.231 and as the governor may assign; and

(12) govern the special education service agency and may hire personnel necessary to operate the agency.

(13) provide to the Alaska Mental Health Trust Authority for its review and consideration recommendations concerning the integrated comprehensive mental health program for the people of the state who are described in AS 47.30.056(b)(2) and the use of the money in the mental health trust income account in a manner consistent with regulations adopted under AS 47.30.031. (§ 2 ch 165 SLA 1978; am § 6 ch 112 SLA 1986; am § 47 ch 66 SLA 1991; am § 3 ch 13 SLA 1992)

Effect of amendments. — The 1991 amendment added paragraph (13).

The 1992 amendment, effective July 28, 1992, substituted "disabled" for "handicapped" throughout the section, inserted U.S. Code references in paragraphs (4), (5), and (7), substituted "persons who are experiencing disabilities" for "persons with handicaps" in paragraph (6), substituted "applicable federal laws" for public

law references in paragraph (11), and made stylistic changes.

Effective date of 1991 amendment. — Under § 58, ch. 66, SLA 1991, the 1991 amendment adding paragraph (13) of this section takes effect upon entry of a final order dismissing *Weiss v. State of Alaska*, 4FA-82-2208 Civ. and the expiration of any time for appeal.

Article 3. Programs and Plans.

Section

110. Program principles

150. Liability for expense of services

Sec. 47.80.110. [See effective date note] Program principles. The system of services and facilities required under AS 47.80.100 shall accord with the principles that service providers shall

(1) make services available at times and locations that enable residents of the provider's service area to obtain services readily;

HB

431

HOUSE COMMITTEE REPORT

(9)

Date Referred: February 2, 1994

FURTHER REFERRALS:

Finance

Date of Committee Action: 3/28/94

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 431

HOUSE BILL NO. 431

AFDC FOR CERTAIN TEENAGED PARENTS

"An Act relating to the payment of aid to families with dependent children in the case of pregnant minors and minors who are parents."

RECOMMENDATIONS:

be replaced with _____

CS HB 431 (HESS)

the same title

a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

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

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact H+SS ⁽³⁾

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>		X	
		<i>[Signature]</i>		X	
		<i>[Signature]</i>		<input checked="" type="checkbox"/>	
		<i>[Signature]</i>		<input checked="" type="checkbox"/>	
		<i>[Signature]</i>		X	
		<i>[Signature]</i>		X	
		<i>[Signature]</i>		X	

[Signature]
CHAIRMAN'S SIGNATURE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

FISCAL NOTE

BILL NO. HB 431

Revision Date: _____ Dept. Affected: Health and Social Services
 Title: An Act relating to payment of AFDC in case of pregnant minors and minors who are parents BRU: Public Assistance Administration
 Component: Public Assistance Administration
 Sponsor: Kott
 Requestor: _____ COMPONENT SERIAL NO. 0233

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	69.8	64.8	64.8	64.8	64.8	64.8
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	69.8	64.8	64.8	64.8	64.8	64.8

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
----------------------	-----	-----	-----	-----	-----	-----

CHANGES IN REVENUES	0	0	0	0	0	0
---------------------	---	---	---	---	---	---

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	34.9	32.4	32.4	32.4	32.4	32.4
1003 GF Match	34.9	32.4	32.4	32.4	32.4	32.4
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	69.8	64.8	64.8	64.8	64.8	64.8

POSITIONS:

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

Estimate of current year (FY94) impact: NONE

ANALYSIS: (Attach a separate page if necessary)

House Bill 431 amends AFDC program policy to exercise a federal option that allows states to require, as a condition of eligibility, that minor parents live at home or in another adult-supervised living situation. Minor parents would be excused from the requirement under certain conditions specified in the federal law and in this bill. This produces a need for professional clinical social worker time to investigate the availability and suitability of the home.

Prepared by: Jan L. Hansen, Director for Randy Mann, acting
 Division: Division of Public Assistance

Phone: 465-2680
 Date: _____

Approved by Commissioner: Margaret R. Lowe, M.Ed., Ed.S.
 Agency: Department of Health & Social Services

Date: 3-10-94

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ANALYSIS (cont.):

Assumptions:

200 AFDC applications per year are received from unmarried minor parents who are not living with their parent(s). Fifty applications per year are denied for reasons unrelated to this legislation.

Each of the remaining 150 applications per year is referred to a contracted clinical social worker for investigation and decision about the suitability of the home.

Applicant investigations require an average of 10 hours of social worker time at \$40/hour for each investigation.

Maintenance of cases in which the minor parent lives at home and is eligible for AFDC will require 120 hours of social worker time per year for continued assessment of the suitability of the home.

Effective date of the legislation is July 1, 1994.

Calculations:

FY 95-

FY 00: Contract Clinical Social Worker (12 months)

Intake Assessment/Evaluation

150 referrals x 10 hours = 1500 hours x \$40/hr x 12 months = 60.0

Re-Evaluations for maintenance caseload

120 hours/year x \$40 = 4.8

Contract Attorney to develop regulations 5.0

Total 69.8

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 431

Revision Date: _____ Dept. Affected: Health and Social Services
 Title: An Act relating to payment of AFDC in case of pregnant minors and minors who are parents BRU: Public Assistance Administration
 Component: Eligibility Determination
 Sponsor: Kott
 Requestor: _____ COMPONENT SERIAL NO. 0236

Expenditures/Revenues:		(Thousands of Dollars)					
OPERATING	FY95	FY96	FY97	FY98	FY99	FY00	
PERSONAL SERVICES	12.8	12.8	12.8	12.8	12.8	12.8	
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0	
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0	
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0	
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0	
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0	
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0	
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0	
TOTAL OPERATING	12.8	12.8	12.8	12.8	12.8	12.8	

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
----------------------	-----	-----	-----	-----	-----	-----

CHANGES IN REVENUES	0	0	0	0	0	0
---------------------	---	---	---	---	---	---

FUND SOURCE		(Thousands of Dollars)					
1002 Federal Receipts	6.4	6.4	6.4	6.4	6.4	6.4	
1003 GF Match	6.4	6.4	6.4	6.4	6.4	6.4	
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0	
Other	0.0	0.0	0.0	0.0	0.0	0.0	
TOTAL	12.8	12.8	12.8	12.8	12.8	12.8	

POSITIONS:							
FULL-TIME	0	0	0	0	0	0	
PART-TIME	0	0	0	0	0	0	
TEMPORARY	0	0	0	0	0	0	

Estimate of current year (FY94) impact: NONE

ANALYSIS: (Attach a separate page if necessary)

House Bill 431 amends AFDC program policy to exercise a federal option that allows states to require, as a condition of eligibility, that minor parents live at home or in another adult-supervised living situation. Minor parents would be excused from the requirement under certain conditions specified in the federal law and in this bill.

Eligibility Determination staff will be responsible for explaining the requirements of HB 431 to minor parents, referring cases for investigation, tracking investigation reports, and monitoring and enforcing compliance with the requirements.

Prepared by: Jan L. Hansen, Director *for Pamela Brown, acting* Phone: 465-2680
 Division: Division of Public Assistance Date: _____
 Approved by Commissioner: Margaret R. Lowe, M.Ed., Ed.S. *Margaret R. Lowe* Date: 3-10-94
 Agency: Department of Health & Social Services

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ANALYSIS (cont.):Assumptions:

200 applications per year are received from minor parents who are not living with their parent(s). 50 applications per year are denied for reasons unrelated to this legislation. We expect to refer 150 application per year for investigation.

We are not requesting an additional eligibility determination position.

Calculations:

1 hour intake per application x 200 application	200 hours
3 hours maintenance per case per year x 120 cases	<u>360 hours</u>
Total	560 hours per year

$560 \div 1950 \text{ hrs/FTE} = .28 \text{ Eligibility Tech II FTE/yr}$

$.28 \text{ Eligibility Tech II FTE/yr} \times \$45.7 \text{ Eligibility Tech II} = \$12.8/\text{yr}$

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 431

Revision Date: _____ Dept. Affected: Health and Social Services
 Title: An Act relating to payment of AFDC in case BRU: Assistance Payments
of pregnant minors and minors who are parents Competent: AFDC
 Sponsor: Kott
 Requestor: _____ COMPONENT SERIAL NO. 0220

Expenditures/Revenues:		(Thousands of Dollars)					
OPERATING	FY95	FY96	FY97	FY98	FY99	FY00	
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0	
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0	
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0	
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0	
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0	
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0	
GRANTS, CLAIMS	(147.8)	(295.6)	(295.6)	(295.6)	(295.6)	(295.6)	
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0	
TOTAL OPERATING	(147.8)	(295.6)	(295.6)	(295.6)	(295.6)	(295.6)	
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0	
CHANGES IN REVENUES	0	0	0	0	0	0	

FUND SOURCE		(Thousands of Dollars)					
1002 Federal Receipts	(73.9)	(147.8)	(147.8)	(147.8)	(147.8)	(147.8)	
1003 GF Match	(73.9)	(147.8)	(147.8)	(147.8)	(147.8)	(147.8)	
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0	
Other	0.0	0.0	0.0	0.0	0.0	0.0	
TOTAL	(147.8)	(295.6)	(295.6)	(295.6)	(295.6)	(295.6)	

POSITIONS:							
FULL-TIME	0	0	0	0	0	0	
PART-TIME	0	0	0	0	0	0	
TEMPORARY	0	0	0	0	0	0	

Estimate of current-year (FY94) impact: NONE

ANALYSIS: (Attach a separate page if necessary)

House Bill 431 amends AFDC program policy to exercise a federal option that allows states to require, as a condition of eligibility, that minor parents live at home or in another adult-supervised living situation. Minor parents would be excused from the requirement under certain conditions specified in the federal law and in this bill. Minor parents who the Department determines must live in their parent's home may be ineligible for AFDC because their parent's income and assets count as available to the minor parent.

Prepared by: Jan L. Hansen, Director *Randy Mon, acting dir.* Phone: 465-2650
 Division: Division of Public Assistance Date: _____
 Approved by Commissioner: Margaret R. Lowe, J. Ed. Ed.S. Date: 3-10-94
 Agency: Department of Health & Social Services

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ANALYSIS (cont.):Assumptions:**AFDC Payment Savings**

Current statute at AS 47.25.310(c) specifically prohibits imposition of the requirement for the minor parent or pregnant minor to live in a particular type of household. We presume, for purposes of this analysis, that the intent of the sponsor of HB 431 is to repeal that subsection.

200 AFDC applications per year are received from unmarried minor parents who are not living with their parent(s). Fifty applications per year are denied for reasons unrelated to this legislation.

Each of the remaining 150 applications per year is investigated for a decision about the suitability of the home.

Twenty percent of the referrals are ultimately denied benefits because the family refuses to cooperate in the investigation, or the family does not qualify financially when the parent(s)' income and assets are counted as available to the minor parent because they are required to live at home.

The average monthly AFDC caseload is reduced by 30 cases per month, beginning in January 1995. The average AFDC savings is \$821 per case per month.

Calculations:**AFDC Benefit Savings**

FY 95: (6 months)

$$30 \text{ cases} \times \$821/\text{case}/\text{month} \times 6 \text{ months} = \$147.8$$

FY 96

FY 00: (12 months)

$$30 \text{ cases} \times \$821/\text{case}/\text{month} \times 12 \text{ months} = \$295.6$$



Alaska State Legislature

House of Representatives
 COMMITTEE ON HEALTH, EDUCATION
 AND SOCIAL SERVICES

DATE: 5/28/94

PLACE: Capitol Room 106

SUBJECT OF MEETING:
 *HB 431: AFDC FOR CERTAIN TEENAGED PARENTS
 HB 378: REVISE OLDER ALASKANS COMMISSION
 SB 221: ARREST OF MINORS FOR CONSUMING ALCOHOL
 * INDICATES FIRST PUBLIC HEARING

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
						IF NEEDED Y N	IF NEEDED Y N	
JOE Ambrose	SEN TAYLOR					IF NEEDED Y N	IF NEEDED Y N	SB 221
JAN HANSEN	DASS				X 2688	IF NEEDED Y N	IF NEEDED Y N	HB 431
JEFF Bush	AKCLU	175 S. Franklin St., Ste. 318 Juneau	99801		468-4150	(☺)	Y N	SB 221
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	

H/HESS ROLL CALL FORM

BILL HB 378 DATE 3/28/94

TAPE 94-62 NUMBER 833

SUBJECT OF VOTE TO PASS HB 378 OUT OF COMMITTEE
WITH INDIVIDUAL RECOMMENDATIONS AND ACCOMPANYING FISCAL NOTE

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>9</u>	<u>0</u>	<u>—</u>

+++++

BILL HB 431 DATE 3/28/94

TAPE 94-67 NUMBER 571

SUBJECT OF VOTE TO PASS HB 431 AS AMENDED OUT OF
COMMITTEE WITH INDIVIDUAL RECOMMENDATIONS AND ACCOMPANYING
FISCAL NOTE

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>6</u>	<u>3</u>	<u>—</u>

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE KOTT

TO: HB 431

Page 2, after line 29:

Insert a new bill section to read:

"* Sec. 3. AS 47.25.310(c) is repealed."

Alaska State Legislature
House of Representatives

COMMITTEES:
HEALTH, EDUCATION
& SOCIAL SERVICES
JUDICIARY
STATE AFFAIRS

SPECIAL COMMITTEES:
MILITARY & VETERANS AFFAIRS
OIL & GAS



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EAGLE CENTER, SUITE 141
EAGLE RIVER, AK 99577
PHONE (907) 694-8944
FAX 694-8945

SESSION:
STATE CAPITOL
JUNEAU, AK 99811
PHONE (907) 465-3777

Representative Pete Kott

SPONSOR STATEMENT

HB 431 - AFDC FOR CERTAIN TEENAGED PARENTS

In Alaska, as nationally, there is a higher rate of welfare dependency by teenage, single parents who set up their own residence than among those who remain at home. House Bill 431 amends state AFDC policy to exercise a federal option allowing an eligibility criteria based on the place of residence of a minor who is a parent. The bill would encourage minor parents to live in a situation involving continued adult supervision.

An average of 200 minor parents who are not living with their parents apply for welfare in Alaska each year. Approximately 150 of these would be subject to investigation under the provisions of this bill. Factoring in the present attrition rate of 20 percent, 120 minor parents would possibly be affected. At least some of these minors and their children would benefit from living in an adult supervised supportive situation, such as a parent's home. The bill provides exceptions for recipients whose physical or emotional health or safety, or that of their children, would be put at risk by moving into a parent's or relative's home.

In addition to the social benefit for some recipients, this bill has the potential for reducing the cost of welfare in Alaska. Some of the recipients who would move back into a parent's home as a result of this legislation would be moving into a household fully capable of providing financial support for the minor parent and the minor parent's child. If the family is able to provide support for the potential welfare recipient, it is inappropriate for the state to be providing such support. The Department of Health & Social Services estimates that House Bill 431 could save the state General Fund \$32,600 in FY95, and \$109,000 each fiscal year thereafter.



HB 431
SECTIONAL ANALYSIS

**"An Act relating to the payment of aid
to families with dependant children
in the case of pregnant minors
and minors who are parents."**

Section 1.

Amends AS 47.25.360 to include an exception for payment of AFDC benefits to a person having custody of a child under circumstances set forth in AS 47.25.362 added by Section 2 of the bill.

Section 2.

Amends AS 47.25 by adding a new section which requires, as a condition of eligibility, that a minor parent reside with the minor parent's parent, legal guardian or other adult relative, or in another adult supervised supportive living arrangement. The section further provides that AFDC payments for such a minor be paid to the minor's parent, guardian or other adult relative, or to the head of the other adult supervised supportive living arrangement. Finally, the section provides a list of exceptions under which the eligibility provision added by this section do not apply. The exceptions are required by federal law.

(43) at the option of the State, provide that—

(A) subject to subparagraph (B), in the case of any individual who is under the age of 18 and has never married, and who has a dependent child in his or her care (or is pregnant and is eligible for aid to families with dependent children under the State plan)—

- (i) such individual may receive aid to families with dependent children under the plan for the individual and such child (or for herself in the case of a pregnant woman) only if such individual and child (or such pregnant woman) reside in a place of residence maintained by a parent, legal guardian, or other adult relative of such individual as such parent's, guardian's, or adult relative's own home; or reside in a foster home, maternity home, or other adult-supervised supportive living arrangement; and
- (ii) such aid (where possible) shall be provided to the parent, legal guardian, or other adult relative on behalf of such individual and child; and

(B) subparagraph (A) does not apply in the case where—

- (i) such individual has no parent or legal guardian of his or her own who is living and whose whereabouts are known;
- (ii) no living parent or legal guardian of such individual allows the individual to live in the home of such parent or guardian;
- (iii) the State agency determines that the physical or emotional health or safety of such individual or such dependent child would be jeopardized if such individual and such dependent child lived in the same residence with such individual's own parent or legal guardian;
- (iv) such individual lived apart from his or her own parent or legal guardian for a period of at least one year before either the birth of any such dependent child or the individual having made application for aid to families with dependent children under the plan; or
- (v) the State agency otherwise determines (in accordance with regulations issued by the Secretary) that there is good cause for waiving such subparagraph.

(44) provide that the State agency shall—

(A) be responsible for assuring that the benefits and services under the programs under this part [42 USCS §§ 601 et seq.], part D [42 USCS §§ 651 et seq.], and part F [42 USCS §§ 681 et seq.] are furnished in an integrated manner, and

(B) consistent with the provisions of this title [42 USCS §§ 601 et seq.], ensure that all applicants for and recipients of aid to families with dependent children are encouraged, assisted, and required to cooperate in the establishment of paternity and the enforcement of child support obligations, and are notified of the paternity establishment and child support services for which they may be eligible; and

(45) provide (in accordance with regulations issued by the Secretary) for appropriate measures to detect fraudulent applications for aid to families with dependent children prior to the establishment of eligibility for such aid.

[Concluding matter unchanged]

(b), (c) [Unchanged]

(d) [Repealed]

(e) Approval of automated data processing planning document; review of management information systems. (1) The Secretary shall not approve the initial and annually updated advance automated data processing planning document, referred to in subsection (a)(30), unless he finds that such document, when implemented, will generally carry out the objectives of the statewide management system referred to in such subsection, and such document—

(A)-(G) [Unchanged]

(2)(A) [Unchanged]

(B) If the Secretary finds with respect to any statewide management information system referred to in section 403(a)(3)(B) [42 USCS § 603(a)(3)(B)] that there is a failure substantially to comply with criteria, requirements, and other undertakings, prescribed by the advance automated data processing planning document theretofore approved by the Secretary with respect to such system, then the Secretary shall suspend his approval of such document until there is no longer any such failure of such system to comply with such criteria, requirements, and other undertakings so prescribed.

(C) If the Secretary determines that such a system has not been implemented by the State by the date specified for implementation in the State's advance automated data processing planning document, then the Secretary shall reduce payments to such State, in accordance with section 403(b) [42 USCS § 603(b)], in an amount equal to 40 percent of the expenditures referred to in section 403(a)(3)(B) [42 USCS § 603(a)(3)(B)] with respect to which payments were made to the State under section 403(a)(3)(B) [42 USCS

AFDC-UP cash assistance in which. This provision also applies at the time of the family's application for assistance, eligibility was established based on the basis of paragraph (a)(3)(iii)(B) section, but eligibility could be established based on the basis of paragraph (a)(3)(iii)(A) section.

Federal Financial Participation
Federal financial participation is for payments authorized in accordance with the State plan under section 402 of the Act as to families with dependent children, with respect to a child:

(i) meets the requirements of § 233.106(a)(2) of the Act;

(ii) is living with any of the relatives specified in section 406(a)(1) of the Act in a place of residence maintained by one or more of such relatives in their own home;

(iii) has been deprived of support or care by reason of the death of his or her parent who is the principal earner is employed less than a month; or exceeds that period or a particular month if his or her work is intermittent and the deprivation is of a temporary nature as evidenced by the fact that he or she was employed at the 100-hour standard for 2 months and is expected to be employed at that standard during the next 12 months;

(iv) the parent who is the principal earner resides in one or more quarters of work in paragraph (a)(3)(iv) of this section within any 13-calendar-month period ending within 1 year of the application for such aid, and the parent is not receiving unemployment compensation under the law of a State or of the United States; or

(v) was qualified (under the provisions of paragraph (a)(3)(v) of this section) for such compensation under the law of a State or of the United States.

(vi) the parent who is the principal earner resides in one or more quarters of work in paragraph (a)(3)(vi) of this section within any 13-calendar-month period ending within 1 year of the application for such aid, and the parent is not receiving unemployment compensation under the law of a State or of the United States.

(vii) the parent who is the principal earner resides in one or more quarters of work in paragraph (a)(3)(vii) of this section within any 13-calendar-month period ending within 1 year of the application for such aid, and the parent is not receiving unemployment compensation under the law of a State or of the United States.

(viii) the parent who is the principal earner resides in one or more quarters of work in paragraph (a)(3)(viii) of this section within any 13-calendar-month period ending within 1 year of the application for such aid, and the parent is not receiving unemployment compensation under the law of a State or of the United States.

(ix) the parent who is the principal earner resides in one or more quarters of work in paragraph (a)(3)(ix) of this section within any 13-calendar-month period ending within 1 year of the application for such aid, and the parent is not receiving unemployment compensation under the law of a State or of the United States.

(x) the parent who is the principal earner resides in one or more quarters of work in paragraph (a)(3)(x) of this section within any 13-calendar-month period ending within 1 year of the application for such aid, and the parent is not receiving unemployment compensation under the law of a State or of the United States.

(xi) the parent who is the principal earner resides in one or more quarters of work in paragraph (a)(3)(xi) of this section within any 13-calendar-month period ending within 1 year of the application for such aid, and the parent is not receiving unemployment compensation under the law of a State or of the United States.

registered with the public employment office in the State if exempt from the JOBS program under § 250.30(b)(5) of this chapter; and

(B) Has not refused to apply for or accept unemployment compensation with respect to any week for which such child's parent qualifies for unemployment compensation under an unemployment compensation law of the State or of the United States.

(2) The State may not include in its claim for Federal financial participation payments made as aid under the plan with respect to a child who meets the conditions set forth in paragraph (c)(1) of this section, where such payments were made:

(i) For any part of the 30-day period specified in paragraph (a)(3)(i) of this section;

(ii) For such 30-day period if during that period the parent refused without good cause a bona fide offer of employment or training for employment;

(iii) For any period beginning with the 31st day after the receipt of aid, if and for as long as no action is taken during the period to undertake appropriate steps directed toward the participation of the parent who is the principal earner in a program under part 250 of this chapter;

(iv) To the extent that such payments are made to meet the need of an individual who is subject to a sanction imposed, under part 250 of this chapter (for failure to meet the requirements for participation in the JOBS program).

(3) Federal financial participation is available for child care and supportive services expenditures associated with participation in an approved State-designed program (as provided in paragraph (b)(3)(iii) of this section) under titles IV-A and IV-F of the Act respectively. However, Federal financial participation is not available for any other costs, program or administrative, associated with State-designed programs.

(d) For all States (other than Puerto Rico, American Samoa, Guam, and the Virgin Islands) the provisions of this section are in effect through September 30, 1998. For Puerto Rico, American Samoa, Guam, and the Virgin Islands, the provisions of this section

are in effect from October 1, 1992, through September 30, 1998.

(57 FR 30426, July 9, 1992)

§ 233.106 Denial of AFDC benefits to strikers.

(a) Condition for plan approval. A State plan under title IV-A of the Social Security Act must:

(1) Provide that participation in a strike shall not constitute good cause to leave, or to refuse to seek or accept, employment.

(2)(i) Provide for the denial of AFDC benefits to any family for any month in which any caretaker relative with whom the child is living is, on the last day of such month, participating in a strike; and

(ii) Provide that no individual's needs shall be included in determining the amount of aid payable for any month to a family under the plan if, on the last day of such month, such individual is participating in a strike.

(b) Definitions. (1) The State must define "strike" by using the National Labor Relations Board definition (29 U.S.C. 142(2)) or another definition of the term that is currently in State law.

(2) The State must define the term "participating in a strike."

(3) For purposes of paragraph (a)(2)(i) of this section, "caretaker relative" means any natural or adoptive parent.

(47 FR 5682, Feb 5, 1982)

§ 233.107 Restriction in payment to households headed by a minor parent.

(a) State plan requirements. A State in its title IV-A State plan may provide that a minor parent and the dependent child in his or her care must reside in the household of a parent, legal guardian, or other adult relative, or in an adult-supervised supportive living arrangement in order to receive AFDC unless:

(1) The minor parent has no living parent or legal guardian whose whereabouts is known;

(2) No living parent or legal guardian of the minor parent allows the minor parent to live in his or her home;

(2) The minor parent lived apart from his or her own parent or legal guardian for a period of at least one year before either the birth of the dependent child or the parent's having made application for AFDC;

(4) The physical or emotional health or safety of the minor parent or dependent child would be jeopardized if they resided in the same residence with the minor parent's parent or legal guardian;

(5) There is otherwise good cause for the minor parent and dependent child to receive assistance while living apart from the minor parent's parent, legal guardian, or other adult relative, or an adult-supervised supportive living arrangement.

(b) *Allegations.* If a minor parent makes allegations supporting the conclusion that paragraph (a)(4) of this section applies, the State agency shall determine whether it is justified.

(c) *Good Cause.* The circumstances justifying a determination of good cause must be set forth in the State plan.

(d) *Protective Payments.* When a minor parent and his or her dependent child are required to live with the minor parent's parent, legal guardian, or other adult relative, or in an adult-supervised supportive living arrangement, then AFDC is paid (where possible) in the form of a protective payment.

(e) *Definitions:* For purposes of this section:

(1) A *minor parent* is an individual who (i) is under the age of 18, (ii) has never been married, and (iii) is either the natural parent of a dependent child living in the same household or eligible for assistance paid under the State plan to a pregnant woman as provided in § 233.90(c)(2)(iv) of this part.

(2) A *household of a parent, legal guardian, or other adult relatives* means the place of residence of (i) a natural or adoptive parent or a step-parent, or (ii) a legal guardian as defined by the State, or (iii) another individual who is age 18 or over and related to the minor parent as specified in § 233.90(c)(1)(v) of this part provided that the residence is maintained as a home for the minor parent and child

as provided in § 233.90(c)(1)(v)(B) of this part.

(3) An *adult-supervised supportive living arrangement* means a private family setting or other living arrangement (not including a public institution), which, as determined by the State, is maintained as a family setting, as evidenced by the assumption of responsibility for the care and control of the minor parent and dependent child or the provision of supportive services, such as counseling, guidance, or supervision. For example, foster homes and maternity homes are "adult-supervised supportive living arrangements."

(f) *Notice Requirements.* Minor applicants shall be informed about the eligibility requirements and their rights and obligations consistent with the provisions at § 206.10(a)(2)(i). For example, a State may wish to: (1) Advise the minor of the possible exemptions and specifically ask whether one or more of these exemptions is applicable; and (2) assist the minor in attaining the necessary verifications if one or more of these exemptions is alleged.

[57 FR 30428, July 9, 1992]

§ 233.110 Foster care maintenance and adoption assistance.

(a) *State plan requirements.* A State plan under title IV-A of the Social Security Act must provide that the State has in effect a plan approved under Part E, title IV of the Social Security Act, and operates a foster care maintenance and adoption assistance program in conformity with such a plan.

[51 FR 9206, Mar. 18, 1986]

§ 233.120 Emergency assistance to needy families with children.

(a) *Requirements for State plans.* A State plan under Title IV, Part A, of the Social Security Act, providing for emergency assistance to needy families with children must:

(1) Specify the eligibility conditions imposed for the receipt of emergency assistance. These conditions may be more liberal than those applicable to other parts of the plan. (See para-

H B

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Alaska State Legislature

House of Representatives
 COMMITTEE ON HEALTH, EDUCATION
 AND SOCIAL SERVICES

DATE: 2/23/94

PLACE: Capitol Room 106

SUBJECT OF MEETING:

HB 139: ASSISTIVE TECHNOLOGY LOAN GUARANTEES
 *HB 451: COMPREHENSIVE HEALTH INSURANCE ACT

*INDICATES FIRST PUBLIC HEARING

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Stan RIDGEWAY	DUIZ				✓ 405-6932	(Y) N	HB 139
Rupe ANDREWS	AARP				✓ 789-7422	(Y) N	HB 139
Nancy CORNWELL	Health System Reform Work Group	2411 West 69th Ave Anchorage AK	99502		243-8326	(Y) N	HB 451
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	

MAR- 2-94 WED 19:36

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P. 01



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ATTN: _____ FAX: 465-2137 PHONE: _____

FROM: Carol Humlin Fauré PHONE: _____

INSTRUCTIONS: Testimony for 3/2 teleconference on
SB270/SB284

SENT: Date _____ Time _____

DISPOSAL OF ORIGINAL: Discard _____ Hold for Pickup _____

NUMBER OF PAGES: 1 (counting cover sheet)

TRANSMITTED BY: AG

3/2/94

My name is Carol Hamlin Faure, and I appreciate having the chance to testify today. I am a social work student at UAA, and I am currently working as a student intern for the Governor's Council on Disabilities and Special Education. I have spent a large part of my internship following health care reform efforts in Alaska for the Council's Health Committee. Although I do not speak for the Council, my work there has increased my awareness of health care issues that impact people with disabilities and their families. I'd like to address some of these issues today.

The first issue is consumer representation on any commission or corporation that is set up to address health care. This is important for two reasons. Representation will help to ensure that the health care concerns of consumers are considered and acted upon. Secondly, consumer representation will contribute to the feeling of ownership in the resulting health care reform measures. I'm pleased to see consumer representation included in SB 284.

Universal health care coverage is essential to people with disabilities, who want and need quality, affordable health care. Also, because people with disabilities often have complex, sometimes specialized medical needs, issues of provider choice and full coverage for services are very important.

A major issue is a benefits package that addresses the needs of people with disabilities. Some important benefits are durable medical equipment, travel costs, personal assistance services, daily therapies and other regular treatments that are necessary to maintain daily health, and long term care. I'm pleased to see that SB 284 specifically requires the development of a long term care plan.

Public involvement in the health care reform process is critical, not just for people with disabilities, but for all Alaskans. You are all aware of the importance of a feeling of ownership on the part of Alaskans. Without that ownership, reforming our health care system is nearly impossible. For people with disabilities, having input into the process of defining a benefits package is absolutely necessary if we are to fill the gaps in service that presently exist in our system. I like the process for public involvement that is included in SB 284.

If you would like more information about the health care concerns of people with disabilities, I encourage you to contact Kathy Fitzgerald, who is the chair of the Governor's Council on Disabilities and Special Education's Health Committee. Thank you again for the opportunity to testify today.



NEA-ALASKA

Affiliated with the National Education Association

NEA-ALASKA POSITION STATEMENT

SB 284 AND HB 451

Alaskans will benefit by our elected state leaders establishing a universal health care plan prior to the adoption of any national plan. SB 284 and HB 451 provide for a health care plan developed by the Health Resources and Access Task Force and the community of providers responsible for health care in Alaska.

NEA-Alaska is committed to a comprehensive health care single-payer system that guarantees universal access regardless of pre-existing conditions or economic circumstances. The plan must address the specific problems unique to our state -- health care delivery system, transportation problems, incentives to providers to locate in areas of Alaska that are not served or are currently underserved.

Any program should support existing collective bargaining agreements as well as the concept of collective bargaining itself. Employees must expect that the rights and benefits they have achieved through collective bargaining will be protected.

The plan should require simplification of forms and reduce unnecessary paperwork.

Health care costs must be controlled through reduction of administrative costs and increased budget discipline on health care providers and insurance companies.

Emphasis on preventive care must be an important component of any program.

Goal #1 on the National Education Goals states "by the year 2000 all children in America will start school ready to learn". If we are to achieve that goal, health care must be made universally available to every family and child. Healthy children make healthy schools.

NEA-Alaska supports SB 284 and HB 451 and commends those who possess the vision to take early action to propose development of an affordable and accessible health care plan for Alaska and her families.

2/23/94

2/8/94

Report of the
Health System Reform Work Group

PURPOSE AND MEMBERSHIP OF THE
HEALTH SYSTEM REFORM WORK GROUP

At the suggestion of several legislators, sponsors of Senate Bill 114 and representatives of the Health Access and Cost Containment Council, who authored Senate Bill 205, began meeting during the legislative interim. It was recognized that there were a number of areas of agreement in the two pieces of legislation.

Members of the work group included legislators, physicians, hospital and nursing home administrators, representatives of the insurance industry, the Administration, and the Alaska Native Health Board.

In addition, many other individuals representing a wide range of interests participated in the meetings. The group met bimonthly through December 1993. This documents reports areas of agreement among all but a few members of the work group. It also suggests a time line for implementation.

The report does not attempt to describe the extent of health care problems facing Alaska nor does it analyze the feasibility or cost of implementing proposed reforms.

This report presents the work group's areas of agreement in the following sequence:

- I. creation of a corporation
- II. cost control and utilization
- III. universal coverage
- IV. financing universal coverage
- V. access to care and mix of providers
- VI. data collection

- VII. a public health improvement plan
- VIII. tort reform
- IX. health insurance reform

I. CREATION OF A CORPORATION

Successful health care reform demands ongoing coordination, integration, and monitoring of the various elements of any comprehensive reform package. The work group agreed that a single administrative and policy-making entity is best suited to coordinate, integrate, and monitor the various elements of their reform proposal.

Areas of Agreement

Section A: Creation of a corporation. A health care corporation will be created to provide a health plan for all Alaskan residents and to monitor and control all health care expenditures in the state.

The corporation will be within a department of the state government but will operate as independently as possible.

Section B: Board of Directors. The operations of the corporation will be directed by a board of directors whose responsibilities are defined below.

Section C: Corporation's responsibilities. The corporation's board of directors will:

- (1) hire an executive director who serves at the pleasure of the board; the executive director hires other staff as necessary;
- (2) design a public involvement process for the purpose of gathering public input on the benefit package, options for financing, cost-sharing, and plan administration;
- (3) establish a comprehensive health care data system and begin collecting and analyzing health care expenditure data, demographic data, clinical information, billing and payment data, and health status, vital statistics, and other public health data;
- (4) design and adopt uniform claims forms and implement their use;

- (5) develop a public health improvement plan for the state of Alaska;
- (6) create a claims clearinghouse in Alaska to process all claims made to the corporation;
- (7) define the benefit package and eligibility requirements;
- (8) establish a voluntary cost control system including:
 - (a) establish and adopt a voluntary state-wide health care expenditure target;
 - (b) annually monitor health care expenditures and determine whether they have exceeded the voluntary expenditure target, how expenditures and patterns of utilization have changed, what factors have contributed to any charges, and report to the legislature and governor;
 - (c) prospectively collect and publish descriptions of provider types and lists of provider prices for frequently billed services and procedures;
 - (d) establish appropriate cost-sharing requirements for all residents under the corporation's health care plan;
 - (e) contract with an agency or agencies of Alaskan providers to perform peer volume, quality and appropriateness control;
- (9) present options to the governor and legislature on how to finance a health plan for all Alaskans;
- (10) with funds appropriated by the legislature, provide or purchase health care coverage (a health plan) for all Alaskan residents through a market-based single-payer system;
- (11) pursue waivers from the Employee Retirement Income Security Act and federal health care payers in order to capture both their claims data and revenue streams;
- (12) develop incentives to attract, train and retain a broad array of health care providers in underserved areas of the state;
- (13) through the claims clearinghouse, pay claims submitted by licensed providers for services that are in the benefit package;
- (14) at any time beginning three years after the voluntary expenditure target has been in effect, if the corporation concludes that voluntary compliance has failed substantially to achieve the adopted voluntary expenditure target:
 - (a) the corporation may, by regulation, impose a mandatory expenditure budget or limit;
 - (b) the corporation may, by regulation, impose mandatory expenditure budget or limits on one, some, or all subcategories of the budget;

(c) the corporation may, by regulation, directly assume some or all previously contracted cost control functions;

(d) the corporation may, by regulation, establish new price, volume and quality control guidelines;

In addition, the corporation will continue to:

(e) annually monitor health care expenditures and determine if they exceeded the mandatory budget, how expenditures and patterns of utilization have changed, what factors contribute to those changes, and report to the legislature and governor;

(f) establish appropriate cost-sharing requirements for all residents under the corporation's plan.

(15) establish committees of experts and others as needed to make recommendations regarding preventive measures, efficacy of health care modalities, provider mix within the state, and other matters; and.

(16) hold public meetings and make annual reports to beneficiaries, the governor, and the legislature.

Section D: Composition and appointment of board of directors. The board of directors will not exceed nine members. They will be appointed to staggered terms by the governor and confirmed by the legislature. A member will serve until replaced by the governor.

A majority of the board will be experts in health issues and fairly represent the interests of the general public in having access to quality and affordable health care. Interests of health care providers and purchasers will be fairly represented on the board. All directors will be residents of the state of Alaska. Their sex and geographical representation will approximate that of the state's population.

Section E: Board compensation, meetings, and staff. Directors will be compensated for the time they serve. This is expected to be part-time. The board will meet at least quarterly and will be supported by professional staff.

II. COST CONTROL AND UTILIZATION

Historical experience with utilization controls, managed care, and hospital rate setting have resulted in little, if any, significant decline in the rate of growth of health care spending. Market-oriented competitive strategies, for which there is almost no experience in Alaska, are unlikely to be effective at controlling costs in many areas because of chronic provider shortages and sparse population.

Areas of Agreement

The work group agrees that health care expenditures will for at least three years be controlled using a voluntary cost-control system as outlined in sections (A) through (E) below:

Section A: Establishing and adopting a voluntary state-wide health care expenditure target. The work group agrees that the management of limited health care resources in Alaska will best be accomplished by annually establishing and adopting a voluntary state-wide health care expenditure target. The corporation will establish the expenditure target from a base year of historical expenditures (the year prior to enactment of enabling legislation) and adjust it in future years, as appropriate by the following factors:

-changes in the general Consumer Price Index (for Alaska) plus a factor as follows:

- in the first year, CPI plus 1.5 percent;
- in the second year, CPI plus 1.0 percent;
- in the third year, CPI plus 0.5 percent; and,
- in the fourth year and years thereafter,
CPI with no additional factor;

-changes in the size and other demographic characteristics in the population such as aging;

-changes in the burden of disease resulting from epidemics, disasters, and reduction or elimination of diseases;

-elimination of unnecessary care;

- changes in technology;
- increases or decreases in the costs associated with medical malpractice premiums and awards;
- changes in administrative costs;
- changes aimed at improving access to care; and,
- changes in the patterns of utilization.

In designing the expenditure target, the corporation will take into consideration and, where possible, include all current sources of payment for health care services in Alaska including:

- all public and private employers and other groups that provide insurance or self-insured plans;
- individual plans and out-of-pocket expenses;
- federal, state, and local government sources, such as Medicare, the military, CHAMPUS, the Department of Veterans Affairs, the Indian Health Service, federal employee plans, Medicaid, General Relief Medical, grants to other governments and non-profit organizations, and other state and local government direct-service health programs;
- transportation costs associated with getting to and from health services; and,
- capital costs of health care facilities.

Section B. Monitoring the expenditure target. The corporation will monitor and make an annual report to the legislature and governor on:

(1) changes in total expenditures, (2) whether expenditures have exceeded the expenditure target, (3) how expenditures and patterns of utilization have changed, and (4) what factors have contributed to those changes.

Section C. Publish Provider Prices. Providers will post or make their price lists available upon request at their place of business. They will list their most frequently billed services.

Annually and prospectively, providers will submit a list of their prices to the corporation. The corporation will publish a description of types of providers licensed to provide services in the benefit package as well as comparative lists of provider prices for frequently billed services.

Section D. Cost-sharing with consumers. After seeking input from the public, the corporation will establish levels of deductibles and copayments.

Section E. Peer volume and quality control. The corporation will contract with an agency or agencies of Alaskan providers to perform peer volume, quality, and appropriateness control. This agency will establish peer specialty groups whose charge will be to control excesses within their discipline by reducing volume of care or by other mechanisms.

Peer specialty groups may also recommend through the agency expected or desired changes in the types and intensity of services or the types of providers best suited to furnish them. The agency may laterally organize various peer groups as a way of consolidating information from the groups. The agency may make this information and other recommendations available to the corporation. Recommendations developed by this agency will focus on developing incentives rather than controlling patterns of care.

Specific state action to require one or more cost control agencies will be necessary in order to forestall Federal Trade Commission antitrust action against providers.

Section F: The possibility of a mandatory cost control system. By the end of the third year of a voluntary cost control system, the corporation will determine if total health care expenditures have exceeded the expenditure target. If the corporation concludes that voluntary compliance has failed substantially to achieve the adopted voluntary expenditure target, the corporation may establish a mandatory state-wide health care expenditure budget. The corporation will not have to seek approval from the governor or legislature in order to implement a mandatory budget. The corporation may also establish new price, volume, and quality controls and guidelines.

The corporation may also annually establish mandatory sub-budgets as a means of controlling costs and making desired changes in the service delivery system.

The corporation may assume some or all of the previously contracted cost control functions or decide to contract with appropriate agencies for some cost control functions.

The corporation will continue to monitor expenditures and patterns of utilization.

III. UNIVERSAL COVERAGE

Areas of Agreement

Section A: Universal Coverage for all Alaskan Residents. The work group agrees on the goal of universal health care coverage for all Alaskans. They further agree that the corporation will be required by law to provide or purchase a health plan for all Alaskan residents.

IV. FINANCING UNIVERSAL COVERAGE

Areas of Agreement

Section A. A market-based single-payer system. The work group agrees that the corporation will provide or purchase health plans for all residents of the state. The corporation will design a system which utilizes market forces to encourage consumers to make more informed and appropriate purchasing decisions. Employers, unions, and individuals may purchase health benefit plans which cover services not included in the corporation's benefit package.

Section B. Market forces/appropriate utilization. The corporation will rely on market forces to control inappropriate utilization. Patterns of utilization will be influenced through appropriate deductibles and copayments and through incentives aimed at appropriate care. The corporation will publish comparative lists of provider prices. Each provider will post or provide upon request their prices at his or her place of business.

Section C. Health Fund. The corporation will undertake an extensive public involvement process for the purpose of gathering public input on the benefit package, options for financing, cost-sharing, and plan administration.

By January 1, 1997, the corporation will present options for financing the health plan for all Alaskans to the legislature. The legislature will decide, from among a variety of revenue sources, which should be used to finance the health plans for Alaskan residents. Potential revenue sources include: payroll taxes, income taxes, sales taxes, excise taxes, permanent fund earnings and dividends, and contributions to premiums. The legislature will appropriate funds to the corporation to pay for the health plan for Alaskans. As federal waivers are granted, existing federal and state revenue streams will be allocated to the corporation's fund.

IV. ACCESS TO CARE AND MIX OF PROVIDERS

In addition to access problems associated with inadequate health care coverage, the current distribution of health care resources in the state impedes some Alaskans from physically getting to health care services.

Areas of Agreement

Section A. Transportation costs. Transportation costs associated with receiving appropriate health care, particularly in a state like Alaska with few roads, must be considered a legitimate health care expense. In addition, reasonable changes in the distribution of health care providers and other resources must be made in the current system in order to alleviate some of the physical access problems. Therefore, valid transportation expenses should be included in the expenditure target.

Section B. Incentives to change the provider mix. The corporation will develop incentives to attract, train and retain health care providers in underserved areas. Incentives may include creating a student loan forgiveness program, supporting the development of an Alaska-based family residency program, developing and maintaining Alaska-based training and rotations for mid-level practitioners, and continuing efforts to analyze specific recruitment and retention problems in the state.

Section C. Scope of practice and reimbursement for services. Allied health professionals, like physicians, will be reimbursed by the claims clearinghouse for services rendered which are in the corporation's benefit package. For services within the benefit package, the corporation shall not restrict reimbursements for a particular provider and a particular service without making similar restrictions for all providers. That is, the corporation may not control health care expenditures by reimbursing only certain providers for a particular service. If the corporation chooses to control health care expenditures by reducing the benefit package, the elimination of certain services in the benefit package must be for all classes of providers.

To help attract and retain primary care providers to the state and in particular to underserved areas, the corporation may vary the rates of reimbursement to providers.

Section D. Allied health professionals. Allied health professionals ask to be included in the same type of peer volume and quality control activities as physicians and health care facilities. The work group agrees that they should be involved in these activities as long as they make the same commitment physicians and health care facilities have made to: (a) provide their fee schedules to the corporation, and (b) limit increases in prices to the CPI plus factors defined in Section II.

V. DATA COLLECTION

Areas of Agreement

Section A. Data collection. The corporation will establish a comprehensive health care data system to collect and analyze the following health care data elements:

- (a) health care expenditures including capital expenditures and transportation expenditures associated with receiving care;
- (b) demographic data;
- (c) clinical information including diagnoses, use of services (provider type, type of services and procedures, location of care, length of care, and referral patterns), quality of care, and health outcomes;
- (d) billing and payment data; and,
- (e) health status, vital statistics, and other public health data.

The above data elements are essential to the corporation's ability to carry out its functions.

The best source of information for most of these data elements is claims data collected by third-party payers. Additional expenditure data will need to be collected from health care agencies such as the Indian Health Service, the Department of Veterans Affairs, and the military, which do not provide indemnity (insurance) plans but rather provide health services directly.

Sources of data on health status, health outcomes, quality of care, and transportation costs, are more difficult to identify. The corporation will have to develop these data bases.

Section B. Uniform claims forms and single claims clearinghouse. The corporation must take two important additional steps in order to develop a comprehensive data system. They are: (1) design and adoption of uniform claims forms for use by all providers and payers, and (2) establishment of a claims clearinghouse in Alaska to process all claims submitted to the corporation.

These steps are necessary even as we transform from our multiple-payer system to a market-based single-payer system.

Another step in the development of a comprehensive data system is to pursue a federal waiver from the Employee Retirement Income Security Act. Without it, the state will not be able to compel self-insured employer plans to provide their claims data to the corporation.

VII. A PUBLIC HEALTH IMPROVEMENT PLAN

Areas of Agreement

The work group discussed Representative Joe Sitton's proposal to create a public health commission with the charge of developing a public health improvement plan. The work group agrees that such a plan is essential and that all public health providers in the state should participate in its development.

Section A. A public health improvement plan. The corporation shall direct the development of a public health improvement plan for the state of Alaska. The plan will identify core public health services and the roles and responsibilities of each federal, state, regional and local public health agency. The work group recognizes that a sound public health infrastructure is

essential to maintaining and improving the health of Alaskans and to controlling the growth in personal health care spending.

VIII. TORT REFORM

Areas of Agreement

The work group agrees that the following tort reform changes are warranted.

Section A. Statute of limitation at age 8 for injury before age 6. The current statute of limitations will be reduced from age 23 so that an action based on alleged professional negligence may not be brought against a health care provider on behalf of a person less than six years of age unless it is brought before the eighth birthday. Exceptions include fraud, intentional concealment of facts, or an undiscovered inappropriate foreign body within the person.

Section B. Floating or pre-judgment interest rates. Pre-judgment interest on medical malpractice claims should be linked to the federal discount rate in effect on January 1 of the year in which judgment or decree is entered.

Section C. Mandatory non-binding arbitration of all lawsuits. As specified in both Senate Bills 123 and 204, all lawsuits alleging medical malpractice will be submitted to non-binding arbitration. The state's three person pre-trial screening process will be replaced with one neutral expert. The arbitration process, including discovery, will be completed within 6 months. The arbitrator's written decision is admissible in court.

Section D. Limitation on recoverable damages. The work group agrees that a limitation on the amount of recoverable damages should be established either through a cap on non-economic damages or through a proposal made by the trial lawyers.

The work group was unable to decide between a cap of \$250,000 on non-economic damages as included in Senate Bill 204 and a new system proposed

by the trial lawyers that would replace the existing way in which medical malpractice lawsuits are adjudicated in Alaska.

Under the trial lawyers' proposal, a (state) authority will issue each health care provider a standardized liability package with a \$5 million limit on coverage. Every provider will be required to purchase professional liability insurance from the corporation. Premiums will reflect type and location of practice, and in the case of financial hardship, income. A risk pool may be established. The corporation will be the only named defendant in a medical malpractice action.

All cases asking compensatory damages of less than \$200,000 will be arbitrated with the cost of arbitration borne equally by both sides and limited to no more than one medical expert for each side. The arbitration hearing will be concluded within two days' time. If a case proceeds to a jury trial, the arbitrator will be the first witness as a friend of the court. The witness fee of the arbitrator will be borne by the party bringing the appeal.

The work group was intrigued by the trial lawyers' proposal but were unable to reach agreement.

Pending Issues

The work group was unable to reach agreement on changing the collateral source rule as presented in Senate Bill 204.

IX. HEALTH INSURANCE REFORM

Interim reform of the health insurance market was not of great interest to the work group, presumably because these potential access improvements are known to be marginal. The work group found some similarities between Senate Bills 114 and 205.

Since these bills were introduced in the legislature, Senate Bill 173 was enacted. It provides for some improvements in the small group insurance market. Insurers can no longer use claims experience, health status, and

length of coverage to set premium rates. It also requires that at least a basic plan be offered if an insurer has been denied coverage on the basis of health status or claims experience.

Under the work group's proposal, a health plan uniformly providing benefits to all Alaskan residents would eliminate the need to further regulate the health insurance industry. However, until the corporation begins providing a health plan to all residents, significant concerns remain.

Areas of agreement

Section A. Rating Practices. Senate Bill 114 and 205 both require insurers or a state pool to set their premium rates based on a quasi-community rate and to issue and renew plans to all groups that make such a request. Insurers may deny coverage for pre-existing conditions for only a limited period of time (one year in SB 114; corporation determines by regulation in SB 205). In all cases, however, insurers or the state pool must offer a basic plan to all who apply.

Section B. Rate review authority. The work group agrees that rate changes filed by all health insurers that sell group or individual insurance policies in Alaska will be subject to review and approval by the state director of insurance. The director must be given appropriate actuarial staff to perform this new function.

Pending Issues

The work group agrees and both bills require that insurers use a quasi-community rate. Both bills allow rates to vary by age and family composition/status. Senate Bill 114 also allows rates to vary by occupation and industry but requires that all rates fall within an established range or band. Insurers may not vary rates among similar businesses within a given geographical regional. Senate Bill 205 allows rates to vary by sex and other "generic factors". Rates must be set on a state-wide basis.

Suggested Timetable

(assumes enactment in 1994 and adequate staffing)

Functions of Corporation

	<u>Begin Date</u>
(1) Create corporation	July 1994
(3) Design public involvement system/begin process	Dec. 1994
(2) Establish data system and begin collecting data	Dec. 1994
(4) Design claims forms	June 1995
implement their use	Dec. 1995
(5) Develop a public health improvement plan	Dec. 1994
(6) Create clearinghouse	Dec. 1995
(7) Establish benefit package and eligibility requirements	1995
(8) Establish voluntary cost control system	Dec. 1996*
Establish Year One expenditure target	1997
(Year Three expenditure target)	1999
Monitor expenditures/patterns of utilization	1995
Collect and publish fees	Dec. 1995
Establish cost-sharing	Jan. 1997
Contract w/peer volume/control agency	Jan. 1996
(9) Present options to the legislature and governor on how to finance the health plans for all Alaskans	Jan. 1997
(10) Legislature begins funding health plans for all Alaskans (date received by corporation)	Jan. 1998
(11) Pursue federal waivers	Dec. 1994
(12) Initiatives to attract, train, and retain providers	Dec. 1994
(13) Claims clearinghouse begins paying claims	Dec. 1996

*If voluntary cost controls are successful at keeping expenditures within the expenditure target, this function will continue.

Continued. Suggested Timetable

Functions of Corporation

Begin Date

If the voluntary cost control system does not succeed in keeping expenditures within the expenditure target, at the end of the third year, the corporation may:

- | | |
|--|-----------|
| (14) Establish a mandatory cost control system | 2000 |
| Establish a mandatory budget | 2000 |
| May assume all or some cost control functions | 2000 |
| Establish new price, volume, and quality controls | 2000 |
| Establish mandatory sub-budgets | 2000 |
| (15) Establish committees of experts | As needed |
| (16) Hold public hearings/report to legislature and governor | Annually |

**HEALTH SYSTEM REFORM WORK GROUP
ALASKA PROPOSAL**

SB 284/HB 451

February 9, 1994

Provided by Senator Jim Duncan

ISSUE	WORK GROUP PROPOSAL SB 284/ HB 451
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1. **Universal Coverage/Access** The corporation is required by law to purchase and/or directly provide a health plan for all Alaska residents.

2. **Financing Universal Coverage** The corporation either contracts or directly pays for the health plans through a "market-driven single-payer system." The system would use market forces to insure appropriate consumption (i.e., published fees, appropriate copayments and deductibles, and incentives to use preventive services).

The legislature would decide from among a variety of revenue sources which should be used to finance the health plans.

Federal contributions added to fund.

3. Cost Containment

Cost containment is necessary.

There will be a set target budget.

There is a base year set for the global/target budget.

The corporation will set both the "target" budget and sub-budgets.

Total expenditures would be under voluntary control (peer review/sanctions). If not successful in a three year period of time, mandatory control would be put in place, and corporation assumes cost control functions.
(See also Provider Mix)

4. Data Collection

Single claim form through single entity.

All claims data + IHS, VA, CHAMPUS (non-fee-for-service) expenditures.

Other health data (which data still to be resolved)

Confidentiality protected.

Annual/periodic reports.

5. **Establish Alaska Health Insurance Corporation**

General

The group would be as independent as possible from politics. It would be housed in a state agency as a public corporation with a board of directors.

It would be a policy making entity, compensated (but not full time employment), have regularly scheduled meetings and a professional staff. The Directors must be residents of Alaska.

The Directors would have staggered terms, longer than four years such that no single governor would be able to appoint all members. (However, given the constitution, a governor can remove directors.) There should be no vacancies.

Members confirmed by the Legislature.

Advisory groups to report to corporation.

Functions

Responsible for implementation of policy as well as development of future policy/alternatives. This includes such items as setting the benefit package, developing and establishing an expenditure target, getting federal waivers, etc.

5. **Establish Alaska Health Insurance Corporation (continued)**

Membership Criteria

Fair geographical representation of the directors.
Uncertain how to assure this feature.

Gender balance.

General categories of membership with fair representation of consumers and providers. If physicians on board of directors, allied health professionals should also be represented.

6. **Provider Mix**

Expenditure data used to establish current provider mix, used by corporation in future years to adjust mix.

Allied health professionals included in same type of peer review/cost control activities as physicians.

Allied health professionals allowed to practice full range of what they are licenses to practice and not constrained by reimbursement mechanisms (as long as such services are included in the benefit package).

Allied health professionals involved in making recommendations to corporation on desired or expected changes in types/intensity of services, increase/decrease in numbers of providers. Recommendations from various peer groups consolidated at structural level between corporation and peer groups. This lateral integration of peer groups will focus on developing "incentives" rather than controls in making recommendations to the corporation.