

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8921 SENATE JUDICIARY

HB

308

FISCAL NOTE

STATE OF ALASKA
 1996 LEGISLATIVE SESSION

Revision Date: 1/15/96 Dept. Affected: Department of Law
 Title: ...relating to the Uniform Probate Code, including BRU: Civil Division
nonprobate transfers, guardianships... Component: General Legal Services
 Sponsor: Representative Parnell
 Requester: House Judiciary Committee COMPONENT SERIAL NO. 2087

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 |
|------------------------|------------|------------|------------|------------|------------|------------|
| 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 | | | | | | |
|----------------------|--|--|--|--|--|--|

| | | | | | | |
|--------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES | | | | | | |
|--------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

| | | | | | | |
|-----------|-----|-----|-----|-----|-----|-----|
| FULL-TIME | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This bill repeals and reenacts some of the state's laws on probate to conform to the Uniform Probate Code recommended by the National Conference of Commissioners on Uniform State Laws. The principal subject matter is succession to property at an owner's death, as controlled by will, intestacy statutes, and the probate process. Aspects of non-probate transfers at death by contract, trust, or other lifetime arrangement are also covered as are guardianships and other protective arrangements for minors and others incapable of self-management. The bill integrates nonprobate transfers with the Uniform Act, thus allowing the use of pay-on-death clauses in joint tenancy deposit account contracts, avoiding the expense and delay of probate. The probate procedures in the amended provisions were designed to meet the public's demand for quicker and less expensive settlements of decedents' estates. The bill will not have a fiscal impact on the Department of Law, because it primarily deals with matters between private parties and it should make the settlement of estates less expensive and simpler for survivors.

Prepared by: Richard I. Peques, Director Phone: 465-3672
 Division: Administrative Services Division Date: 1/15/96
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 1/15/96
 Agency: Department of Law

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SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 2/12/96

FURTHER:

~~Date of 5-Day Notice:~~
~~in accordance with Uniform Rule 23)~~

DATE TURNED
 INTO OFFICE: 3-29-96

The Judiciary Committee considered CS FOR HOUSE BILL NO. 308(JUD)

Relating to the Uniform Probate Code, including nonprobate transfers, guardianships, trusts, multiple-party accounts and relating to the Uniform Simultaneous Death Act.

and recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to the _____ Committee

Senate Bill:
 same title
 new title
 House Bill:
 same title
 technical title
 new: SCR# _____

| ENDING DQ PASS | DP | OTHER RECOMMENDATIONS | R | DNP | A |
|----------------------------------|----|-----------------------|-------------------------------------|-----|---|
| | | <i>John Brennan</i> | <input checked="" type="checkbox"/> | | |
| | | <i>Nike Miller</i> | <input checked="" type="checkbox"/> | | |
| | | | | | |
| | | | | | |
| | | | | | |
| CHAIR: <i>Adrian L. Taylor</i> ✓ | | CHAIR: | | | |

NEW FISCAL NOTE(S):

| Department | Date | Zero | Fiscal |
|------------|------|------|--------|
| | | | |
| | | | |

PREVIOUS FISCAL NOTE(S):*

| Department | Date | Zero | Fiscal |
|------------------------|----------------|-------------------------------------|--------|
| <i>Law - Civil Div</i> | <i>1/15/96</i> | <input checked="" type="checkbox"/> | |
| | | | |

Alaska State Legislature

REPRESENTATIVE
SEAN R. PARNELL



716 WEST 4TH AVENUE, SUITE 122
ANCHORAGE, ALASKA 99501
(907) 258-5194

While in Juneau
STATE CAPITOL
JUNEAU, ALASKA 99801-1182
(907) 465-2993

HOUSE OF REPRESENTATIVES

SPONSOR STATEMENT House Bill 308

"An act relating to the Uniform Probate Code, including non probate transfers, guardianships, trusts, and multiple-party accounts; relating to the Uniform Simultaneous Death Act; amending Alaska Rule of Probate Procedure 5; and providing for an effective date."

In an effort to clear up confusion and alleviate unneeded litigation and legal fees to the public, the National Conference of Commissioners on Uniform State Law (NCCUSL) developed a Uniform Probate Code in 1969. Alaska Adopted this code in 1972. Since that time, the NCCUSL continued to study and improve existing uniform codes and in 1990 issued new recommendations for two sections (2 & 6) of the Uniform Probate Code, which have become dated through changes in societies financial and family practices (for example the proliferation of divorces and second families). Additionally, HB 308 repairs glitches in the code discovered since its' drafting in 1969.

HB 308 adopts the NCCUSL's newly revised Uniform Probate Code with a few modifications. The provisions contained in this bill were reviewed in depth by Alaska's uniform law commissioners and by the members of the Alaska Bar Association's Probate and Estate Planning Section. In drafting this legislation, any changes from current law which could not be agreed upon by interested parties were set aside for discussion in separate legislation.

Eight states (States with Community Property laws do not need this) have already adopted the new Uniform Probate Code and at least five others are considering them this year. The Alaska Code Commissioners and the members of the Alaska Bar Association's Probate and Estate Planning Section agreed on some changes so that the new code would dovetail with current Alaska Law. One issue could not be agreed on and lacking any consensus was left out.

I respectfully request your support.

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February 6, 1996

The Honorable Sean Parnell
Alaska House of Representatives
Room 515, State Capitol
Juneau, AK 99801-1182

HAND-DELIVERED

Re: CSHB 308 (JUD), Update of Uniform Probate Code, Art. II
(wills, intestacy, etc.) and Art. VI (non-probate transfers)

Dear Representative Parnell:

Since CSHB 308 (JUD) is scheduled for a floor vote in the House tomorrow, I wanted to express, on behalf of Alaska's uniform laws delegation, my strong support for the bill. It is an excellent measure, updating Alaska's Uniform Probate Code (UPC) in many significant ways. Here's a synopsis.

The bill is based on the amendments promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL)¹ and has been favorably studied by the Probate and Estate Planning Section of the Alaska Bar Association for three years. It is supported by the American Bar Association and the American Association of Retired Persons.

BACKGROUND:

In 1972, Alaska enacted the UPC, which had been promulgated in 1969 by the NCCUSL. Although there have been a few relatively minor amendments of it in the intervening decades, this bill presents the NCCUSL's first comprehensive updating of Article II and its revision of Article VI. Since Alaska has enacted the UPC, we need to keep up-to-date with national developments.

The national version of the UPC consists of seven "articles." In Alaska's numbering system, those articles have become "chapters." This bill amends Article II (AS 13.11, which the bill repeals and replaces with AS 13.12) and Article VI (AS 13.31, which the bill repeals and

¹ A nonpartisan organization in its 104th year, comprised of more than 300 state and federal judges, law professors, and governmental and private law practitioners representing all 50 states, Guam, Puerto Rico, and the District of Columbia. It drafts and promulgates Uniform Acts on subjects for which interstate uniformity is necessary.

replaces with AS 13.33). It includes some compatibility amendments in Article I (AS 13.06) and Article III (AS 13.16). The section numbers are the same in both versions. The subjects are:

- AS 13.06 -- General Provisions
- AS 13.12 -- Intestacy, Wills, and Donative Transfers
- AS 13.16 -- Probate of Wills and Administration
- AS 13.33 -- Nonprobate Transfers.

THE ARTICLE II CHANGES:

The bulk of the bill presents the Article II revision. In addition to the basic wills and intestacy provisions, Article II includes several components² that you might occasionally hear referred to independently.

The general thrust of the Article II changes is to update that article and to provide protection for surviving spouses in intestate succession. The NCCUSL summarizes the revision as follows:

This revision reflects a recommitment of the UPC to family protection, to reducing the risk of technical invalidation of wills, and to harmonization of rules of presumed intention for probate and nonprobate transfers of property at death. The 1969 UPC II served the first two of these three purposes; twenty years' experience with the original provisions and changes in the makeup of American families during recent decades have pointed the way to new improvements in earlier formulations.

Essentially, there are three motivations behind the revision: (1) over 20 years' experience with implementing the original version and dealing with a variety of interpretation questions that have arisen; (2) the statistics on the increasing number of American families involved in divorce, remarriage, and children with multiple families; and (3) evolving notions of how to provide for decedants' survivors.

THE ARTICLE VI CHANGES:

UPC Article VI, on nonprobate transfers, clarifies the law of joint tenancy and tenancy in common for deposit accounts, with or without right of survivorship, and declares that pay-on-death (POD) clauses in the contracts that establish deposit accounts are nontestamentary. This means that such clauses allow the payment of the money in an account to the beneficiary named in a POD clause even though the clause does not meet the formal requirements for a will. The

²

- Testamentary Additions to Trusts Act (1991), UPC sec. 2-511 (AS 13.12.511)
- Simultaneous Death Act (1991), UPC sec. 2-702 (AS 13.12.702);
- Disclaimer of Property Interests Act (1990), UPC sec. 2-801 (AS 13.12.801);
- International Wills Act (1977), UPC art. II, part 10 (AS 13.12.912 -- 13.12.921).

money is paid without passing through the estate of the decedent account holder. The expense, frustration, and delay of probate is thus avoided.

The amendments in this bill offer substantial improvements over the original version. In addition to improved pay-on-death deposit accounts, the amended article provides for transfer-on-death (TOD) investment securities -- stock, bonds, mutual fund shares, security accounts, and the like. They, too, are then nontestamentary and need not go through probate, thus further avoiding unnecessary expense, frustration, and delay.

CONCLUSION:

This bill makes a number of improvements, addresses the concerns that have developed in a changing society, and helps keep Alaska law current with that in the rest of the country¹. If you would like to have additional information, let me know. Or you could contact the leading national authority on the UPC, Professor Richard V. Wellman, of the University of Georgia School of law.

Sincerely,



Arthur H. Peterson
Uniform Law Commissioner
for Alaska

cc: Professor Richard V. Wellman
Rest of Alaska's ULC Delegation:
Hon. Jay A. Rabinowitz
W. Grant Callow, Esq.
Tamara Brandt Cook, Esq.
L. S. Kurtz, Jr., Esq.
Deborah E. Behr, Esq.

¹ CSHB 308 (JUD) contains nine variances (in addition to some minor wording changes to accommodate Alaska's drafting style and format requirements) from the national version -- seven incorporated into the original bill, and two adopted by the House Judiciary Committee. These variations appear at:

- proposed AS 13.06.050(29) (page 6 of the bill);
- proposed AS 13.12.202 (page 14);
- proposed AS 13.12.502(c) (deleted from page 31);
- proposed AS 13.12.503 (deleted from page 31);
- proposed AS 13.12.515, two changes (page 37);
- proposed AS 13.12.606(a)(5) and (6) (deleted from page 42);
- proposed AS 13.12.803 (page 60);
- proposed AS 13.33.101(b) (page 79).

Notwithstanding the desirability of complete uniformity, the NCCUSL and Alaska's uniform laws delegation warmly endorse this bill, containing these relatively minor variances.

HARTIG, RHODES, NORMAN, MAHONEY & EDWARDS

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October 13, 1995

RECIPROCAL RELATIONSHIP

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REPLY TO:
Anchorage

Representative Brian Porter
Chairman, House Judiciary Committee
Alaska State Legislature
716 West Fourth Avenue
Anchorage, AK 99501

RE: Revisions to Alaska Uniform Probate Code
H.B. 308

Dear Representative Porter:

It is my understanding that there will be a hearing at 1:00 p.m., Monday, October 16, 1995, to hear testimony regarding H.B. 308.

As past chairman of the Alaska Bar Association's Probate and Estate Planning Committee, a current director of the Anchorage Estate Planning Council, and a practitioner who practices exclusively in the estate planning, probate and tax areas, I would like to express my enthusiastic support for the changes incorporated by H.B. 308. The bill, as it is currently drafted, goes a long way to improving some of the concerns of the current probate code as adopted in Alaska.

If you have any question, please do not hesitate to contact me.

Sincerely,

HARTIG, RHODES, NORMAN,
MAHONEY & EDWARDS, P.C.

By: 

Peter B. Brautigam

PBH:paz
F:\CHG\APPORTER.LTR

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October 3, 1995

Representative Sean Parnell
Alaska State Legislature
716 W. 4th Ave.
Anchorage, AK 99501

Re: Support for House Bill 308
Uniform Probate Code Revisions

Dear Representative Parnell:

Please consider this letter an expression of my support for the passage of House Bill 308. As an estate planning and probate legal practitioner in this State since 1977, I have noted a number of difficulties that clients have had through the years with the current Probate Code. House Bill 308 is the type of legislation that helps resolve some of those problems that have been encountered by families of decedents and at the same time relieves a decedent's heirs of a lot of aggravation and excessive expenditures by clearing up a number of problems that often led to protracted probate proceedings and/or litigation.

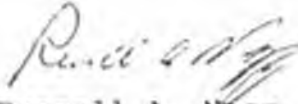
Although I am the current Chairperson of the Alaska State Bar Estate Planning and Probate Section, I write my letter of support of House Bill 308 solely as a private practitioner and not as a Chairperson or member of any Bar Section.

I appreciate your support of the Bill, as well as all of your efforts expended in these regards over the past several years.

Sincerely,

Law Offices of Russell A. Nogg

By:


Russell A. Nogg

RAN:jn

Alaska Women's Lobby

416 Harris Street, Suite 208
Juneau, Alaska 99801
(907) 463-6744 phone/(907) 586-2680 fax

Representative Sean Parnell
Alaska House of Representatives
State Capitol, Room 515
Juneau, Alaska

January 30, 1996

Dear Representative Parnell,

This letter is in reference to HB308, the Uniform Probate Code and to urge you to consider an amendment to the Uniform law.

We are concerned about the changes proposed to the elective share of the surviving spouse. The Uniform law would change that share from one-third of the estate and homestead and jointly held property to a share percentage determined by the length of time the spouse and the decedent were married to each other.

We would oppose that change and in fact have supported increasing spousal entitlement from one-third to one-half in contested wills. A proposal to do that was introduced by the Governor for the Alaska Women's Commission in 1985.

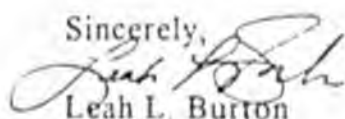
Historically, it is women more than men who have been disinherited since men more often than women have controlled the bulk of economic wealth in a marriage. Women are also most likely to find themselves in poverty as they grow older. Women over the age of 65 have the highest incidence of poverty of any age group of either sex.

Marriage is a mutual undertaking. The contributions a spouse provides to a marriage such as time, labor, emotional support, financial income, and other resources, should not be diminished because the partner has died.

We believe the surviving spouse has an inherent economic interest in the other spouse's estate and should receive at least one-half of the remaining estate that they built together.

We hope that you will consider amending the bill to delete the proposed schedule of payments based on the length of time the spouses were married and consider instead providing complete equity to the surviving spouse.

Sincerely,



Leah L. Burton

for the Alaska Women's Lobby

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Juneau, Alaska 99801-2105

MEMORANDUM

January 31, 1996

SUBJECT: Sectional summary of CSHB 308(JUD) revising the Uniform Probate Code (Work Order No. 9-LS0898F)

TO: Representative Sean Parnell
Attn: Richard

FROM: *TB*
Theresa L. Bannister
Legislative Counsel

The following is a sectional summary of the above described bill draft. As a preliminary matter, note that a sectional summary of a draft should not be considered an authoritative interpretation of the draft and the draft itself is the best statement of its contents.

Section 1. Establishes six rules to be used in addition to the Alaska Rules of Evidence to determine death and status

Section 2. Provides definitions for certain terms in the state's probate code.

Section 3. Adds a new chapter to the state's probate code to replace AS 13.11, the current chapter on intestate succession and wills, which is repealed by sec. 9 of the bill. The chapter relates to intestacy, wills, and donative transfers. Article 1. Sections 13.12.101 - 13.12.114 relate to intestate succession.

Sec. 13.12.101 states that a decedent's estate that is not effectively disposed of by will passes by intestate succession to the decedent's heirs under the state's probate code, except as modified by the decedent's will. Authorizes the use of a will to exclude or limit the persons to inherit the property passing by intestate succession, and indicate how the property passes in that situation.

Sec. 13.12.102 indicates how much of the intestate estate, including inalienable Native corporation stock, that the spouse of a decedent receives in various situations

Sec. 13.12.103 indicates when and how much of an intestate estate the heirs other than the spouse receive in various situations

Representative Sean Parnell

January 31, 1996

Page 2

Sec. 13.12.104 requires an individual to survive the decedent by 120 hours to be considered an heir for the purposes of homestead allowance, exempt property, and intestate succession. Requires the survival to be established by clear and convincing evidence. Prevents these requirements from applying if the result is that the state takes the intestate estate.

Sec. 13.12.105 gives property in the intestate estate to the state if there isn't a taker under this chapter, subject to statutes on unclaimed property and escheated real property.

Sec. 13.12.106 establishes the rules for determining the heirs and allocating shares of an intestate estate when the estate passes "by representation" to the decedent's descendants or to the descendants of the decedent's deceased parents or grandparents.

Sec. 13.12.107 states that relatives of the half-blood inherit as if they were of the whole blood.

Sec. 13.12.108 treats an individual in gestation at a particular time as living at that time if the individual lives 120 hours or more after birth.

Sec. 13.12.109 states that property given to an heir before the decedent's death is not charged as an advance against the heir's share in the decedent's intestate estate unless certain evidence exists to that effect. Establishes how "advanced" property is valued. Prevents, with one exception, the advance from being taken into account for the intestate estate if the recipient of the advanced property does not survive the decedent.

Sec. 13.12.110 states that a debt owed to a decedent is not charged against the intestate share of anyone but the debtor. States that the debt is not considered when computing the intestate share of the debtor's descendants if the debtor fails to survive the decedent.

Sec. 13.12.111 states that being an alien or claiming a share through an alien does not disqualify an individual to take as an heir.

Sec. 13.12.113 states that an individual related to the decedent through two lines takes only a single share, which is based on the relationship that yields the larger share.

Sec. 13.12.114 considers, for the purpose of intestate succession by, through, or from a person, that an individual is the child of the individual's natural parents--without regard to their marital status--except as provided otherwise in the section. Provides that the parent and child relationship may be established under AS 25.20.050. States that an adopted child is the child of the adopting parents and not the natural parents, except as provided in the section when the child is adopted by the spouse of a natural parent. Precludes inheritance from or through a child by the natural parents or their kindred unless the natural parents satisfy certain conditions. This section governs if it conflicts with two other statutes relating to legitimation and the effect of adoption decrees.

Representative Sean Parnell

January 31, 1996

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Article 2. Secs. 13.12.201 - 13.12.214 relate to the elective share of a surviving spouse.

Sec. 13.12.201 defines terms for the article.

Sec. 13.12.202 entitles a surviving spouse to take an elective share amount equal to one-third of the augmented intestate estate. The election is subject to the limitations and conditions in Article 2. Provides for a supplemental elective share if the result of certain calculations is less than a certain amount. Provides that the surviving spouse's homestead allowance, exempt property, and family allowance are in addition to the elective share and supplemental elective share. Makes the right to take an elective share of property in this state subject to the law of the decedent's domicile at death, if the decedent dies domiciled in another state.

Sec. 13.12.203 explains what property constitutes the augmented estate: the net probate estate, nonprobate transfers to others, nonprobate transfers to the surviving spouse, the surviving spouse's property, and the surviving spouse's nonprobate transfers to others.

Sec. 13.12.204 states that the net probate estate is included in the augmented estate and identifies what property the net probate estate covers.

Sec. 13.12.205 states that the decedent's nonprobate transfers to others are included in the augmented estate and lists what property is included in this category.

Sec. 13.12.206 states that the decedent's nonprobate transfers to the surviving spouse are included in the augmented estate and identifies what property is included in this category.

Sec. 13.12.207 states that the surviving spouse's property and nonprobate transfers to others are included in the augmented estate and identifies what property is included in this category. Indicates how and when the property is valued and what reductions are allowed.

Sec. 13.12.208 indicates when property is excluded from the decedent's nonprobate transfers to others. Provides some guidelines for reducing and including property in the augmented estate and for handling property covered by overlapping provisions.

Sec. 13.12.209 prioritizes the property sources from which the surviving spouse's elective share is payable.

Sec. 13.12.210 identifies which recipients of the decedent's nonprobate transfers to others and which donees of the recipients are liable to make a contribution toward the satisfaction of the elective share and how the contribution may be made. Explains what happens if a provision of this Article 2 is preempted by federal law with respect to property included in the decedent's nonprobate transfers to others.

Representative Sean Parnell

January 31, 1996

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Sec. 13.12.211 establishes the procedure, including time limitations and notices, for making and enforcing the election. Allows the surviving spouse to obtain an extension of the time for making the election. Allows the surviving spouse to withdraw a demand for an elective share until a set time.

Sec. 13.12.212 limits the right of election to a surviving spouse who is living when the petition for the elective share is filed in the court. Authorizes the exercise of the right by a conservator, guardian, or agent of the surviving spouse. Directs that certain elective share property be placed in a custodial trust for the benefit of the surviving spouse, if the spouse is incapacitated. Establishes certain exceptions to the operation of the Alaska Uniform Custodial Trust Act (AS 13.60) for this situation.

Sec. 13.12.213 authorizes a surviving spouse to waive the right of election and other rights, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the surviving spouse. Establishes when a waiver is not enforceable.

Sec. 13.12.314 provides that a third party is not liable for a good faith payment or transfer of property claimed under an election, if the payment or transfer is made before the third party receives written notice from the surviving spouse about the election. Holds that the third party is liable for payments made or other actions taken after receiving written notice about the election. Establishes procedures relating to the notice, to third party payment or deposit of the property in court, and to court handling of property deposited with it.

Article 3. Sections 13.12.301 - 13.12.302 relate to the situation where the spouse and children are not provided for in the will.

Sec. 13.12.301 provides that a surviving spouse who married the testator after the execution of the testator's will is entitled to receive not less than the share the spouse would have received if the testator had died intestate as to a certain identified portion of the estate, except in certain circumstances. Establishes that devises made by the will to the testator's surviving spouse are applied first to satisfy the share provided by this section, and that certain other devises abate as provided in AS 13.16.540.

Sec. 13.12.302 establishes how children born or adopted after the execution of the will share in the estate if the testator failed to provide for them in the will. Provides that a child not provided for in the will because the testator believed that the child was dead is entitled to share in the estate as if the child were an omitted after-born or after-adopted child.

Article 4. Sections 13.12.401 - 13.12.405 address exempt property and allowances.

Sec. 13.12.401 indicates that Article 4 applies only to the estate of a decedent who dies domiciled in this state. Provides that rights to homestead allowance, exempt property, and

Representative Sean Parnell

January 31, 1996

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family allowance for a decedent who dies not domiciled in this state are governed by the law of the decedent's domicile at death.

Sec. 13.12.402 provides a homestead allowance to the surviving spouse or, if there is not a surviving spouse, to the minor and dependent children of the decedent. Exempts from and gives priority to the homestead allowance over all claims against the estate. Makes the homestead allowance in addition to other shares passing to the surviving or minor or dependent children by the decedent's will, except as otherwise provided, by intestate succession, or by elective share.

Sec. 13.12.403 states that, in addition to the homestead allowance, the surviving spouse or, if there is no surviving spouse, the surviving children are also entitled from the estate a certain value in certain property. Gives this exempt property priority over all other claims against the estate, but allows for abatement under certain conditions. Indicates that the exempt property rights under this section are in addition to a benefit or share passing to the spouse or children by the will, unless otherwise provided, by intestate succession, or by way of elective share.

Sec. 13.12.404 provides the surviving spouse and certain minor children with a reasonable allowance from the estate for their maintenance during the administration of the estate. The family allowance may not last longer than one year if the estate is inadequate to discharge allowed claims. Establishes how the allowance may be paid and to whom it is paid. Exempts the allowance from and gives it priority over all claims except the homestead allowance. Provides that the family allowance is not chargeable against the share of the surviving spouse or children by the decedent's will, unless otherwise provided, by intestate succession, or by way of elective share. Death terminates the right to what has not yet been paid.

Sec. 13.12.405 establishes, with one exception, that the surviving spouse, guardians of minor children, or adult children may select property of the estate to satisfy the homestead allowance and the exempt property entitlement. Authorizes the personal representative to execute the appropriate documents to distribute the selected property. Authorizes the personal representative to determine the family allowance in a lump sum up to a certain amount or periodic installments not exceeding a certain monthly amount for a year. Authorizes the personal representative to disburse funds for the homestead allowance and the family allowance. Allows the personal representative or an aggrieved person to petition the court for appropriate relief.

Article 5. Secs. 13.12.501 - 13.12.517 address wills, will contracts, and the custody and deposit of wills.

Sec. 13.12.501 establishes who may make a will

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Sec. 13.12.502 establishes the requirements for a will, including its execution and witnessing. Validates a noncomplying will as a holographic will under certain conditions.

Sec. 13.12.504 provides for a will to be simultaneously executed, attested, and made self-proving. Provides the form that the will must be substantially in order to qualify. Allows an attested will to be made self-proved after its execution at any time by the acknowledgment of the will by the testator and the affidavits of the witnesses in substantially the form provided in the section. Validates certain signatures affixed to a self-proving affidavit attached to the will.

Sec. 13.12.505 provides that an individual who is generally competent to be a witness may witness a will. Prevents the invalidation of a will or a provision of a will because an interested person signed the will.

Sec. 13.12.506 validates a will if it is executed in compliance with AS 13.12.502 or with the law of another jurisdiction having a specified relationship to the execution of the will or to the decedent.

Sec. 13.12.507 indicates what actions and writings revoke or supplement a will.

Sec. 13.12.508 provides, with certain exceptions, that a change of circumstances does not revoke all or part of a will.

Sec. 13.12.509 establishes the principles for determining when all or part of a revoked will is revived.

Sec. 13.12.510 authorizes the incorporation of a writing into a will by the will's reference to the writing if the language of the will manifests this intent and if the will sufficiently describes the writing.

Sec. 13.12.511 allows a will to validly devise property to certain qualifying trusts. Provides that such a devise is not invalid because the trust is amendable or revocable or because the trust is amended after the will's execution or the testator's death. Provides that, unless provided otherwise by the will, the devised property becomes part of the trust and is administered under the trust's governing instrument. States that, unless the will provides otherwise, the revocation or termination of the trust before the testator's death causes the devise to lapse.

Sec. 13.12.512 allows a will to refer to dispose of property by reference to acts and events, including the execution or revocation of another individual's will, that have significance apart from their effect on the will.

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Sec. 13.12.513 allows a will to devise property by referring to a written statement or list disposing of the items, except money. Establishes how a writing qualifies for this purpose.

Sec. 13.12.514 indicates how a contract to make a will or a devise, or not to revoke a will or devise, or to die intestate is established. States that the execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will(s).

Sec. 13.12.515 allows a will to be deposited with a court for safekeeping, under the rules of the court. Establishes certain rules for the confidentiality, delivery, and examination of the will.

Sec. 13.12.516 directs the custodian of a will, after the testator's death and on request of an interested person, to deliver the will with reasonable promptness to a person able to secure its probate or, absent such a person, to the appropriate court. Holds a person who wilfully fails to so deliver the will liable for damages. Subjects to contempt of court a person who wilfully refuses or fails to deliver a will after a court order.

Sec. 13.12.517 states that a penalty clause for contesting a will is unenforceable if probable cause exists for the contest.

Article 6 - Secs. 13.12.601 - 13.12.609 address the rules of construction applicable only to wills.

Sec. 13.12.601 states that certain rules of construction control the construction of a will in the absence of a finding of a contrary intent.

Sec. 13.12.602 states that a will may pass all property that the testator owned at death and all property acquired by the estate after the testator's death.

Sec. 13.12.603 establishes the rules for the passage of property when certain devisees fail to survive the testator.

Sec. 13.12.604 provides that, with certain exceptions, a devise that fails becomes part of the residuary estate. Establishes how the residuary estate passes when the share of a residuary devisee fails, if the residue is devised to two or more persons.

Sec. 13.12.605 provides that if a testator's will devises securities then owned by the testator, the devise includes certain additional securities owned by the testator at death if acquired after the will's execution as a result of the testator's ownership of the original securities. States that pre-death cash distributions with respect to a described security are not part of the devise.

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Sec. 13.12.606 provides that a specific devisee is entitled to the specifically devised property and to certain property connected with the specifically devised property, except in certain circumstances. Provides for the devisee to receive a general cash devise rather than the specific property under certain conditions.

Sec. 13.12.607 provides that a specific devise passes subject to any mortgage interest, without the right of exoneration, even if the will contains a general directive to pay debts.

Sec. 13.12.608 states that, absent a requirement that a power of appointment be exercised by a reference or by an express or specific reference to the power, a general residuary clause or a general disposition of all the testator's property expresses an intention to exercise the testator's power of appointment only under certain conditions.

Sec. 13.12.609 provides that property given by a testator during the testator's lifetime satisfies a devise only under certain circumstances. Establishes a valuation date when there is partial satisfaction. Indicates how the gift is treated if the devisee fails to survive the testator.

Article 7. Secs. 13.12.701 - 13.12.711 address the rules of construction applicable to wills and other governing instruments.

Sec. 13.12.701 indicates which rules of construction control the construction of a governing instrument.

Sec. 13.12.702 requires that, except for certain listed situations, an individual must survive an event, which includes the death of an individual, by 120 hours in order to be considered to have survived the event. The survival must be established by clear and convincing evidence. Establishes other rules relating to survivorship. Establishes when a third party is liable for payments or transfers made to persons not entitled to the payment or transfer or for having taken other action in reliance on a beneficiary's apparent entitlement. Establishes the procedure for handling a claimed lack of entitlement under this section. Establishes when a purchaser or recipient is required to return the payment, property, or benefit, or is personally liable for the amount of the payment or the value of the property or benefit. Indicates how to proceed if all or part of this section is preempted by federal law with respect to a payment, an item of property, or a benefit.

Sec. 13.12.703 provides that, except in certain situations, the meaning and legal effect of a governing instrument is governed by the local law of the state selected in the instrument.

Sec. 13.12.704 establishes a presumption relating to the intention of the donor of a power of appointment.

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Sec. 13.12.705 provides that adopted individuals and individuals born out of wedlock, and their respective descendants if appropriate to the class, are included in class gifts and other terms of relationship in accordance with the rules for intestate succession. Indicates what certain terms of relationship include and exclude. Indicates which children are included in certain dispositive provisions made by persons who are not the natural or adopting parents of the children.

Sec. 13.12.706 establishes certain rules governing inheritance when certain beneficiaries fail to survive the decedent. Establishes when a payor is liable for making a payment under the terms of the beneficiary designation when a substitute gift is claimed under the section. Establishes the procedure to be followed for the handling of claims to substitute gifts. Establishes when a purchaser of property or a recipient of a payment or other property is obligated to return the payment, property, or benefit, or liable for the amount of the payment, or value of the property or benefit when there is a claimant for a substitute gift. Establishes what happens if all or a part of this section is preempted by federal law with respect to particular property.

Sec. 13.12.707 states that a future interest under the terms of a trust is contingent on the beneficiary surviving the distribution date. Establishes certain rules for inheritance if the person fails to survive.

Sec. 13.12.708 provides that if a class gift using certain words does not specify the manner of distribution, the property is distributed among the class members who are living when the interest is to take effect in such shares as they would receive if the designated ancestor had died intestate owning the property.

Sec. 13.12.709 provides the rules for distributing property "by representation," "per capita at each generation," or "per stirpes."

Sec. 13.12.710 abolishes the "worthier title" doctrine. Provides that certain language does not create a reversionary interest in the transferor.

Sec. 13.12.711 provides how certain present or future distributions or interests are to pass.

Article 8. Sections 13.12.801 - 13.12.804 supply general provisions concerning probate and nonprobate transfers.

Sec. 13.12.801 allows a person to disclaim the receipt of property by delivering or filing a written disclaimer under this section. Establishes a time limit and procedure for handling the disclaimer in testamentary and nontestamentary situations. Addresses disclaimers by joint tenants and tenants by the entirety. If the disclaimed property is real property or an interest in real property, allows a copy of the disclaimer to be recorded. Indicates what a disclaimer must contain and that it must be signed. Indicates how a disclaimed interest, testamentary

or nontestamentary, passes. Establishes that a disclaimer or a written waiver of the right to disclaim binds the disclaimant or person waiving and all persons claiming through or under either of them. Indicates that certain activities bar the right to disclaim. Indicates that this section does not abridge the right of a person to waive, release, disclaim, or renounce property under another statute. Provides a transition section for disclaiming certain property interests existing on the effective date of this Act

Sec. 13.12.802 establishes how a divorce, annulment, or decree of separation affects the establishment of a "surviving spouse." Excludes certain persons from the status of "surviving spouse."

Sec. 13.12.803 establishes the effect of homicide on intestate succession, wills, trusts, joint assets, life insurance, and beneficiary designations.

Provides that an individual who feloniously kills the decedent forfeits all benefits under this chapter with respect to the decedent's estate. If the decedent died intestate, the estate passes as if the killer disclaimed the killer's intestate share.

States that felonious killing revokes certain revocable dispositions, provisions, and nominations, and severs the interests of the decedent and the killer in certain jointly held property. Provides that a severance doesn't affect the rights of certain third parties acquiring the property.

Provides that provisions of a governing instrument are given effect as if the killer disclaimed all provisions revoked by this section or, in a certain case, as if the killer predeceased the decedent

States that a wrongful acquisition of property or interest by a killer not covered by this section is to be treated under the principle that a killer may not profit from the killer's wrong

States that, after exhaustion of appeals, a conviction establishing criminal accountability for the felonious killing of the decedent conclusively establishes the convicted individual as the decedent's killer for the purposes of this section. Without a conviction, the court is to determine upon request whether the individual would be found criminally accountable for the felonious killing, and, if so, the individual is considered the decedent's killer for the purposes of this section.

Establishes when a payor or other third party is liable for having made a payment or transferred an item of property or other benefit to a beneficiary designated in a governing instrument affected by a felonious killing, or for having taken other action in reliance on the validity of the instrument. Establishes when a person who purchases property or receives a payment or other property in satisfaction of a legally enforceable obligation is obligated

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to return the payment, property, or benefit, or is liable for the amount of the payment or value of the property or benefit, to the person entitled to it under this section.

Establishes the procedure for handling claims of a forfeiture or revocation under this section. Establishes what happens when this section is preempted by federal law with respect to a payment, or to property or other benefit, covered by this section.

Allows a court, under certain circumstances, to set aside certain provisions of this section in the case of a felonious killing that was unintentional.

Sec. 13.12.804 establishes, except in certain circumstances, that a divorce or an annulment revokes certain dispositions, provisions, and nominations, and severs the interests of the former spouses in property held by the spouses as joint tenants with the right of survivorship. Indicates that a severance does not affect certain third-party interests in property acquired under certain conditions. States that provisions are given effect as if the former spouse and relatives of the former spouse disclaimed all the provisions revoked by this section, or, in a certain case, died immediately before the divorce or annulment. States that provisions revoked solely by this section are revived by remarriage to the former spouse or nullification of the divorce or annulment. States that a change of circumstances other than as described in this section and in sec. 13.12.805 does not effect a revocation. Establishes the liability of property payors, payees, transferors, and transferees in these circumstances. Establishes the procedure for handling claims under this section based on divorce, annulment, or remarriage. Indicates the effect of federal preemption on the section.

Article 9 Sections 13.12.907 - 13.12.921 contain provisions relating to honorary trusts, trusts for pets, and international wills

Sec. 13.12.907 authorizes the performance of certain honorary trusts for 21 years. Validates, except as otherwise provided in this section, trusts for the care of a domestic or pet animal and the animal's offspring, indicates when a trust for a pet terminates, and provides for a liberal construction of the governing instrument. Establishes some rules for honorary and pet trusts.

Sec. 13.12.912 validates as to form a will that is made in the form of an international will complying with secs. 13.12.912 - 13.12.921, irrespective of where the will is made, where the assets are located, and the nationality, domicile, or residence of the testator. States that the invalidity of a will as an international will does not affect its formal validity as a will of another kind. States that the sections on international wills do not apply to the form of testamentary dispositions made by two or more persons in one instrument.

Sec. 13.12.913 establishes the formal requirements for an international will.

Sec. 13.12.914 establishes additional formal requirements for international wills.

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Sec. 13.12.915 requires the authorized person to attach to an international will a certificate to be signed by the authorized person establishing that the requirements of secs. 13.12.912 - 13.12.921 for valid execution of an international will have been complied with. Requires the person to keep a copy of the certificate and to deliver another to the testator. Establishes the form that the certificate must substantially comply with.

Sec. 13.12.916 establishes that, in the absence of contrary evidence, the certificate of the authorized person is conclusive of the formal validity of the will. Indicates that the absence or irregularity of the certificate does not affect the formal validity of the will.

Sec. 13.12.917 states that an international will is subject to the ordinary rules of revocation of wills.

Sec. 13.12.918 describes the source and desired construction of the international will provisions.

Sec. 13.12.919 indicates which individuals qualify as authorized persons for the purposes of international wills.

Sec. 13.12.920 provides for the registration of information on international wills. Directs the Department of Commerce and Economic Development to establish the registry system. Establishes certain rules regarding the registry system, what information may be registered, and the confidentiality and communication of the information.

Sec. 13.12.921 provides definitions for the sections on international wills.

Section 4. States that a will must be declared to be valid in certain ways in order for it to be effective to prove the transfer of property or to nominate an executor.

Section 5. Establishes a time limit for starting probate, testacy, and appointment proceedings. Provides certain exceptions to the time limit. States that the time limits do not apply to construe probated wills or to determine the heirs of an intestate person.

Section 6. Makes conforming and technical amendments.

Section 7. Makes technical amendments.

Section 8. Makes a conforming amendment.

Section 9. Makes conforming and technical amendments. Also provides under certain circumstances for the distribution of the residuary estate in any equitable manner.

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Section 10. Alters one reference to cover any "governing instrument," not just probated wills.

Section 11. Makes technical amendments.

Section 12. Establishes a new chapter on nonprobate transfers. Sec. 13.33.101 is Article 1. Secs. 13.33.201 - 13.33.227 are Article 2, which relates to multiple-person accounts. Secs. 13.33.301 - 13.33.310 are Article 3, the Uniform Transfer-on-Death Security Registration Act.

Sec. 13.33.101 states that provisions for nonprobate transfer of property on death in certain written documents are not testamentary. Identifies certain provisions that are covered by the section. Allows certain non-testamentary documents to designate a trustee named or to be named in a will as a beneficiary, payee, or owner. Allows the designation to be made before or after the will is made. States that it is not necessary to have an existing trust corpus. Declares that the section does not limit the rights of creditors under other laws of this state.

Sec. 13.33.201 defines some terms for the article on multiple-person accounts.

Sec. 13.33.202 describes certain accounts that are not covered by Article 2.

Sec. 13.33.203 states that an account with a financial institution may be for single or multiple parties and that a multiple-party account may be with or without a right of survivorship. Allows, subject to sec. 13.33.212(c), a single-party or multiple-party account, to have a pay-on-death designation, an agency designation, or both. Describes the application of Article 2.

Sec. 13.33.204 provides that contracts of deposit containing provisions in substantially the form established in the section establishes the type of account provided, and the account is governed by the Article 2 provisions applicable to an account of that type. Provides for Article 2 coverage for contracts of deposit that don't contain provisions substantially in the form provided by this section.

Sec. 13.33.205 allows the parties on an account to designate a person other than a party to the account as the agent for the parties on the account. States that the agent's authority survives disability and incapacity of a party to the account unless the agency designation provides otherwise. Allows an agent to act for a disabled or incapacitated party until the agent's authority is terminated. Provides that the death of the sole party to the account or of the last surviving party to the account terminates the agent's authority.

Sec. 13.33.206 establishes applicability of secs. 13.33.211 - 13.33.216 and secs. 13.33.221 - 13.33.227.

Sec. 13.33.211 ties the ownership of an account during the lifetime of all parties to the proportionate net contribution of each party to the account, unless clear and convincing evidence establishes a different intent. For parties married to each other, presumes each contributed equally, unless there is proof otherwise. States that a beneficiary in an account having a pay on death designation is not entitled to deposited sums during the lifetime of any party. States that an agent in an account with an agency designation does not have a beneficial right to sums on deposit.

Sec. 13.33.212 establishes the ownership rights to account money at a party's death for the various types of accounts covered by Article 2. Also addresses the liability of a surviving party or beneficiary for unpaid requests for payments.

Sec. 13.33.213 establishes that rights at death under the previous section are determined by the terms of the account. Allows the parties to change the terms of the account and establishes the procedure for doing so. States that a right of survivorship created in certain ways may not be altered by will.

Sec. 13.33.214 states that, with exceptions, a transfer resulting from the application of sec. 13.33.212 is not testamentary or subject to certain sections of the state's uniform probate code.

Sec. 13.33.215 provides that, under certain conditions, a transfer resulting from a right of survivorship or a pay on death designation under Article 2 is not effective against an estate if needed to pay certain claims against the estate. States that surviving parties or beneficiaries who receive payments after the death of a party to the account are liable to account to the personal representative for certain amounts. Establishes a condition for beginning a proceeding to assert the liability of the party or beneficiary, and the time by which the proceeding must be begun. Authorizes a surviving party or beneficiary to join in the proceeding a surviving party or beneficiary of another account of the decedent. States that sums recovered by the personal representative are administered as part of the decedent's estate. Indicates how this section relates to sec. 13.33.226.

Sec. 13.33.216 establishes that deposit of community property in an account does not change the community character of the property or community rights in the property, but prohibits changing by will certain express rights of survivorship for the account between married parties. States that Article 2 doesn't affect the law governing tenancy by the entirety.

Sec. 13.33.221 authorizes a financial institution to enter into a contract of deposit for a multiple-party account and to provide for pay on death and agency designations in both single-party and multiple-party accounts. Provides that the institution doesn't have to inquire as to the source of a deposit to an account or the proposed application of a payment from an account.

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Sec. 13.33.222 indicates to whom a financial institution, on request, is authorized to pay money from a multiple-party account.

Sec. 13.33.223 indicates to whom a financial institution, on request, may pay money in an account with a payment on death designation.

Sec. 13.33.224 authorizes a financial institution, on request, to pay to an agent under an agency designation for an account the money in the account whether or not certain described conditions exist.

Sec. 13.33.225 authorizes a financial institution to make a payment under AS 13-46, if the payment to a minor beneficiary is required or permitted under Article 2.

Sec. 13.33.226 states that payment made under Article 2 in accordance with the terms of the account discharges the financial institution from all claims for the money paid, whether or not the payment is consistent with the beneficial ownership of the account. Authorizes payment whether or not a party, beneficiary, or agent is disabled, incapacitated, or deceased. Limits this section's protection in certain circumstances. Authorizes a financial institution to refuse, without incurring liability, to make payments in accordance with the terms of the account in certain circumstances. States that the protection under this section does not affect the rights of certain disputing parties relating to the beneficial ownership of account moneys.

Sec. 13.33.227 authorizes a financial institution to receive a setoff against the account for an indebtedness of a party to the financial institution. Describes the extent of the setoff.

Secs. 13.33.301 - 13.33.310 are Article 3, the Uniform Transfer-on-Death Security Registration Act.

Sec. 13.33.301 defines terms for Article 3.

Sec. 13.33.302 establishes who can obtain registration of a security in beneficiary form. Establishes how multiple owners can hold a security registered in beneficiary form.

Sec. 13.33.303 authorizes the registration of a security in beneficiary form if the form is authorized by this or a similar TOD statute in states having certain specified connections with the issuer, registering entity, the registering entity's transfer agent, or the owner. Establishes a presumption of validity for other registrations.

Sec. 13.33.304 establishes when a security is considered to be registered in beneficiary form

Sec. 13.33.305 establishes the language that can be used to show registration in beneficiary form

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Sec. 13.33.306 states that the designation of a transfer-on-death beneficiary on the registration of a security does not affect ownership until the owner's death. Authorizes the cancellation or change of a registration in beneficiary form at any time without the beneficiary's consent.

Sec. 13.33.307 establishes who owns the security when the sole owner or the last of multiple owners dies, and allows reregistration in the names of the surviving beneficiaries. Provides that multiple beneficiaries surviving the death of all of the owners hold their interests as tenants in common until the security is divided after the death of all the owners. Provides that the estate of the deceased sole owner, or of the last to die of all multiple owners, owns the security if a beneficiary does not survive the sole owner or the multiple owners.

Sec. 13.33.308 provides that a registering entity is not required to provide registration of a security in beneficiary form. If the entity does offer this registration, the owner is considered to have assented to the protections provided to the entity under Article 3. If the entity accepts a request for the registration, the entity agrees that the registration will be implemented on the owner's death as provided in Article 3. Discharges the registering entity from all claims by certain persons if, in good faith reliance on Article 3, on the registration, or on certain information, it registers a transfer of the security in accordance with AS 13.33-307. Limits the extent of the protections provided by Article 3. States that the Article 3 protections provided to the registering entity do not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred, its value, or its proceeds.

Sec. 13.33.309 declares that a transfer on death resulting from a registration in beneficiary form is not testamentary. States that Article 3 does not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this state.

Sec. 13.33.310 authorizes a registering entity to establish the terms and conditions under which it will receive and implement registrations in beneficiary form. Indicates what the terms may provide, including substitution of beneficiaries. Provides some illustrations of registrations in beneficiary form that a registering entity may authorize.

Section 13. Amends the Uniform Custodial Trust Act (AS 13.60) to make certain trust termination provisions subject to the Uniform Probate Code

Section 14. Amends the Uniform Custodial Trust Act (AS 13.60) to make certain trust administration provisions subject to the Uniform Probate Code.

Section 15. Amends the Uniform Custodial Trust Act (AS 13.60) to make certain trust expenditure provisions subject to the Uniform Probate Code

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Section 16. Amends the Uniform Custodial Trust Act (AS 13.60) to make certain trust property expenditure provisions subject to the Uniform Probate Code.

Section 17. Makes a conforming amendment.

Section 18. Repeals three current chapters on intestate succession and wills, nonprobate transfers, and the uniform simultaneous death act.

Section 19. Provides transition provisions for the bill.

Section 20. Makes the Act effective January 1, 1997.

If I may be of further assistance, please advise.

TLB:lmb:klb
96-031 lmb

ATTACHMENT NO. 1

JANE BRYANT QUINN, INSURANCE PLOY CAN LEAVE SPOUSE PENNILESS¹

Washington Post Writers Group, Released November 16, 1995

Published in Over 200 U.S. Newspapers

NEW YORK—The life insurance industry loves to show pictures of good-looking men buying life insurance to save their grateful wives from the poorhouse.

Guess what? In most states, those good-looking men can also use life insurance to disinherit their wives (and wives can disinherit their husbands). You just dump your savings into a cash-value policy and leave that policy to someone else.

A number of states are considering laws to prevent this from happening. But the powerful insurance lobby is obstructing change. Only three states have blocked disinheritance-by-insurance (Kansas, Minnesota and South Dakota). Other states have rolled over when the lobbyists came to call.

In an attack on the laws, Jerry O'Leary, former senior counsel of the American Council on Life Insurance (ACLI) and now retired, wrote the following last year: "I believe we can all agree that the surviving spouse should be protected, but many question whether the surviving spouse should be 'canonized' and protected to the detriment of the insurance policy beneficiary. . . ."

At issue is a change proposed in probate law. It's part of the Uniform Probate Code (UPC), developed by a committee of lawyers to improve and simplify the process of leaving property to heirs. States decide individually what to accept from the UPC.

Probate assures that, when you die, the property you've left by will goes to the people you designate. But state law makes one exception: You're not allowed to disinherit a spouse unless the spouse consents.

In the nine states (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, Wisconsin) with community property

laws, spouses own one-half of the marital property. In most of the other states, they get at least one-third or one-half of their spouse's property at death.

If you write a will that leaves your spouse too small a share, he or she can demand the full portion owed by law. Spouses, however, can give up their share voluntarily, by signing an agreement to do so.

Spousal-support laws have a valid public purpose. No married spouse should be allowed to leave a penniless mate, who might have to go on welfare.

You're pretty well protected in a community property state, where half of the marital property is yours by law, says Los Angeles attorney Charles Collier. In most of the states, however, huge loopholes exist, which can be used to cut a spouse out.

That's because the spousal share applies only to the property that's left by will. Billions of dollars in assets pass outside the will: through joint ownership and the named beneficiaries of living trusts, annuities, Individual Retirement Accounts or life insurance policies. In non-community property states, you can generally leave this property to anyone you want—even if your spouse winds up without a dime.

The new UPC would stop all that. It says that, when a married person dies, all the assets of both spouses must be added up, including life-insurance proceeds. The surviving spouse gets a share of the entire pot but no less than \$50,000 (unless the spouse has formally waived his or her rights). Spouses in long marriages get a larger share than spouses in short ones.

Seven states have adopted this idea

so far. But life insurance has been excluded in four of them (Colorado, Montana, North Dakota and West Virginia), as well as New York, which reformed along different lines from the UPC. There, a spouse can still be shortchanged, says Professor Lawrence Waggoner of The University of Michigan Law School.

Insurers think that the person who buys the coverage should decide where it goes, says Michael Bartholomew, managing counsel for the ACLI. Bartholomew also claimed that, if a spouse could challenge the contract, insurers would have to go to court to figure out who to pay.

That's not true, however. The UPC says that insurers can pay the policy's named beneficiary, if the spouse hasn't entered a contrary claim. If the spouse makes a claim, the payment goes to a court with no proceedings necessary for the insurance company. In both cases, the insurer has no further liability.

Bartholomew backpedaled in a second interview. He knows of no state that requires a court proceeding. I mention this incident because some of the information used by the insurance lobby to defeat the UPC is similarly misleading.

Bartholomew says that there's no proof that life insurance is used to disinherit a spouse. He's right that no data exist. But Denver attorney James Wade is sure that it's done. "It's a strategy discussed in estate-planning programs," he says.

If the UPC ends other ways of disinheriting spouses, why should life insurance be exempt?

1. Each newspaper writes its own headline. The above came from the Chicago Tribune, Sunday, Nov. 10, 1995, (p. 5, at 3).

HB

311

BEFORE THE SENATE JUDICIARY COMMITTEE
Robin Taylor, Chair

Testimony by Wendy Natkong, Medical Coordinator, Kennecott Greens Creek Mining Company, Regarding the Need to Amend Alaska Statute 23.10.410 to Increase the Number of Hours a Person May Work in an Underground Mine to 10 Hours at the Face.

Chairman Taylor and Committee members, my name is Wendy Natkong. I am the Medical Coordinator and Emergency Medical Service Director at Kennecott Greens Creek Mining Company on Admiralty Island. I have held this position since May 1995, but was employed by a contractor to provide medical services at Greens Creek until the shutdown in 1993. My husband has been a Kennecott employee for four years and currently works as an underground miner at Greens Creek.

I recently addressed the 10-hours at the face issue by way of a letter to the editor of the Juneau Empire, which was endorsed with thirty-four signatures from Greens Creek Mine underground workers. Attached is a copy of that letter as well as a petition signed by 128 of the 150 people now employed at the mine. I am here today to speak for myself and also on their behalf.

It is my belief that the original intent of restricting underground working hours was for the safety and welfare of miners. In 1913 when that legislation was introduced, there was most certainly a need for it. However, we are now approaching the turn of another century and this restriction is clearly an antiquated mandate. The pick axe days are long gone. A miner who worked in 1913 would find that the only part of a mining operation that has remained constant is the rock itself.

With the new technology in mining operations it is my own opinion that restricting the hours worked at the face may, ironically, have a reverse effect on the safety aspects of underground work. For instance, a miner uses a Power Class twin

boom drill to bore the holes for explosives. A crew loads those holes with a non-volatile emulsion-type explosive. The face is blasted, wet down, scraped and the ore is then mucked out by an operator in a state-of-the-art loader to enclosed cab haul trucks. This cycle that probably took 3-4 days in 1913, with a full crew, can now be done in well-lit, ventilated areas in less than a shift. I personally feel that workers underground would prefer a little extra time to get more done. When they feel rushed to finish a round before the end of a shift, accidents happen. This is why I believe that it is safer to work a little longer at the face. When one considers that currently at Greens Creek, time at the face is about six hours, miners feel that they just begin an assignment and the shift is suddenly over. Remember that a drill that costs over \$400,000 is much safer, more efficient, and easier to operate than a hammer and steel or a pick axe.

My goal at Greens Creek is to not have to work. I am a Paramedic and I would rather not display my skills and knowledge, except in the classroom or in training scenarios. I have a vested interest in the safety and well-being of our employees since I know them all and care very much for them.

A lot of my time is spent underground. There are first aid stations that require my attention regularly. It is important for me to know where everything is and what everyone does underground. One discovery I have made is that time passes by very rapidly when I am working inside the mine. I usually have to quit much sooner than I would like so that I may shower and change. I would welcome a ten-hour day and more time off.

When I am underground, I get dirty. But it is not the scary, damp and dreary place that some have suggested. There are desks, filing cabinets, and coffee pots there, too. Presently, the ambulance is stored there to keep it warm, dry and quickly

available. (Although, since my return in May, we have only used it twice, both times for contractors.) The mining equipment that I have described earlier is equipped with fire suppression and lighting systems that completely illuminate the face. Many areas are lit with regular fluorescent lights.

Greens Creek employees have long had an excellent safety record. I could not work there if safety were not supported completely. If I felt that the underground mine was an unsafe place, I would not go in there every chance I can. I would fear for my husband's safety if I believed it to be any less safe than other forms of industry. I would definitely not be here today if I did not fully believe that changing the limit on 'hours worked at the face' was a safe and positive move that will greatly benefit our employees and Alaska mining in general.

As a Kennecott Greens Creek employee, a veteran Paramedic, and as a wife, I ask the Committee to support the House passed HB 311, which changes the 8-hours rule to allow 10 hours by statute at the mining face.

Thank you for your consideration.

Kennecott Greens Creek Mining Company
P.O. Box 32199
Juneau, AK 99803
(907) 789-8100
FAX (907) 789-8117



We the undersigned, employees of Kennecott Greens Creek Mining Company, urge the Legislature to pass legislation changing current law to allow a full 10 hours of work at the raining face. The effect of the change will be to allow us the opportunity to spend more time with our families and will give all Greens Creek employees greater economic security through increased operating efficiency.

The Greens Creek underground operation is well within compliance of the Mine Safety and Health Administration's (MSHA) regulations. Greens Creek is a safe operation and maintains an effective, employee oriented safety program. The extensions to 10 hours at the mining face will not compromise safety, as demonstrated in other states which already authorize 10 hours or longer. A number of us have worked extended hours at other operations without compromising occupational health and safety.

Passage of this legislation now will encourage the hiring of more qualified Alaskans to fill the remaining jobs available at Greens Creek before mine start-up in summer, 1996.

Sincerely,

| Name | Job Title |
|--------------------|-------------------------------------|
| <i>[Signature]</i> | ADMINISTRATOR ENVIRONMENTAL PROJECT |
| <i>[Signature]</i> | Senior Analyst |
| <i>[Signature]</i> | PROJECT ENGINEER |
| <i>[Signature]</i> | Miner U.G. |
| <i>[Signature]</i> | MECHANIC SUP |
| <i>[Signature]</i> | MECHANICAL SUPERVISOR |
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Passage of this legislation now will encourage the hiring of more qualified Alaskans to fill the remaining jobs available at Greens Creek before mine start-up in summer, 1996.

Sincerely,

| Name | Job Title |
|--------------------|------------------------|
| Bob Spross | MEAT DEPT. |
| Haynes Torrey | Mill Maint Dept |
| Paul Nelson | Mill Maint Elect. |
| Ronald J. Callahan | Mill maintenance Dept. |
| Gilles McNamee | Mill Maint Dept |
| Leonard Skunkie | Mill maint. Dept. |
| JOHN MILLER | MILL MAINTAINANCE |
| Mike Boyson | Mill Maint. |
| Ace McLaughlin | Mill Maint |
| KEN Lihlbid | TECH 4 MILL MECHANIC |
| Boud Lardok | mill ops |
| JOHN HANSEN | WATER ops |

M

| Name | Job Title |
|--------------|----------------|
| PETE HALL | H2O OPTS |
| Chas Hiskind | Electrical |
| Tom Bruner | MIL OPERATIONS |
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Passage of this legislation now will encourage the hiring of more qualified Alaskans to fill the remaining jobs available at Greens Creek before mine start-up in summer, 1996.

Sincerely,

| Name | Job Title |
|------------------------|-----------------------|
| Paul Davidson | Geologist |
| Tim Hall | Chief Geologist |
| Kerry Lear | Geologist |
| Brett Allen | Underground Geologist |
| Steve Newkirk | Senior Geologist |
| Lynne Wood | Sr. Planning Engineer |
| Ken Paulsen | HR Mgr. |
| Lynn [unclear] | Assoc. HR Rep. |
| Madel Vander [unclear] | Accountant |
| Kenneth [unclear] | Sr. Est. Engineer |
| | |
| | |

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Passage of this legislation now will encourage the hiring of more qualified Alaskans to fill the remaining jobs available at Greens Creek before mine start-up in summer, 1996.

Sincerely,

| Name | Job Title |
|-----------------------------|---|
| Gordon F.W. Canning "Bronx" | Underground Mine Foreman |
| Bill Johnson | Mine Clerk |
| Michael Smith | Materials Control Supervisor |
| Gloria Jaye Hill | Purchasing |
| Eric Holt | ASSOCIATE BUYER |
| Tom Miller | miner |
| Paul Schur | Associate Buyer |
| [REDACTED] | |
| Y. A. Nelson | Materials Clerk |
| [REDACTED] | MATERIALS CLERK |

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Sincerely,

| Name | Job Title |
|----------------------|--------------------------|
| William F Oelklaus | Environmental Supervisor |
| [Signature] | Environmental Tech |
| Stephen L. Martin | Environmental Technician |
| Mary Kirtley | Account Payable |
| Peter D. [Signature] | Environmental Engineer |
| [Signature] | Product Supervisor |
| R.W. [Signature] | Controller |
| [Signature] | Payroll Accountant |
| [Signature] | Information Specialist |
| [Signature] | Crew Manager |
| | |
| | |

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Sincerely,

| Name | Job Title |
|--------------------|-------------------------------|
| Albert A. Morrison | Sr Health & Safety Technician |
| R. J. (G. Morgan) | Health & Safety Supervisor |
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Sincerely,

| Name | Job Title |
|--------------------|------------------|
| Charles Churchill | mechanic |
| Marty Coomb | miner |
| Darin Coomb | miner |
| A.C. Fredley | miner |
| Rick L... | miner |
| C. P... | mine electrician |
| John E. ... | C/G miner |
| Dyke W. Wainwright | miner |
| Tom ... | Mechanic |
| John ... | miner |
| C. ... | SUPERVISOR |

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Sincerely,

| Name | Job Title |
|-------------------|-------------------------|
| Daniella Nelson | Sr. Business Analyst |
| Robert J. Hiebs | Building Maintenance |
| Nipha Phillips | TIESMAN |
| Clay Walker | Sr. Engine Tech |
| Wm J. Russell | Cubs / Tiesman |
| Robert W. Bennett | U.G. Miner |
| Hobby Z. Burn | Environmental Tech. |
| Mae Spokore | SHUTTLE VAN "DRIVER" |
| Kathleen Weede | U.G. TIESMAN |
| Alan Skunway | Miner |
| A. E. Smith | Miner |
| D. [Signature] | Contractor (CONTRACTOR) |

| Name | Job Title |
|------------------------|------------------------|
| Robin K. Jackson | Pump Man (Underground) |
| Charles H. Mitchell | Shift Boss |
| Jim [unclear] | [unclear] |
| Jim "White" [unclear] | Miner |
| Clayton [unclear] | SURFACE WELDER |
| [unclear] | Underground Mechanic |
| Ken McLaughlin | Underground Miner |
| [unclear] | UG Electrician |
| Hugh [unclear] | UG Electrician |
| [unclear] | Surface Operator |
| [unclear] | Surface Operator |
| John Oldaker | Underground MINER |
| M. [unclear] | Core Driller |
| John O. Morris | Underground Miner |
| [unclear] core driller | Core Driller |
| [unclear] | Underground Miner |
| James DePascis | Geo TECH |
| William [unclear] | MINER |
| [unclear] | UG Mech. |
| [unclear] | UG Mech. |
| [unclear] | UG Mech. |
| [unclear] | Miner |
| Robt. [unclear] | UG MINER |
| [unclear] | UG Mechanic |
| [unclear] | Essential Centers |
| [unclear] | Medicine COORDINATOR |
| [unclear] | mechanic (underground) |
| [unclear] | UG Mechanic/Welder |

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Sincerely,

| Name | Job Title |
|-----------------|-----------------|
| John R. Wick | Underminer |
| Darryl E. Jones | Mechanic |
| Teddy J. Smith | OPERATOR |
| Kerry B. Beld | operator |
| Steve Hesse | OPERATOR |
| Steve Danner | operator |
| Mike Pinner | operator |
| Kenneth Hubbard | FACILITY |
| M. Warr | Powerhouse |
| Dorcia Mervise | EMT III |
| Lloyd Williams | Insulator |
| Frank Soren | Building Maint. |

| Name | Job Title |
|-----------------------|--------------------|
| Mark Petrus | Boilerhouse Mains |
| Paul Smith | P. Ser. |
| William | Operator |
| Edward Leighton | Inventor |
| New R. Smith | Boilerhouse Maint. |
| Brie Mygatt | Elec. Engineer |
| Vern Carey | Mill Maint |
| Bob Ridler | Electrician |
| Gordon Hill | E/EC, TECH |
| William | Elec. Sup. |
| Bryan Hubert | Millwright |
| Bill Schodding | Chief Metallurgist |
| Bob J | Administration |
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Wendy J. Natkong
3805 McGinnis Drive
Juneau, Alaska 99801
(907)789-8116

March 21, 1996

Juneau Empire
3100 Channel Drive
Juneau, Alaska

Dear Editor:

Mining personnel around the state are awaiting the decision of the legislature as to the reversal of the eight-hour work day for miners. As this issue is debated, it is important to remember that the mining industry has definitely moved into the nineties in terms of quality and technology.

At Greens Creek Mine on Admiralty Island, the workforce has been told repeatedly by our general manager that safety issues come first. We have a safe mine. We intend to maintain our high standard for safety. Changing our work schedule will not affect our safety issues and there are statistics that confirm that. The underground work area is certainly not a noisy, vibrating damp place where water and rocks fall constantly. Work areas are well lit, ground control is our highest priority, and the ventilation system is extremely efficient in removing dust and exhaust. We employ engineers of the highest calibre who design these systems for the comfort and safety of the workers.

This has been a year of great transition as we added over 100 employees and many contractors in preparation for the re-opening of our mine. Yet, Greens Creek Mining Company employees have operated for nearly a year without a single lost time accident. In Alaska, the fishing and logging industries are considered to be more dangerous than mining, yet there are no restrictions limiting the daily work schedules of those industries. Once an employee arrives at the mine site, time is required for changing clothes, safety meetings and shift change information. Then more time is needed to go underground to be taken to an assigned piece of equipment and then to the work area. Miners must leave their work area in time to go outside, shower and change clothes again. The actual time spent in the underground work area is much less than eight hours. Adding a couple of hours to the work day does not present a safety hazard to these workers. Often a worker gets started on an assignment just to have the shift ending before it can be completed.

There is a boat and bus commute to Greens Creek Mine that adds nearly three hours to the day. A twelve-hour day does not leave much time for home and family. The end point desired in extending our shifts is that we would have more days off to spend with our families and fewer commutes per week. In a time when family value issues are constantly discussed, it seems that a plan to allow workers optimal quality time at home would be a positive move.

Reversing the 'eight hour work day for miners' law does not mandate that miners must work ten hours, it only opens the door for freedom of choice in the workforce. At Greens Creek Mine our organizational structure is flatter than other companies. Employees are encouraged to voice opinions and communicate and interact at all levels. Underground miners have been told that they would design a schedule based on their own choice. Management will not dictate any change in the schedule; workers will discuss options and present proposals. It is even possible that the employees may decide not to change our current schedule. However we do believe that we should be empowered legislatively to make that decision ourselves. Changing this law gives us that choice.

We are proud to work at Greens Creek. It is a beautiful property with strict environmental controls, state-of-the art equipment and a clean, safe underground operation. The company offers good wages and benefits which boosts the local economy. We are only asking for the right to have alternatives in our schedule.

Yours truly,

Wendy J. Natkong

Wendy J. Natkong
Medical Coordinator
Greens Creek Mining Company

Tim Hall - Chief Geologist *Dan Cannon U.G. Miner*

John Miller M. Walter

Craig Bussell CONSTRUCTION SUPERINTENDENT

Ken McNaughton Underground Miner

Charles F. Christ Underground mechanic

Robert W. Bennett U.G. Miner

John Odeh U.G. MINER

Mate F. diamond driller

Joseph Zuber MINE ENGINEER

Cecilia McCully EMS Division

Robin K. Jackson U.G. Miner

Alan Sorensen U.G. MINER

Chris J. Wilson CONVEYOR DRILL FOREMAN

Walter SURF TECH. *Mike*

Roger HEALTH & SAFETY SUPERVISOR

Jerry Burtell U.G. Miner

Steve J. Oliver

Phil L. U.G. Miner

Clayton Wilder

Sherry

Clayton Edens SURF OPS

Kris SURFACE OPS

Don

Paul Nelson

Col

Jim U.G. Miner

Mike MINER

Mike SURF OPS

Mike



Council of Alaska Producers

PO. Box 22653 Juneau, Alaska 99802

April 10, 1995

Senator Robin Taylor
Chairman
Senate Judiciary Committee
Capitol Building, Room 30
Juneau, Alaska 99801-1182

Dear Senator Taylor:

I am writing this letter on behalf of the Council of Alaska Producers in support of HB 311. The Council is an Alaska non-profit corporation whose members include most of the major mining companies currently exploring, developing and operating in Alaska.

We strongly support the concept of more flexible work hour arrangements for underground mining operations. This should lead to improved safety, morale and productivity in many cases. Remote camp operations (where there is no daily commute) should particularly benefit by this legislation due to the long periods an employee would be idled with an 8 hour shift. This already has happened in Northern Canada with remote, fly-in, underground mines that have gone to longer shifts under laws similar to that proposed here.

The Alaska minerals industry is in competition with a global market for mineral exploration and development dollars. We must do everything we can to meet this challenge if we want to continue development of our vast mineral resource potential.

We are not asking you to set a precedent or blaze any new trails here. SB 311 simply falls into line with many other states by recognizing that times have changed. It offers a reasonable approach to the issue that will benefit employee and employer alike, allows our state to compete on a more level playing field and sends a positive message to industry that Alaska is open for business.

Yours truly,


David Stone
President



ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503 FAX: (907) 278-7997 Telephone: (907) 278-0347

April 9, 1996

Honorable Robin Taylor
Chairman, Senate Judiciary
Alaska State Senate
Capitol Building
Juneau, AK 99801

RE: CS for House Bill 311(JUD), Time At the Face in Underground Mines

Dear Senator Taylor,

The Alaska Miners Association wishes to go on record strongly supporting CS HB-311(JUD). This bill makes important changes regarding the amount of time that an employee can work at-the-face in an underground mine.

The change from the currently allowed 8 hours to 10 hours is extremely important for the viability of many projects in the State, especially in remote areas. The bill also includes an innovative approach whereby, if a company wishes to work a schedule of more than 10 hours, they can do so only if they can convince the Commissioner of Labor and get his approval.

This bill is important for underground mining anywhere in the State but especially in Southeast Alaska. Because of the rugged terrain it is very likely that most mines in Southeast will be underground. This bill will allow companies evaluating these projects to plan for 10 hour shifts during their feasibility studies, thereby increasing the odds that more projects will be economic. This will of course mean new jobs and diversified economic development for this area of the state.

Thank you for the opportunity to comment on this bill.

Sincerely,

Steven C. Borell, P.E.
Executive Director

cc: Representative Al Vezey

FISCAL NOTE

N. 2

Bill Version: CSHB 311(L&C)

(H) Publish Date: 3/8/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date: _____
Title: An Act repealing limitation on hours
may be employed in a mine
Sponsor: Representative Vezey
Requestor: House Labor and Commerce

Department Affected: Labor
BRU: Labor Standards & Safety
Component: Occupational Safety
and Health
COMPONENT SERIAL NO. 970

EXPENDITURES/REVENUES:

(Thousands of Dollars)

| OPERATING | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 |
|------------------------|------------|------------|------------|------------|------------|------------|
| 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 |

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|----------------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|----------------|--|--|--|--|--|--|

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|--------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUE | | | | | | |
| FUND SOURCE # | | | | | | |

FUNDING:

(Thousands of Dollars)

| | | | | | | |
|-------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipt | | | | | | |
| 1006 GF-MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

Estimate of current year (FY96) impact: \$ 0.0

ANALYSIS: (Attach a separate page if necessary)

HB 311 would repeal the limitation on the hours a person may be employed in a mine. Current law allows a person to perform work not more than 8 hours within any 24 hour period under ground.

Prepared by: Al Dwyer, Director Phone: 269-4914
 Division: Labor Standards and Safety Division Date: 1/23/96
 Approved by Commissioner: Tom Cashen, Commissioner
 Agency: Department of Labor Date: 1/23/96

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

COMMITTEE COP

FISCAL NOTE

FISCAL NOTE

No. 1

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Bill Version: CSHB 311(L&C)

(H) Publish Date: 3/8/96

Revision Date: Original Dept Affected Natural Resources
 Title: An Act repealing the limitation on the hours BRU: Resource Development
a person may be employed in a mine; and making a ... Component: Mining Development
 Sponsor: Representative(s) Vezey, Toohy, Martin
 Requestor: _____ Component Serial No. 442

| Expenditures/Revenues | (Thousands of Dollars) | | | | | |
|-------------------------------|------------------------|------|------|------|------|------|
| OPERATING EXPENDITURES | FY97 | FY98 | FY99 | FY00 | FY01 | FY02 |
| 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 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CHANGE IN REVENUES () | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

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

Estimate of any current year (FY96) cost: \$ none

| POSITIONS | FY97 | FY98 | FY99 | FY00 | FY01 | FY02 |
|-----------|------|------|------|------|------|------|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

ANALYSIS: (Attach a separate page if necessary)

There is no anticipated fiscal impact associated with implementation of this legislation.

Prepared by: Jules Ineson, Director Phone: 269-8625
 Division: Mining & Water Date: 31-Jan-96
 Approved by Commissioner: [Signature] Date: 31-Jan-96

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HB

314

Alaska State Legislature

REPRESENTATIVE
SEAN R. PARNELL



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HOUSE OF REPRESENTATIVES

SPONSOR STATEMENT

House Bill 314

HB 314 strengthens Alaska's domestic violence prevention and intervention laws by adopting new and uniform laws based on the Model Code on Domestic and Family Violence, which was developed by the National Council of Juvenile and Family Court Judges.

HB 314 adopts model code language on domestic violence protection to establish additional protective order provisions and crimes for violating a protective order. HB 314 enhances current domestic violence response procedures through improved laws, education, and training which are highlighted in the establishing of: (1) mandatory arrest policy in domestic violence situations, (2) training for police agencies as well as professionals in the justice system who interact with victims of domestic violence, and (3) a central protective order registry.

Additionally, HB 314 prohibits surreptitious taping of crime victims and witnesses by the defense or those working for the defense. The bill also protects domestic violence and sexual assault victims and witnesses by requiring defense attorneys or those working for the defense to identify themselves and gain written consent to an interview.

Recently, the Alaska Bar Association adopted a rule to permit surreptitious taping. This rule allowing taping, without a person's notice or consent, is an alarming encroachment on privacy and was passed by the Bar Association's Board of Governors over the dissent of the Bar Association's own ethics committee (Ethics Committee letter attached).

HB 314 will bring much needed protection to victims and witnesses of violent crimes. The bill provides effective tools for the continuing work of preventing domestic violence in our state. This legislation is strongly supported by the victims rights community. I respectfully request your support.

Alaska State Legislature

REPRESENTATIVE
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HOUSE OF REPRESENTATIVES

HB 314 Summary

Domestic Violence Prevention and Victim Protection Act of 1996

1. The Act is based on the Model Code on Domestic and Family Violence developed by the National Council of Juvenile and Family Court Judges, and aligns current Alaska law with the code.

Definitions

2. The Act defines a crime involving domestic violence as one of the following offenses that is directed to a household member:

- crimes against a person under AS 11.41
- burglary under AS 11.46.300-11.46.310
- criminal trespass under AS 11.46.320-11.46.330
- arson or criminally negligent burning under AS 11.46.400-11.46.430
- criminal mischief under AS 11.46.480-11.46.486
- terroristic threatening under AS 11.56.810
- violating a protective order under AS 11.56.740
- harassment under AS 11.61.120(a)(2-4)
- or similar ordinances

3. The Act defines "household member" as including adults or minors who currently or formerly were married, lived together, dated, or have engaged in a sexual relationship; adults or minors related by blood or adoption, current or former marriage, who have a child in common, and minor children of persons described above.

Protective Orders

4. The Act provides the opportunity for victims to gain increased protection by expanding protective order provisions to include:

- prohibiting the abuser from threatening to commit domestic violence
- prohibiting the abuser from harassing, telephoning, or contacting the victim
- directing the abuser to stay away from the residence, school, or place of employment of the victim or any specified place frequented by the victim or any designated family member
- prohibiting the abuser from using or possessing a deadly weapon
- directing the abuser to surrender firearms owned or possessed by the abuser
- requesting a peace officer to accompany the victim to the petitioner's residence to ensure the victim safely obtains possession of the residence, vehicle or personal items
- prohibiting the abuser from consuming alcohol or controlled substances
- when considering arrangements for visitation of any minor child, the safety of the child and the victim must be ensured.

5. The Act provides for three types of protective orders that may be issued:

- a protective order issued after notice to the respondent and a hearing
- an *ex parte* protective order
- an emergency protective order

A court may grant a protective order after notice and hearing if it finds by a preponderance of evidence that the abuser committed a crime involving domestic violence. A protective order issued after notice and hearing is effective until further order of the court for items 1, 2, 4, & 5 (pg. 21, line 14); and, for up to one year for the other provisions.

If the petition establishes probable cause that a crime involving domestic violence has occurred, and the court finds it necessary to protect the petitioner it shall, without notice or hearing, issue the order *ex parte*. An *ex parte* order may not order all protections available in a protective order; rather, the protections available focus on the immediate safety of the victim. An *ex parte* order expires 20 days after it is issued unless extended or dissolved by the court.

An emergency protective order may be obtained by a peace officer on behalf of a victim. It may be obtained by a telephone call to a judicial officer, if there is probable cause to believe that a person is in imminent danger of domestic violence, based on the allegation of the recent

commission of domestic violence toward the petitioner. The protections available in the order concern the immediate safety of the victim. It expires 72 hours after issuance.

6. The Act rewrites the crime of violating a protective order. In the Act it is a class A misdemeanor to knowingly violate a condition of a protective order which:

- prohibits the abuser from committing further domestic violence
- prohibits the abuser from communicating with the victim
- removes the abuser from the home of the victim
- orders the abuser to stay away from the home, school, job, or other place where the victim may be found
- prohibits the abuser from entering a vehicle with the victim
- prohibits the abuser from possessing a deadly weapon
- requires the respondent to surrender a firearm

7. The Act creates a central protective order registry. The registry will assist both law enforcement and the court system in responding more effectively to violations of protective orders.

Mandatory Arrest

8. The Act provides for mandatory arrest if the violence has occurred within 12 hours of the call to law enforcement. AST and APD, as well as other law enforcement agencies in the state, have mandatory arrest protocols already in place. Placing mandatory arrest in statute provides for statewide consistency in responding to domestic violence.

9. The Act clarifies who is to be arrested--the primary aggressor, not a victim engaged in self-defense. A peace officer who does not make an arrest after a domestic violence incident, or who arrests more than one person from a single incident, must put in writing the reasons for the action.

Courts and Victim Safety

10. The Act adds domestic violence to the offenses where the court may decide that the threat to the victim prohibits the defendant, when representing himself or herself, from obtaining the address and telephone number of the victim.

11. The Act requires the court to consider the safety of the victim and the victim's family in addition to the safety of the public before releasing the defendant either before trial, pending sentencing, and/or pending appeal.

12. The Act requires prosecutors to make a reasonable effort to confer with all victims of domestic violence before entering into a plea agreement in a case.

13. The Act requires the court to consider the safety of the victim before ordering probation for a domestic violence offender.

Corrections and Parole Board Responsibilities

14. The Act allows the Commissioner of Corrections to release a domestic violence offender on prerelease and short-duration furloughs only under conditions which protect the victim and the victim's family.

15. The Act requires the Commissioner of Corrections to notify the victim and to accept and consider comments by a victim of domestic violence before deciding to release the prisoner on prerelease furlough. The victim must be notified of the decision to release the prisoner.

16. The Act requires the Department of Corrections to adopt standards for rehabilitation programs for perpetrators of domestic violence. The department must determine if a program meets the standards before a court may order a person to participate in the program.

17. The Act requires the Parole Board to inform a victim of domestic violence 30 days in advance of a hearing to consider discretionary parole for a prisoner. It also requires the board to inform the victim of its decision to grant or deny discretionary parole and to release the prisoner on mandatory parole. The victim must be informed of the area a parolee will reside and conditions on the parole of a prisoner, and of any changes in these conditions.

18. The Act addresses the factors which the Parole Board must consider in releasing the parolee from custody pending a decision on whether to revoke parole. It provides that if the person is on parole for a domestic violence crime, and the alleged violation is based on an act of domestic violence, the parolee may not be released pending the final revocation hearing.

19. The Act amends the definition of serious offense in the Criminal Justice Information Systems Security and Privacy Act by adding crimes involving domestic violence. This has the effect of allowing information about past convictions of domestic violence to be released to an interested

person, if the information is requested to help decide if a person should be given supervisory or disciplinary power over a child or dependent adult.

Prohibiting Surreptitious Taping

20. The Act requires a defendant or a person acting on his behalf to obtain consent prior to recording statements of a victim or witness of an offense for which the defendant is or could be charged.

21. The Act requires the defendant or their representative to clearly inform the victim of (1) the person's identity and specific association with the defendant; (2) the victim does not have to talk to the person unless the victim wishes; 3) the victim may have a prosecuting attorney or other person present during an interview; 4) the statement will be recorded if consent is given; and, 5) the victim or witness may obtain a transcript or other copy of the recorded statement upon request.

22. The Act requires the person making the recording to indicate in the recording that the victim or witness has been clearly informed of their rights regarding the recording, and further requires that the victim or witness state in the recording that their consent has been given to the recording.

Witness and Victim Protection

23. The Act prohibits the defendant accused of a sexual offense or anyone acting on his behalf to contact the victim or witness to the offense, if the victim or witness has informed the defendant or his counsel in writing or in person that the victim or witness does not wish to be contacted by the defense.

24. If a defendant or anyone acting on his behalf can contact the victim or witness of a sexual offense to obtain a statement, the Act requires written authorization for obtaining statements other than recorded statements which must have consent stated in the recording.

25. The Act provides for referring violators of this section of the bill to the Disciplinary Board of the Alaska Bar Association as a grievance.

26. The Act provides for a presumption of inadmissibility for statements obtained from a victim or witness in violation of this section.

Continuing Education

27. The Act requires public employees who are required to report suspected child abuse or neglect to obtain continuing education in the dynamics of domestic violence which will include:

- lethality assessments
- nature, extent, and causes of domestic violence
- procedures designed to promote the safety of victims of family members
- resources available to victims and perpetrators of domestic violence

28. The Act amends the Alaska Police Standards Council statute on minimum standards for permanent appointment as a police officer to include at least 12 hours instruction in domestic violence issues.

29. The Act requires correctional, probation, and parole officers to be trained in domestic violence issues in order to be certified.

30. The Act requires the court system and the Department of Law to provide continuing education to their employees who come into contact with domestic violence victims and perpetrators.

31. The Act requires the Department of Health and Social Services to adopt standards and procedures for health care to victims.

Divorce, Child Custody, and Visitation

32. Conditions which may be imposed on visitation where domestic violence occurred are provided, including supervised visitation.

33. The Act prohibits mediation in child custody cases where a domestic violence protective order is in effect.

34. The Act prohibits mediation in divorce actions if a protective order is in effect.

35. The Act allows mediation of child custody and divorce cases where domestic violence has occurred only when certain safeguards are met--the victim requests mediation, the mediator is trained in domestic violence cases, and the victim is allowed a supporting person to attend the mediation sessions.

36. The Act provides that a finding that domestic violence has occurred since the last child custody or visitation decision constitutes a change in circumstances. This allows for the modification of custody and visitation orders.

Dissolutions

37. The Act requires a petition for dissolution of marriage to state whether a criminal charge of domestic violence has been filed or whether a petition for a domestic violence protective order has been granted during the marriage. In such cases, the court must give heightened scrutiny to the dissolution agreement to ensure it is fair to both parties.

DFYS

38. The Act requires the Department of Health and Social Services to develop procedures for screening reports of child abuse and neglect for the presence of domestic violence. The procedures must include criminal record checks of the alleged abusive or neglectful person and inquiry into whether a domestic violence protective order has been issued to either parent. The department must take action to protect the child if it determines that the violence endangers the child whether directly or by exposure to domestic violence of another family member.

Court Rules and Rules of Administration

39. The Act amends Court Rules 3,4,65 (b)-(d), 100(a), 505(a)(2); Rules of Administration 9(b)(11), 9(c)(3), and 9(e)(6); and Alaska Rules of Evidence 613.

**DOMESTIC VIOLENCE PREVENTION AND
VICTIM PROTECTION ACT OF 1996**
Proposed SCS HB 314 (Jud) -- 4/13/96 draft

SECTIONAL ANALYSIS

Section 1 names the Act.

Section 2 adds crime involving domestic violence to the definition of serious criminal offense in AS 09.60.070(c). This allows a person to recover full attorney fees in a cause of action arising from the commission of a crime involving domestic violence.

Section 3 is a conforming amendment. It amends stalking in the first degree so that it refers to protective orders issued under AS 18.66 and former AS 25.35.

Section 4 is a conforming amendment. It changes the definition of "enter or remain unlawfully" in the burglary and criminal trespass statutes to refer to protective orders under AS 18.66 and former AS 25.35.

Section 5 rewrites the crime of violating a domestic violence protective order. It is an A misdemeanor to knowingly violate a condition of a protective order which

- 1) prohibits the respondent from committing further domestic violence;
- 2) prohibits the respondent from communicating with the victim;
- 3) removes the respondent from the home of the victim;
- 4) orders the respondent to stay away from the home, school, job, or other place where the victim may be found;
- 5) prohibits the respondent from entering a vehicle with the victim;
- 6) prohibits the respondent from possessing a deadly weapon; or
- 7) requires the respondent to surrender a firearm.

In current law a person commits the crime of violating a domestic violence restraining order only if the person communicates with another after being ordered not to, after a court has made a factual finding that the person had committed domestic violence.

3) an emergency protective order.

The extent of protection available in the order depends on the type of protective order.

A court may grant a protective order after notice and hearing if it finds by a preponderance of evidence that the respondent committed a crime involving domestic violence. The protection available in such an order includes, for example, ordering the respondent to stay away from the petitioner, the petitioner's residence, place of employment or other place, removing the respondent from the residence of the petitioner, and other relief the court determines necessary to protect the victim. A protective order issued after notice and hearing is effective for a year or, if the condition is to stay away from the victim, until further order of the court. The authorized protections are more extensive and the effective period is longer than current law. Under present law a domestic violence injunction is effective for 90 days, with the possibility of one 45 day extension.

A victim of domestic violence may request a protective order and ask for *ex parte* relief. If the petition establishes probable cause that a crime involving domestic violence has occurred, and the court finds it necessary to protect the petitioner it shall, without notice or hearing, issue the order *ex parte*. An *ex parte* order may not order all protections available in a protective order after notice and hearing; rather, the protections available focus on the immediate safety of the victim. For example, an *ex parte* protective order may not order the respondent to participate in a program of rehabilitation for batterers. An *ex parte* order expires 20 days after it is issued unless extended or dissolved by the court.

An emergency protective order may be obtained by a peace officer on behalf of a victim of a crime involving domestic violence. It may be obtained by a telephone call to a judicial officer, if there is probable cause to believe that a person is in imminent danger of domestic violence, based on the allegation of the recent commission of domestic violence directed toward the petitioner. The protections available in the order concern the immediate safety of the victim. It expires 72 hours after issuance. There is no similar provision in existing law.

As with current law, either the petitioner or the respondent may request modification of a protective order. For an *ex parte* order, the court must schedule a hearing on 3 days notice, unless the court prescribes a shorter notice period. A hearing on a request to modify a protective order issued after notice and hearing must be scheduled within 20 days of the request, unless the court determines that the request to modify is meritless on its face.

If a protective order prohibits contact by the respondent with the petitioner, the initiation of contact by the petitioner does not excuse the contact, and does not

Section 6 clarifies that it is not a defense that a respondent, if ordered not to communicate with the victim or be present at the residence or other place, did so at the invitation of the victim.

Section 7 is a conforming amendment. It amends third degree misconduct involving weapons to include criminal trespass by violating a protective order under AS 18.66 and former AS 25.35.

Section 8 amends AS 12.25.030, grounds for arrest without a warrant, to include the mandatory arrest with probable cause requirement in domestic violence cases (within 12 hours of offense) in the Act, and discretionary arrest without a warrant in other domestic violence situations. A more complete explanation of the arrest authority is found in section 29.

Section 9 adds crimes involving domestic violence to the exceptions to the general rule that a peace officer may issue a citation for a misdemeanor or violation rather than arrest the offender. The Act requires a law enforcement officer to arrest a person when there is probable cause to believe the person has committed domestic violence within the previous 12 hours, with certain exceptions. This is explained more fully in section 29.

Section 10 is a conforming, technical amendment to the existing statute setting conditions of release before trial in cases involving stalking that is necessitated by the amendment contained in section 11.

Section 11 addresses release before trial, pending sentencing, and pending appeal of a person charged or convicted of a domestic violence offense. It requires the court to consider the safety of the victim and the victim's family in addition to the safety of the public before releasing the defendant. It provides additional conditions of release that may be imposed on a defendant in a domestic violence case; for example, no contact with the victim. It requires the prosecuting or arresting authority to make reasonable efforts to notify the victim when a domestic violence defendant is released from custody. Section 11 also requires a person who is arrested for domestic violence to appear personally or telephonically before a judicial officer before being released.

Section 12 requires, as part of a sentence following a conviction for a crime involving domestic violence, that deadly weapons used or possessed by a defendant during the commission of a crime involving domestic violence be forfeited.

Section 13 adds a new section to AS 12.55 (sentencing) to require the court to consider the safety of the victim before ordering probation for a domestic violence offender. It also provides additional conditions of probation in domestic violence cases, including the condition of a rehabilitation program for the offender if one is available where

the offender resides. Treatment must be paid for by the defendant if the defendant is not in custody.

Section 14 is a conforming amendment. The mandatory 20 day term of imprisonment for conviction of assault in the fourth degree in violation of a protective order is applied to orders under AS 18.66 as well as former AS 25.35.

Section 15 is a conforming, definitional amendment.

Section 16 makes a conforming amendment to AS 12.61 (Victims' Rights), and adds the requirement that prosecutors make a reasonable effort to confer with all victims of domestic violence before entering into a plea agreement in a case.

Section 17 adds domestic violence to the offenses (others are crimes against the person, burglary and criminal trespass, terroristic threatening, misconduct involving weapons in 1st through 4th degrees) where the court may decide that the threat to the victim prohibits the defendant, when representing him or herself, from obtaining the address and telephone number of the victim.

Section 18 clarifies that the duty of defendants and their representatives to clearly identify themselves to victims extends to victims of offense with which the defendant is not yet, but could be, charged.

Section 19 provides that defendants and their representatives who want to tape record statements of victims and witnesses, must obtain the consent of the victim or witness before recording the statement. It also allows victims and witnesses to obtain a copy of the statement that was taken.

Section 20 provides that defendants charged with sex crimes, and their representatives, may not contact a victim or witness if the victim or witness informs the defendant in writing that the victim or witness does not wish to be contacted by the defense. If a victim or witness of a sex crime does consent to contact, written or tape recorded authorization for taking a statement must be obtained from the victim or witness. The section also provides that statements taken from a victim or witness in violation of the statute are presumed to be inadmissible, and provides a method for the defendant to overcome the presumption of inadmissibility.

Section 21 sets out definitions that apply to sections 18-20.

Section 22 amends the definition of serious offense in the Criminal Justice Information Systems Security and Privacy Act by adding crimes involving domestic violence. This has the effect of allowing information about past convictions of domestic violence to be released under AS 12.62.160(b)(11) to an interested person, if the

information is requested to help decide if a person should be given supervisory or disciplinary power over a child or dependent adult.

Section 23 is a conforming, definitional amendment.

Section 24 amends the Alaska Police Standards Council statute on minimum standards for permanent appointment as a police officer to include at least 12 hours instruction in domestic violence.

Section 25 requires correctional, probation, and parole officers to be trained in domestic violence in order to be certified.

Section 26 amends the requirements for domestic violence education in police training programs by adding training in investigating and report writing in domestic violence cases, the laws relating to domestic violence protective orders, and general information about the effects of domestic violence. The section also requires police training programs to consult with the Council on Domestic Violence and Sexual Assault in preparing domestic violence training programs.

Section 27 adds to the duties of peace officers in domestic violence cases by requiring the officer to transport the victim and the victim's family to a shelter or safe home, assist in removing belongings from a residence, help the victim obtain medical care, and give notice of the victim's rights. It also allows a peace officer to seize a deadly weapon for protective purposes, and requires the weapon to be returned to the owner if it is not needed for evidence.

Section 28 revises the notice required to be given by a peace officer to a domestic violence victim by expanding the information which must be provided. In addition to the information required in current law, a victim must be advised that the officer will assist in retrieving belongings from a residence, obtaining medical care, and obtaining an emergency protective order. The victim must also be advised concerning domestic violence protective orders and the protections which are available in an order.

Section 29 requires a peace officer to arrest a person who the officer has probable cause to believe has committed domestic violence, violated a domestic violence protective order, or violated a condition of release in connection with a domestic violence charge within the last 12 hours. There are three exceptions to this mandate: first, if there is more than one domestic violence complaint arising from the same incident, the officer must evaluate which party is the principal aggressor and arrest that person. Second, arrest is not mandated in homicides. Homicide investigations require painstaking investigation; a hasty arrest would likely result in a weaker case. Further, since the victim is deceased the urgency to arrest the perpetrator to protect the victim is no longer present.

Third, a peace officer may request authorization from the prosecuting authority not to arrest.

This section also prohibits a peace officer from threatening to arrest all the persons present in an incident of domestic violence. The purpose is to encourage victims to report domestic violence rather than to discourage reporting because of fear of arrest.

A peace officer who does not make an arrest after a domestic violence incident, or who arrests more than one person from a single incident, must put in writing the reasons for the action.

Section 29 also establishes a central registry of domestic violence protective orders in the Department of Public Safety. It contains all protective orders issued in this state and those issued in other states and filed under AS 18.66.140. A petitioner or respondent under a protective order may challenge the accuracy of information in the registry by procedures provided. Protective orders should be entered in the registry within 24 hours of being issued or registered.

Section 30 adds crimes involving domestic violence to those misdemeanor convictions which would disqualify a person from obtaining a permit to carry a concealed weapon. The section also adds a conforming amendment, which adds the issuance of a protective order under AS 18.66 to those issued under former AS 25.35 as a basis for denial of a permit to carry a concealed weapon.

Section 31 is a conforming amendment, adding orders issued under AS 18.66 to those under former AS 25.35 as a basis for immediate suspension of a permit to carry a concealed weapon.

Section 32 adds new responsibilities to the Council on Domestic Violence and Sexual Assault. The council must consult with specific public entities throughout the state to provide expertise in training people who come in contact with victims of domestic violence and their families.

Section 33 adopts provisions for obtaining protective orders in domestic violence cases. A victim of domestic violence or the parent or guardian of a victim may apply to the courts for a domestic violence protective order. There are three types of protective orders that may be issued:

- 1) a protective order issued after notice to the respondent and a hearing;
- 2) an *ex parte* protective order; and

invalidate the order. Mutual protective orders are prohibited, and mediation may not be ordered for issues arising from the petition. As in present law, a protective order is in addition to any other civil or criminal remedy.

A protective order issued by another state may be filed with the courts of this state, and must be enforced as if they were issued by a court in this state.

The court system must prepare forms and instructions for applying for protective orders after consulting with the Council on Domestic Violence and Sexual Assault. Petitions must include a statement of pending litigation between the petitioner and the respondent. Procedures for service of process are the same as in current law, except that fees for service of process may not be charged in a case seeking only domestic violence protective relief.

When a court issues a protective order, it must send the order to the appropriate law enforcement agency. Law enforcement agencies must establish procedures to inform their officers, and peace officers must use every reasonable means to enforce the order.

The section also addresses health treatment for victims, education about domestic violence, and prevention. It requires the Department of Health and Social Services to adopt standards and procedures for health care to victims. It requires public employers of people who work with children and families to provide continuing education to their employees who are required by law to report abuse or neglect of children. It requires the court system and the Department of Law to provide continuing education to their employees who come into contact with domestic violence victims and perpetrators.

These agencies must consult with the Council on Domestic Violence and Sexual Assault in formulating continuing education programs. General standards for the subject matter to be included in the training are provided. Decisions regarding other particulars of the continuing education including length and form of training (whether oral or written) are left to the individual agency.

"Domestic violence" for purposes of the Act is defined as one of the following offenses, or a similar municipal ordinance violation, that is directed to a household member:

- crimes against a person under AS 11.41;
- burglary under AS 11.46.300 - 11.46.310;
- criminal trespass under AS 11.46.320 - 11.46.330;
- arson or criminally negligent burning under AS 11.46.400 - 11.46.430;
- criminal mischief under AS 11.46.480 - 11.46.486;
- terroristic threatening under As 11.56.810;

violating a protective order under AS 11.56.740; and harassment under AS 11.61.120(a)(2) - (4).

In present law domestic violence includes only crimes against the person under AS 11.41.

"Household member" is defined as including adults or minors who currently or formerly were married, lived together, dated, or have engaged in a sexual relationship; adults or minors related by blood or adoption, current or former marriage, who have a child in common, and minor children of persons described above.

Section 34 is a conforming amendment which provides that a petition for a protective order under AS 18.66 may be filed in either the superior or district court. This is the same as present law.

Section 35 is a conforming amendment adding protective orders under AS 18.66 to those issued under former AS 25.35 to the jurisdiction of the district court and providing that petitions for protective order under AS 18.66 may be filed in either superior or district court.

Section 36 is a conforming amendment providing that magistrates and district court judges may issue protective orders under AS 18.66.

Section 37 is a conforming amendment which substitutes AS 18.66.160 for AS 25.35.040 in regard to service of process for domestic violence protective orders.

Section 38 adds a provision to the child custody statute to allow the address and telephone number of the victim of domestic violence to be kept confidential.

Section 39 also addresses child visitation in cases where domestic violence has occurred. Conditions which may be imposed on visitation where domestic violence occurred are provided, including supervised visitation.

Sections 40 and 41 amend the statute allowing mediation in child custody cases whenever a party petitions for mediation. The Act prohibits mediation in cases where a domestic violence protective order is in effect. If there is no order in effect but the court finds that domestic violence has occurred, mediation is allowed only when certain safeguards are met -- the victim requests mediation, the mediator is trained in domestic violence cases, and the victim is allowed a supporting person to attend. A mediator assigned to a child custody case is required to screen for domestic violence, and may not mediate where either party has committed a crime involving domestic violence unless the safeguards are met.

Section 42 amends the provision concerning modification of a child custody or visitation award. Modification is allowed if the court determines there has been a change in circumstances. The Act provides that a finding that domestic violence has occurred since the last decision constitutes a change in circumstances.

Sections 43 and 44 addresses mediation in divorce actions. It qualifies the provision that mediation may be ordered whenever a request for mediation is filed within a certain time limit. Mediation may not be ordered if a protective order under AS 18.66 is in effect. Mediation may not be ordered if a party objects based on domestic violence unless certain safeguards are present. These safeguards include the victim requesting mediation, the mediator being trained in domestic violence, and allowing a support person to attend with the victim. Additionally, when a mediator is appointed without an objection based on domestic violence, the mediator must screen for domestic violence, and may not continue mediation if either party has committed a crime involving domestic violence unless safeguards are present.

Section 45 is a conforming amendment providing that protective orders under AS 18.66 may be ordered while a divorce case is pending.

Sections 46 and 47 amend the statute allowing mediation or family counseling during the pendency of a divorce action by providing that mediation and family counseling may not be ordered if a protective order under AS 18.66 is in effect. Mediation or family counseling may not be ordered if a party objects based on domestic violence, unless the safeguards discussed in section 41 are provided.

Sections 48 and 49 address the court's responsibilities in regard to a petition for dissolution of the marriage filed by both parties to a marriage. The petition must state whether a criminal charge of domestic violence has been filed or whether a petition for a domestic violence protective order has been filed by a member of the household during the marriage. In such cases, the court must give heightened scrutiny to the dissolution agreement to ensure it is fair to both parties. The court must also give heightened scrutiny to a dissolution agreement if there is any evidence of domestic violence during the marriage.

Section 50 is a conforming, definitional amendment.

Section 51 amends AS 33.16.120, which establishes victims' rights in connection to parole, by adding a requirement that the Parole Board inform a victim of domestic violence 30 days in advance of a hearing to consider discretionary parole for the prisoner. It also requires the board to inform the victim of its decision to grant or deny discretionary parole and to release the prisoner on mandatory parole. The victim must be informed of the area a parolee will reside and conditions on the parole of a prisoner, and of any changes in these conditions.

Section 52 amends AS 33.16.150 to provide for conditions of parole in domestic violence cases, in addition to those conditions which may be imposed in other cases. These conditions parallel the conditions which may be imposed as bail or probation considerations for domestic violence offenders. It also requires the Parole Board to establish procedures for informing the victim of relevant information concerning the parolee and for responding to reports of noncompliance with release conditions by the parolee.

Section 53 adds violation of the new conditions of release as a basis for revocation of parole.

Section 54 addresses the factors which the Parole Board must consider in releasing the parolee from custody pending a decision on whether to revoke parole. It provides that if the person is on parole for a domestic violence crime, and the alleged violation is based on an act of domestic violence, the parolee may not be released pending the final revocation hearing.

Section 55 is a conforming, definitional amendment.

Section 56 allows a victim of domestic violence to request to be notified by the Parole Board of an application for executive clemency by the parolee, and allows the victim to comment in writing on the application to the board.

Section 57 is a conforming, definitional amendment.

Section 58 requires the Commissioner of Corrections to give notice of a status change of an offender to the victim of domestic violence.

Section 59 allows the Commissioner of Corrections to release a domestic violence offender on prerelease and short-duration furloughs only under conditions which protect the victim and the victim's family.

Section 60 and 61 require the Commissioner of Corrections to notify the victim and to accept and consider comments by a victim of domestic violence before deciding to release the prisoner on prerelease furlough. The victim must be notified of the decision to release the prisoner.

Section 62 is a conforming, definitional amendment.

Section 63 adds payment for court ordered rehabilitation programs under AS 12.55.101, AS 18.66.100(c)(15), AS 25.20.061(3), AS 33.16.150(c)(2) to those obligations where an exemption from levy on permanent fund dividends is not available.

Section 64 amends the Office of Public Advocacy statute to allow appointment of a guardian ad litem for a minor under section 33.

Section 65 requires the Department of Corrections to adopt standards for rehabilitation programs for perpetrators of domestic violence. The department must determine if a program meets the standards before a court may order a person to participate in the program.

Section 66 is a conforming amendment correcting the statutory citation of definitions for domestic violence programs.

Section 67 requires the Department of Health and Social Services to develop procedures for screening reports of child abuse and neglect for the presence of domestic violence. The procedures must include criminal record checks of the alleged abusive or neglectful person and inquiry into whether a domestic violence protective order has been issued to either parent. The department must take action to protect the child if it determines that the domestic violence is endangering the child either directly or by exposure to domestic violence of another family member, and must provide victims with a notice setting out their rights and services available to victims.

Section 68 amends Rule 3, Alaska Rules of Civil Procedure, by setting the venue for petitions for domestic violence protective orders.

Section 69 amends Rule 100(a), Alaska Rules of Civil Procedure, regarding mediation in cases where domestic violence has occurred.

Section 70 amends Rule 505(a)(2), Alaska Rules of Evidence, to add an exception to spousal privilege in a case of a crime involving domestic violence.

Section 71 and 72 describe the statutes repealed as a result of adopting the Act.

Section 73 requests the Revisor of Statutes to move domestic violence related statutes from Title 25 to Title 18 so that domestic violence statutes are in the same Title, and requests the revisor to change statutory cross-references to these statutes.

Section 74 provides that domestic violence injunctions in force on the effective date of the Act remain effective until they expire by their own terms or are dissolved by the court.

Section 75 allows agencies with a duty to adopt regulations under the Act to begin formalizing regulations before the Act is effective.

Sections 76 -- 79 describes changes in court rules that do not require a super majority vote.

Section 80 describes changes in the bill which affect court rules and which require a 2/3 majority vote.

Sections 81 -- 84 contain the effective dates.

FISCAL NOTE

No. 4
 Bill Version: CSHB 314(JUD)
 (H) Publish Date: 2/2/96

STATE OF ALASKA
 1996 LEGISLATIVE SESSION

Revision Date: _____
 Title: An Act relating to domestic violence and to crime victims and witnesses
 Sponsor: Rep. Pamell
 Requestor: (H) JUD

Dept. Affected: Administration
 BRU: Public Defender Agency
 Component: Public Defender Agency
 COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES:

(Thousands of Dollars)

| OPERATING EXPENDITURES | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 |
|------------------------|-------|-------|-------|-------|-------|-------|
| 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 | 0 | 0 | 0 | 0 | 0 | 0 |
|-----------------------------|---|---|---|---|---|---|

| | | | | | | |
|-------------------------------|---|---|---|---|---|---|
| CHANGE IN REVENUES () | 0 | 0 | 0 | 0 | 0 | 0 |
|-------------------------------|---|---|---|---|---|---|

FUND SOURCE:

(Thousands of Dollars)

| | | | | | | |
|--------------------------|-----|-----|-----|-----|-----|-----|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| OTHER | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY 96) cost: \$ -0-

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact to the Public Defender Agency.

Prepared by John Salem, Director
 Division Public Defender Agency

Phone 264-4400
 Date _____

Approved by Commissioner Mark Boyer
 Agency Department of Administration

Date _____

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FISCAL NOTE

No. 3
 Bill Version: CSHB 314(JUD)
 (H) Publish Date: 2/2/96

STATE OF ALASKA
 1996 LEGISLATIVE SESSION

Revision Date: _____
 Title: An Act relating to domestic violence and to crime victims and witnesses
 Sponsor: Rep. Parnell
 Requestor: (H) JUD

Dept. Affected: Administration
 BRU: Office of Public Advocacy
 Component: Office of Public Advocacy
 COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 |
|-------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 00 | 00 | 00 | 00 | 00 | 00 |
| CAPITAL EXPENDITURES | 0 | 0 | 0 | 0 | 0 | 0 |
| CHANGE IN REVENUES () | 0 | 0 | 0 | 0 | 0 | 0 |

FUND SOURCE: (Thousands of Dollars)

| | | | | | | |
|--------------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| OTHER | | | | | | |
| TOTAL | 00 | 00 | 00 | 00 | 00 | 00 |

Estimate of any current year (FY 96) cost: \$ -0-

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal impact to the Office of Public Advocacy.

Prepared by Brian McGee Public Advocate
 Division: Office of Public Advocacy

Phone 274-1684
 Date _____

Approved by Commissioner Mark Boyer
 Agency Department of Administration

Date 1/24/96

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FISCAL NOTE

STATE OF ALASKA 1996 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: An Act relating to the crime of violating a BRU: Trial Courts
domestic violence restraining order. Component: _____
 Sponsor: Reps. Parnell, Robinson, Bunde, Elton, Toohey
 Requester: House Judiciary COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 |
|------------------------|------------|------------|------------|------------|------------|------------|
| 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 | | | | | | |
| CHANGE IN REVENUES () | | | | | | |

Fund Source (Thousands of Dollars)

| | | | | | | |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY 96) cost: None

Positions

| | | | | | |
|-----------|--|--|--|--|--|
| Full-Time | | | | | |
| Part-Time | | | | | |
| Temporary | | | | | |

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel Phone: 264-8228
 Agency: Alaska Court System Date: 01/24/96

Approved by: Arthur H. Snowden, II, Administrative Director Date: 01/24/96
 Agency: Alaska Court System

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FISCAL NOTE

No. 1
 Bill Version: CSHB 314(JHD)
 (H) Publish Date: 2/2/96

**STATE OF ALASKA
 1996 LEGISLATIVE SESSION**

Revision Date: 1/24/96 Dept. Affected: Department of Law
 Title: "...relating to domestic violence...crime victims..." BRU: Criminal Division
 witnesses...amending...Rule of Evidence 613." Component: Criminal Division
 Sponsor: Representative Parnell
 Requester: Representative Parnell COMPONENT SERIAL NO. 2085

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 |
|------------------------|------------|------------|------------|------------|------------|------------|
| 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 | | | | | | |
|----------------------|--|--|--|--|--|--|

| | | | | | | |
|------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1005 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

| | | | | | | |
|-----------|-----|-----|-----|-----|-----|-----|
| FULL-TIME | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 11.56.740(a) so that the criminal prohibitions contained in this statute coincide with the civil prohibitions contained in a civil domestic violence restraining order issued under AS 23.35.010 or AS 23.35.020. Thus the bill clarifies the interplay between the civil and criminal laws dealing with domestic violence restraining orders, making these laws easier to enforce.

The bill also amends AS 12.61.120 to require that if a defendant or a person acting on behalf of a defendant wishes to make a recording of statements of the victim of an offense, or of a witness, the consent of the victim or witness must be obtained before a recording begins. The bill will not have a fiscal impact for the Department of Law.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: 1/24/96
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 1/24/96
 Agency: Department of Law

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April 18, 1996

Senator Robin Taylor
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

| | | |
|-----------------------|------------------|--------------|
| Post-It® Fax No. 7671 | Date 4/18/96 | # of pages 1 |
| To Senator Taylor | From S. Cattrell | |
| Co./Dept. | Co. | |
| Phone # | Phone # 274-7279 | |
| Fax # 465-3922 | Fax # | |

Dear Senator Taylor:

I am writing to you to register my support for **HB 314** which addresses some important issues pertaining to domestic violence cases. I greatly appreciate the work that all members of the Senate, including yourself, are doing to end domestic violence and to stop violence against women in Alaska, but I am concerned about the mediation amendment to this bill. I support the bill, including the weapons amendment, but I oppose the mediation amendment. I urge you to support **HB 314** without the mediation amendment.

To stop domestic violence and end violence against women, we need to make abusers be held accountable, and including a provision for mediation does not hold the abuser accountable.

Mediation in domestic violence cases is inappropriate, because mediation would imply that the two parties involved are somewhat equal and open to reaching an agreement or reconciliation of some sort. This is impossible however, given the dynamics of domestic violence -- the victim has suffered emotional, verbal and or physical abuse and is likely to be intimidated by the abuser. This intimidation factor may lead the victim to agree to some unjust proposal simply to end the meeting which could only be uncomfortable for her. Also, due to the isolation imposed upon the victim by the abuser, the victim may be unfamiliar with the court system and with her rights, ensuring that justice will not be done in this situation. To propose that a victim and abuser must meet under these circumstances sends a strong message to the victim, the abuser and to the society at large, that abuse is unimportant, just an argument that got out of hand. Domestic violence is not an argument to be resolved. It will take intensive work and education to stop the cycle of violence and abuse.

If you must pass **HB 314** as it is, with the mediation amendment still present, I then request that you include a provision that mediators must be trained by one of the programs of the Alaska Network on Domestic Violence and Sexual Assault, who see the effects of domestic violence on Alaskan families daily and who understand the cycle of abuse and the issues involved.

I strongly urge you to oppose the amendment concerning mediation, but support **HB 314**.

Sincerely,

Susan P. Cattrell

Susan P. Cattrell
7538 Stanley Drive
Anchorage, AK 99518

Dr. Dorothy J. Shepard 4701 Gramman St. # 2 Anchorage, AK 99507 (907) 561-3875

April 18, 1996

Senator Robin Taylor
Chairman, Senate Judiciary Committee

Re: Comments on SCS CSIB 314

Dear Senator Taylor:

It's important to me to let you know how very pleased I am with the contents of this bill relating to domestic violence and mediation. Here are some of the reasons I feel qualified to comment:

• In 1979, I started the Kotzebue women's shelter and sexual assault counseling program. I recruited the initial volunteers, ran the crisis line from my home, wrote the first funding proposals. I served as executive director of that program until the end of 1981.

• I left Kotzebue to serve as the first executive director of the domestic violence and sexual assault program in Valdez, leaving at the end of 1983 to work in Cordova with the same issues through the mental health program.

• In mid-1984, I became the executive director of the Anchorage based Conflict Resolution Center. We trained over 100 volunteers to serve as community mediators and arbitrators. That program lost funding in 1987. However, it still serves as the prototype for mediation and community dispute resolution in Alaska.

• I went into private practice as a Family and Divorce Mediator from 1986 through 1992. I was a Practitioner member of the Academy of Family Mediators from 1986 on, after training by Dr. John Haynes, the founder of that international organization.

• I finished my doctorate through AK Pacific University in 1994, in Human Resource Education.

• I am now the owner of Alpenglow Training and Mediation Associates, a Board member of the Alaska Dispute Settlement Association. I have trained over a hundred mediators in Alaska, and mediated countless family, divorce and custody disputes.

• I have been a victim of domestic violence in my own past.

I have thought deeply about the question of mediating family cases when domestic violence has occurred in the relationship. I have worked in both fields, and understand the concerns of people in the domestic violence movement as well as those in mediation.

It is true that those affected by domestic violence often make choices not in the best interest of their own personal safety. Battered women frequently return to the men who have abused them.

Sometimes they refuse to press charges, even right after they have been severely beaten. I have seen women beg the courts for temporary restraining orders, only to beg a few days later for the protective order to be dismissed.

Even so, professionals in the domestic violence arena have long supported the right of battered women to make these choices. Women leave shelters and return home, while their counselors are certain they will be brutalized again there. Professionals in this field speak often of "empowerment."

I have been puzzled, therefore, by the vehemence of their opposition to mediation in domestic violence cases. Then they say the law should prevent victims of domestic violence from using mediation, even when the last incident of violence may have occurred years before. This doesn't make sense to me.

Mediation may actually be the best option for many battered women, especially those who do not have the ability to hire expensive attorneys. An effective mediator will not let one of the parties dominate the other, or one party to give up important rights through intimidation. A good mediator sets up a safe, supportive environment, uses empowering and balancing strategies.

No one should be "mandated" to mediate. It is a voluntary process for good reason. When it is not, it can be used as a power tool by the unscrupulous. On the other hand, mediation should be available to any person who wants to use it. Parties deciding what process to use to settle important questions should have an opportunity to understand what mediation is before agreeing to it.

The present bill includes important safeguards for cases where domestic violence has been a factor. The language calling for a restriction on mediation when a protective order is in effect seems to me a reasonable compromise. A TRO is granted when the threat of violence is recent or imminent. It is asked for by a person alleging fear for personal safety. It is not too much to ask that negotiating important life decisions be put off for a few months under those circumstances.

In short, I feel the bill, as written, represents an excellent piece of legislation-- the kind of solution we might reach in mediation, in that it addresses the real needs of all concerned. Thank you for the opportunity to comment.

Sincerely,

Dr. Dorothy J. Shepard

April 12, 1996

VIA FAX

465-3922

Senator Robin Taylor, Chairman
Senate Judiciary Committee
State Capitol
Juneau, AK 99801-1182

RE: Committee Substitute for House Bill No. 314 am

Dear Senator Taylor:

Please consider this to be public testimony to be considered at the hearing on the above-referenced bill.

I urge the Committee not to support this bill as written. The bill would amend the Alaska criminal laws concerning domestic violence and concerning disclosures to accused persons. Several reasons supporting my disfavor of this bill follows.

First, I would like to make the committee aware, from my experience in the past 10 years, that domestic violence orders are liberally issued by the courts upon receiving any testimony of conflict, however slight.

There is a "race to the courthouse" atmosphere during most situations where a dv restraining order might benefit a petitioner. Men are more often denied dv orders, for various reasons, including that the judicial officer does not believe a "man could be frightened of a woman". Also, men generally are reluctant to apply for domestic violence restraining orders and are less informed than women about how and when to apply for them.

At the initial stages, there is no attempt to verify the statements of a petitioner requesting a domestic violence restraining order. The petition is treated as an emergency and an order issued upon the mere allegation of the petitioner. Generally, a female petitioner's mere assertion of fearfulness (either past or prospective) suffices for issuance of an order.

The courts consider the dv petition as an opportunity to separate persons in a relationship during a period of discord - however slight or grave the discord may be. Therefore, the issuance of a domestic violence restraining order is often to provide a "cooling off period" and does not represent judicial determination as to the merit of facts represented.

House Bill 314 Section 1, which deals with domestic violence restraining orders, would amend AS 11.56.740(a) by adding 3 specific behaviors which would become Class A misdemeanors and by deleting the protection now in Subsection 740(a)(2).

These protection derive from the concurrent requirement that the Court must have found that the person being restrained had subjected another to domestic violence. Under the present law, a petitioner's fear of potential violence should be insufficient to raise violation of a dv order provision to the status of a crime. And the wisdom of a judge or magistrate tempers the potential use of the criminal system as a weapon by one person against the other.

As proposed, Section 1 would eliminate these protection, while adding criminal behavior.

The domestic violence restraining order process, a civil law procedure, should not become merged with criminal activity from the start. People do not always get along and all discord is not criminal. In the domestic violence arena, there is already a propensity to act "tit for tat" and to use police, the courts and children as weapons in power struggles between persons. Before making new crimes, there should be more protection against abuse of the criminal justice process, not less.

It is well established that war is fostered by unequal power and weaponry: domestic strife is like war. If the object is to quell domestic violence, then the focus should be on giving neither participant an advantage against the other and protecting both participants from increasing hostility by the other. Proposed Section 1 does just the opposite.

House Bill 314 Sections 2 through and including 5 would amend AS 12.61.120(c) dealing with disclosure of information to defendants accused of any crime, not merely crimes pertaining to domestic violence.

Section 2 proposes language which is overbroad. Any victim or witness could assert that anyone talking with he/she could be acting on behalf of a defendant. Such an assertion could be raised merely because a victim or witness did not like what the other person was stating or just to gain advantage over the another person.

More importantly, the scope of the new language would include subjects about which a person could be charged without limitation as to time or type of offense. The language is likely unenforceable. It muddies what currently is clear and adequate law. Please do not support this amendment.

Sections 3 and 4 proposes further additions which appear intended to prevent adequate defense against criminal charges. No person can have the expectation of privacy when speaking in public yet the proposed amending language would give special rights to persons prosecuting crimes, rights which would cripple the opportunity of accused persons to defend themselves. If we are a society interested in justice and truth finding, then the rules regarding privacy expectations should apply equally to all persons before they are convicted of a crime. The amendments proposed in Section 3 would curtail the ability of an accused to protect herself or himself from untruthfulness.

Furthermore, these sections, by encompassing witnesses are overbroad and chilling. A person becomes a witness, for purposes of law, when they are selected to provide evidence: anyone can become a witness. Who is not a witness to a crime which "could be charged"? How could the proposed amendments be enforced without impairing the constitutionally protected rights of free speech and due process under the law? The inclusion of "witness" in the proposed language should be deleted, at minimum.

Finally, subparagraph (c) of Section 4 proposes that any violation of the section by the defendant's attorney or agent of the defendant's attorney would act as an official grievance against the attorney. This is terribly chilling. Is the intent of this language to so frighten attorneys that they will be unwilling to represent the accused? It appears so.

Also, not even attorney's have perfect control over their agents, investigators, etc., or their client's "agents". (See definition in proposed Section 5) Not even attorney's can protect themselves, without substantial cost and interruption to their practices, from spiteful or untruthful allegations. Why does it seem necessary to threaten officers of the Court, who are sworn to abide by the law and Court Orders and who do so to the best of their abilities?

Subsection 5, the definition of "persons acting on behalf of a defendant", includes an "agent of the defendant". This includes for example, friends and family, as well as all others, who are connected with the defendant.

For domestic violence allegations, there would remain no avenues whereby reconciliation could possibly take place without potential criminal repercussions for the attempt. People don't live together without discord. People cannot suddenly cut themselves and their families off from each other in one quick decisive stroke simply because an offense has or could be charged. The proposals of House Bill 314 are anti-human and impracticable.

In conclusion, please do not adopt House Bill 314 as written. The purposes to be accomplished by this proposed legislation are unclear. What ills are sought to be remedied? Society should not become such a prisoner of our fears that we would destroy constitutionally protected rights and individual liberties in its quest for protection. There must be a better way.

Thank you for receiving my concerns.

Sincerely,



Ms. Claire Steffens

| | | |
|-----------------------|-------------------|--------------|
| Post: # Fax Note 7671 | Date 4/18/96 | # of pages 1 |
| To Senator-Taylor | From S. Catterall | |
| Co./Dept. | Co. | |
| Phone # | Phone # 276-7279 | |
| Fax # 465-3922 | Fax # | |

April 18, 1996

Senator Robin Taylor
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Dear Senator Taylor:

I am writing to you to register my support for **HB 314** which addresses some important issues pertaining to domestic violence cases. I greatly appreciate the work that all members of the Senate, including yourself, are doing to end domestic violence and to stop violence against women in Alaska, but I am concerned about the mediation amendment to this bill. I support the bill, including the weapons amendment, but I oppose the mediation amendment. I urge you to support **HB 314** without the mediation amendment.

To stop domestic violence and end violence against women, we need to make abusers be held accountable, and including a provision for mediation does not hold the abuser accountable.

Mediation in domestic violence cases is inappropriate, because mediation would imply that the two parties involved are somewhat equal and open to reaching an agreement or reconciliation of some sort. This is impossible however, given the dynamics of domestic violence -- the victim has suffered emotional, verbal and or physical abuse and is likely to be intimidated by the abuser. This intimidation factor may lead the victim to agree to some unjust proposal simply to end the meeting which could only be uncomfortable for her. Also, due to the isolation imposed upon the victim by the abuser, the victim may be unfamiliar with the court system and with her rights, ensuring that justice will not be done in this situation. To propose that a victim and abuser must meet under these circumstances sends a strong message to the victim, the abuser and to the society at large, that abuse is unimportant, just an argument that got out of hand. Domestic violence is not an argument to be resolved. It will take intensive work and education to stop the cycle of violence and abuse.

If you must pass **HB 314** as it is, with the mediation amendment still present, I then request that you include a provision that mediators must be trained by one of the programs of the Alaska Network on Domestic Violence and Sexual Assault, who see the effects of domestic violence on Alaskan families daily and who understand the cycle of abuse and the issues involved.

I strongly urge you to oppose the amendment concerning mediation, but support **HB 314**.

Sincerely,

Susan P. Catterall

Susan P. Catterall
7538 Stanley Drive
Anchorage, AK 99518

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO: CSHB 314(JUD) am

Revision Date: April 9, 1996
Title: Violating Domestic Violence Orders
Sponsor: Representative Parnell
Requestor: S. Judiciary

Dept. Affected: Public Safety
BRU: Alaska State Troopers
Component: Detachments
COMPONENT SERIAL NO. 0799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

| OPERATING | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 |
|---|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | -0- | -0- | -0- | -0- | -0- | -0- |
| CAPITAL | -0- | -0- | -0- | -0- | -0- | -0- |
| CHANGE IN REVENUES () Revenue Code | -0- | -0- | -0- | -0- | -0- | -0- |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|-----------------------|-----|-----|-----|-----|-----|-----|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | -0- | -0- | -0- | -0- | -0- | -0- |

Estimate of current year (FY 96) impact: \$ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

This bill will not have a fiscal impact on the Division of Alaska State Troopers. The troopers currently respond to complaints of violating a domestic violence restraining order, this bill will clarify violations of the order.

Prepared By: Lt. Dan Lowden Phone: 465-5505
Division: Alaska State Troopers Date: April 9, 1996
Approved by Commissioner: *Ronald I. Otte* Date: 4/9/96
Agency: Ronald I. Otte Department of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. Work draft SCS CSHB 314 -
version W dated 4/13/96

Revision Date: _____
Title: Domestic violence

Dept. Affected: Alaska Court System
BRU: Trial Courts
Component: _____

Sponsor: Reps. Parnell, Robinson, Bunde, Elton...
Requestor: _____

COMPONENT SERIAL NO. 768

Expenditures/Revenues

(Thousands of Dollars)

| OPERATING EXPENDITURES | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 |
|------------------------|--------------|-------------|-------------|-------------|-------------|-------------|
| PERSONAL SERVICES | 66.7 | 66.7 | 66.7 | 66.7 | 66.7 | 66.7 |
| TRAVEL | 25.7 | 25.7 | 25.7 | 25.7 | 25.7 | 25.7 |
| CONTRACTUAL | 0.9 | | | | | |
| SUPPLIES | 7.2 | | | | | |
| EQUIPMENT | 8.0 | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS & CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 108.5 | 92.4 | 92.4 | 92.4 | 92.4 | 92.4 |

| | | | | | | |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|----------------------|--|--|--|--|--|--|

| | | | | | | |
|----------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES (| | | | | | |
|----------------------|--|--|--|--|--|--|

Fund Source

(Thousands of Dollars)

| | | | | | | |
|--------------------------|--------------|-------------|-------------|-------------|-------------|-------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 108.5 | 92.4 | 92.4 | 92.4 | 92.4 | 92.4 |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other | | | | | | |
| TOTAL | 108.5 | 92.4 | 92.4 | 92.4 | 92.4 | 92.4 |

Estimate of any current year (FY 96) cost: None

Positions

| | | | | | | |
|-----------|-----|-----|-----|-----|-----|-----|
| Full-Time | | | | | | |
| Part-Time | 6.0 | 6.0 | 6.0 | 6.0 | 6.0 | 6.0 |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: C. S. Christensen III, Staff Counsel 
Agency: Alaska Court System

Phone: 264-8228
Date: 04/15/96

Approved by: Arthur H. Snowden, II, Administrative Director 
Agency: Alaska Court System

Date: 04/16/96

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Rev 1/96

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Alaska Court SystemFiscal AnalysisWork draft SCS CSHB 314 - version W dated 4/13/96Personal Services

| <u>Position</u> | <u>Salary</u> | <u>Benefits</u> | <u>Total</u> |
|---|---------------|-----------------|---------------|
| <u>Sections 8, 11 & 29 (In-Person Hearing)</u> | | | |
| Superior Court Judge Pro Tem, 50% vested, PPT, (25% of filings aff | \$5,737 | \$3,537 | \$9,274 |
| In-Court Clerk, range 12A, PPT | 2,725 | 1,236 | 3,961 |
| (25% of current criminal filings will be affected by the bill, 1/2 of these will require 15 minute hearing) | | | |
| <u>Section 33 (Extended Orders)</u> | | | |
| Standing Master, range 24A, PPT | 17,583 | 6,137 | 23,720 |
| In-Court Clerk, range 12A, PPT | 7,813 | 3,544 | 11,357 |
| Court Clerk II, range 10A, PPT | 554 | 265 | 819 |
| (25% of current criminal filings will result in extended orders, 1/2 will require an additional 30 minutes of hearing) | | | |
| <u>Section 33 (Peace Officer Request)</u> | | | |
| Court Clerk II, range 10A, PPT | 308 | 147 | 455 |
| (Expecting 100 additional case filings, which will require 15 minutes of clerical processing time) | | | |
| <u>Section 33 (Prohibit Mutual Orders)</u> | | | |
| Standing Master, range 24A, PPT | 2,816 | 983 | 3,799 |
| In-Court Clerk, range 12A, PPT | 1,251 | 568 | 1,819 |
| Court Clerk II, range 10A, PPT | 1,108 | 530 | 1,638 |
| (Expecting 8% increase in case filings, which will require 15 minutes of courtroom time and clerical processing time) | | | |
| <u>Section 33 (Prohibit Mutual Orders (Respondent's Petition))</u> | | | |
| Standing Master, range 24A, PPT | 1,408 | 491 | 1,899 |
| In-Court Clerk, range 12A, PPT | 626 | 284 | 910 |
| Court Clerk II, range 10A, PPT | 554 | 265 | 819 |
| (Expecting 50% increase in orders on increased filings, which will require 15 minutes of courtroom time and clerical processing time) | | | |
| <u>Section 33 (Forms and Clerical Assistance)</u> | | | |
| Court Clerk II, range 10A, PPT | 2,303 | 1,100 | 3,403 |
| (Expecting additional clerical assistance on 25% of new filings, which will require 15 minutes of clerical time) | | | |
| <u>Section 49 (Heightened Scrutiny)</u> | | | |
| Standing Master, range 24A, PPT | 1,408 | 491 | 1,899 |
| In-Court Clerk, range 12A, PPT | 626 | 284 | 910 |
| (10% of current dissolutions will require a 30 minutes hearing) | | | |
| Estimated Total Personal Services | | | 66,882 |

TravelSection 33 (Forms and Clerical Assistance)

This legislation will require a complete revision of all domestic violence forms and instructions. The court Forms Committee will have to meet twice to accomplish the revision of 12 existing forms. These forms are used in all superior and district courts.

5,400

This legislation requires continuing education of judicial officers and staff. The court will lengthen existing conferences for judges, magistrates and clerks to accomplish this requirement. The court will use experts to conduct annual training conferences.

20,300

Estimated Total Travel**25,700**

Alaska Court SystemFiscal AnalysisWork draft SCS CSHB 314 - version W dated 4/13/96Contractual (one-time)

Postage for mailing new forms and instructions 5900

Supplies (one-time cost)

Paper and duplication supplies for new forms and instructions 7,200

Equipment (one-time cost)Section 33 (Peace Officer Request)

20 portable tape recorders for hearings 8,000

Estimated Total Cost

\$108,482