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reconciliation, we affirm its decision to set aside the separation decree.

II. FACTS AND PROCEEDINGS

A. Factual Background

1. The pre-separation relationship

Danny and Gail Glasen met in Hawaii in 1984, while Danny was opening a restaurant with business partners there. At that time, Danny was married but estranged from his first wife, and Danny and Gail began living together shortly after they met. During their time in Hawaii, Gail worked with Danny on his restaurant for about six or seven months. After that, Danny sold his interest in the restaurant and the two moved to Cordova. Danny obtained a divorce from his former wife shortly thereafter.

From the beginning, Danny and Gail have had an erratic and tumultuous relationship, marked by periods of separation and reconciliation. After moving to Cordova in the summer of 1985, Gail left Danny for a short period before moving back in with him.

Gail and Danny had their first child, Drake William Glasen, in September 1986. After nine months, Gail again left Danny because his "party" lifestyle bothered her. She moved to Morro Bay, California for about a month and a half with the baby.

The couple reconciled, however, and got married in August 1987 in Reno. Gail returned to Cordova with Danny and stayed there until their daughter Meriah Victoria was born in June 1988. The Glasens bought a luxury home in Malibu, California, for $550,000 in 1988. Gail lived there with the children until August 1993, while

Danny remained in Cordova and intermittently visited the Malibu home.

2. The separation agreement

In July 1991 Danny filed a complaint for legal separation and, through his attorney, prepared a separation agreement for Gail to sign. The separation agreement characterized nearly all property, except for the Malibu home and the Glasens' yacht, as Danny's separate property to which he was entitled. This property included, for example, the Cordova home, the Cordova cabin, Orca Oil stock, an escrow account, land in Cordova, Danny's pension, and other property and resources. Notably, the separation agreement did not contain any values for any marital or separate property, any marital or separate debts, or either of the parties' salaries or income.

As for the Malibu house, the agreement stated that after satisfying all debts and reimbursing Danny for his mortgage and maintenance payments, Gail should receive the sale proceeds. In addition, the agreement stated that Danny and Gail would jointly own the yacht and be equally responsible for all related expenses.

The parties agreed to joint custody of their children, and Danny agreed to pay $2,000 a month in temporary child and spousal support. Gail signed the agreement without the assistance of counsel because she "trusted Danny, and she just wanted to make Danny happy and sign it."

Shortly after Gail signed the agreement, the superior court granted a decree of legal separation incorporating the

agreement. During the hearing -- at which Gail was not present -- Danny assured the standing master that Gail would receive between $450,000 and $600,000 from the sale of the Malibu home after expenses. They also assured the master that the settlement agreement would obviate the need for spousal support. When Danny and Gail ultimately sold the Malibu home, however, they barely made enough money to cover their costs and netted only $419.89. Finally, Danny testified that the agreement would allow for future reconciliation.

3. The post-separation relationship

After the superior court entered the decree of legal separation in 1991, the Glasens remained married and reconciled a few months later. Their sexual relationship resumed, and their marital relations continued as they had before the separation. For the next two years Gail lived in the Malibu home while Danny commuted from Cordova to visit. Then Gail moved back to Cordova with the children to be with Danny and enroll Drake in school. The Glasens remained in Cordova together for two more years.

During this entire period -- from 1991 through 1996 -- Danny and Gail remained a financial and marital unit. They filed joint tax returns, maintained joint credit cards, and also kept a joint bank account. Moreover, Danny voluntarily supported Gail and the children by wiring them money, paying bills, and depositing money in the joint banking account. The Malibu home remained in joint title.

In January 1996 Gail and the children moved to Juneau so that Gail could pursue her education. But even then, she returned to Cordova during the summer with the children to be with Danny.

In the spring of 1997 Danny and Gail decided to move to Cambria, California, and buy a home there. They flew to California together to look for real estate and business opportunities. Before they could make the move, however, Danny and Gail had an argument that precipitated the present divorce action. Danny filed for divorce in July 1997 and sought to enforce the 1991 separation agreement.

B. Procedural History

After Danny filed for divorce in July 1997, he requested that the 1991 separation agreement be merged into the divorce decree. Superior Court Judge Elaine M. Andrews granted the divorce, but declined to incorporate the 1991 agreement into the divorce decree. Instead, Judge Andrews scheduled an evidentiary hearing to determine whether the agreement was valid and enforceable. The superior court did award visitation and custody under the terms of the 1991 agreement, but required that child support conform to Alaska Civil Rule 90.3 guidelines. The court also ordered interim spousal support and attorney's fees for Gail.

Ultimately, the superior court determined that although it had authority to enter the decree of legal separation in 1991, the separation decree was interlocutory rather than final. On alternative grounds, the superior court concluded that Gail had met the Civil Rule 60(b)(6) requirements to set aside the decree.

Finally, the superior court determined that under a post-nuptial contract analysis, the 1991 agreement did not "meet the fair and reasonable test or survive an equitable estoppel analysis." The court entered a Rule 54(b) certification of final order, and Danny timely appealed.

III. STANDARD OF REVIEW

To the extent that this case presents a question of law, we exercise our independent review.[1] We will disturb the superior court's factual findings only if those findings are clearly erroneous.[2] "It is the function of the trial court, not of this court, to judge witnesses' credibility and to weigh conflicting evidence."[3]

Moreover, we "will not disturb a trial court's grant of a Rule 60(b) motion except upon a showing of an abuse of discretion."[4] And we will find an abuse of discretion only when "left with a definite and firm conviction, after reviewing the whole record, that the trial court erred in its ruling."[5]

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1 See Knutson v. Knutson, 973 P.2d 596, 599 (Alaska 1999).

2 See id.

3 Id. at 599-600.

4 McGee v. McGee, 974 P.2d 983, 987 (Alaska 1999) (quotation omitted).

5 Id. (quotation omitted).

IV. DISCUSSION

A. The Superior Court's Authority to Enter the Separation Decree

Gail argues as a preliminary matter that the superior court lacked authority to enter the separation decree in 1991 because actions for legal separation do not exist in Alaska. After finding "inferential authority recognizing the validity of separation agreements," the superior court concluded that it possessed jurisdiction when it granted the decree in 1991.

Although there is no statute that directly authorizes courts to enter separation decrees, the superior court reasoned that the legislature's references to "legal separation" in statutes pertaining to child custody and support indicate that individuals may bring such actions. The superior court noted that although some statutes refer to "legal separation," these provisions do not specifically authorize courts to grant legal separations.[6] Danny, on the other hand, maintains that because actions for separate maintenance exist at common law, the superior court possessed authority to enter the separation decree here.

We need not decide in this case whether courts in Alaska may enter decrees of legal separation. Instead, we affirm the superior court's decision because we conclude that the decree, even if authorized, was not a final order and that the Glasens' reconciliation dissolved the decree.

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[6] See AS 25.24.150(a) (governing child custody judgments); AS 25.27.900(5) (governing the Child Support Enforcement Agency).

B. The Separation Decree's Status as an Interim Order

Danny disputes the superior court's conclusion that the Glasens' 1991 separation agreement was not a final property division. We agree with the superior court that the legal separation decree was an interim order that was "provisional and conditional, affording an opportunity for reconciliation."[7] First, Danny's testimony from 1991 indicates that he did not intend the separation to be final. He and Gail specifically chose to separate rather than divorce because they believed they might still reconcile.[8] Danny testified that "we don't want to totally, even though we can't get along, we're incompatible right now, we don't want to totally close the door on it for the future if something does happen we can get together." Thus, Danny himself believed

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[7] 24 Am. Jur. 2d Divorce & Separation § 409, at 571 (1998). The treatises also refer to legal separation as "limited divorce" and "judicial separation," noting that there are no meaningful distinctions between these terms. See Judge Joyce Hens Green et al., Dissolution of Marriage § 3.02, at 125 (1986) ("The limited divorce is also called . . . legal separation, or judicial separation."); 24 Am. Jur. 2d Divorce & Separation § 1, at 229 (1998) ("Absolute divorce . . . is a judicial dissolution of the marriage . . . whereas limited divorce, sometimes referred to as . . . legal separation is a change in status by which the parties are separated and are precluded from cohabitation, but the actual marriage is not affected."). Thus, we refer to the action in this case as simply "legal separation."

[8] States that recognize legal separation as an action distinct from dissolution or separate maintenance provide for termination or revocation of the separation decree upon reconciliation. See Or. Rev. Stat. § 107.475 (1999) (requiring courts to fix duration of legal separation decree and providing that when the judicially determined time expires, "the decree shall have no further effect"); Wis. Stat. Ann. § 767.09 (West 1993) ("A decree of separation shall provide that in case of a reconciliation at any time thereafter, the parties may apply for a revocation of the judgment.").

that he and Gail might reconcile, indicating that the separation was not a permanent arrangement.

Moreover, the test of a final judgment "is essentially a practical one."[9] We have stated:

> The basic thrust of the finality requirement is that the judgment must be one which disposes of the entire case, ". . . one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." Further, the reviewing court should look to the substance and effect, rather than form, of the rendering court's judgment, and focus primarily on the operational or "decretal" language therein.[10]

The Glasens' decree of legal separation fails this test of finality, for it provides that the child custody and property settlement agreement "shall be incorporated in any final judgment issued in this action or in any decree of divorce where ever issued . . . ." This clearly implies that the separation decree itself is not the "final judgment issued in this action." Further, the decree demonstrates that it is only a stepping stone on the path to divorce as it provides that "at any time hereafter either party may . . . calendar an uncontested divorce hearing for the purpose of terminating the parties' marriage." Thus, the separation decree was an interim rather than a final order.

Finally, a contract that purports to embody a final property distribution, but which does not list or describe all of

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[9] City and Borough of Juneau v. Thibodeau, 595 P.2d 626, 628 (Alaska 1979).

[10] Matanuska Maid, Inc. v. State, 620 P.2d 182, 184-85 (Alaska 1980).

the spouses' property or assets, is invalid as a final property division.[11] The Glasens' separation agreement did not fully list or describe all of the marital property that existed in 1991. Indeed, the Glasens may have continued to acquire marital property or debt from 1991, when the separation decree was entered, to 1997, when Danny filed for divorce. Because the Glasens continued their marital relationship for approximately six years after the initial settlement agreement, that agreement could not have embodied a final property division.

We conclude that the Glasens' decree of legal separation could not be a final judgment. Thus, even assuming that Alaska law authorizes entry of a separation decree, the Glasens' separation decree was valid only insofar as it settled certain support and property issues between the spouses while they were separated.

C. The Glasens' Reconciliation

It is well recognized that a legal separation decree ordinarily terminates "if the parties become reconciled and resume cohabitation."[12] The superior court found that Danny and Gail reconciled about three months after the separation decree was entered. Danny asserts that because Gail committed adultery during

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[11] See Lacher v. Lacher, 993 P.2d 413, 419-20 (Alaska 1999); Musser v. Johnson, 914 P.2d 1241, 1242 (Alaska 1996); 24A Am. Jur. 2d § 1111, at 533 (citations omitted).

[12] 24 Am. Jur. 2d Divorce & Separation § 409, at 572 (1998). Some jurisdictions that statutorily authorize judgments for legal separation require the parties to make a joint application to the court for an order of termination. See id. and n.61. In many jurisdictions, however, the separation decree automatically terminates, or its effect is destroyed, once the parties reconcile. See id. and n.60.

their separation and sporadically lived in California, the superior court erred in concluding that they reconciled. Gail counters that they reconciled within a few months of their separation, and that "nothing changed in the pattern of their marriage."

Although we have never defined "reconciliation" expressly, one authority has stated that

> reconciliation means a voluntary resumption of marital cohabitation in the fullest sense. This ordinarily requires living together as husband and wife, engaging in sexual relations, and where possible, establishing a joint domicile.
>
> . . . .
>
> But a reconciliation may be found to exist without the resumption of a matrimonial domicile if the parties live together as constantly as the circumstances permit.[13]

In addition, when spouses reconcile and indicate through their conduct "the intention of rescinding the separation agreement in whole or in part, effect should be given to their action."[14]

In this case the superior court found sufficient facts to support its conclusion that Danny and Gail had reconciled:

> After the separation agreement was ordered, the couple cohabitated [sic] and had sexual relations. They filed joint tax returns for the years between the legal separation and the divorce. In all ways Danny and Gail operated as a marital unit. Danny did not pay child

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[13] Homer H. Clark, Jr., The Law of Domestic Relations in the United States § 19.7, at 437-38 (1998) (footnotes omitted); see also 24 Am. Jur. 2d Divorce & Separation § 34, at 253-54 ("If the parties resume the marital relationship by unequivocal acts, it is said that the parties have reconciled, even if the reconciliation fails after a short time.") (citation omitted).

[14] Clark, supra note 13, § 19.7, at 439.

> support as the parties contemplated in the Separation Agreement, because the Glasens functioned as a family unit.

The record supports the superior court's findings: Danny and Gail maintained both a commuter relationship and a cohabitation relationship, and they continued to function as an economic unit. They filed joint tax returns, maintained joint credit cards, and also kept a joint bank account. As the trial court found, the Glasens' reconciliation, cohabitation, and economic commingling indicated an intent to behave as a marital unit and rescind their separation agreement. Based on these facts, we conclude that the superior court did not err in finding that the Glasens reconciled.

Thus, the Glasens' reconciliation after their separation provides a separate basis for affirming the superior court's decision not to incorporate the separation decree into the divorce decree.

D. Interim Alimony and Interim Attorney's Fees

Danny also argues that the superior court erred in awarding interim alimony and attorney's fees to Gail. The superior court did not, however, certify those awards as final orders under Civil Rule 54(b); it only certified its decision to set aside the separation decree.[15] Thus, the interim alimony and attorney's fees

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[15] Alaska R. Civ. P. 54(b) states:

> When more than one claim for relief is presented in an action, . . . the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and

(continued...)

awards are not proper matters for appeal, and we therefore do not decide whether the superior court erred in granting those awards.

V. CONCLUSION

Because the Glasens' 1991 separation decree was not a final judgment, we AFFIRM the superior court's decision to deny Danny's request to incorporate the separation agreement into the 1997 divorce decree.

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[15](...continued)
upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all of the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

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Divorce—Rates in Alaska and the U.S. and Correlation to Welfare Participation

Legislative Research Services
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Legislative Affairs Agency
Alaska State Legislature

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SUMMARY

You wished to know the divorce rate in Alaska and how it compares to rates across the country. You requested information on the economic impacts of divorce on women and children in Alaska. Additionally, you wished to know the percentage of public assistance cases that are single-parent households and the percentage that are married-parent households.

After increasing for several years, the divorce rate in the nation and in Alaska has been declining since about 1980. From highs of 5.2 (nationwide) and 8.8 (in Alaska) during 1980, the divorce rate declined to 4.4 divorces per 1,000 population nationwide and 5.0 divorces per 1,000 population in Alaska in 1996. Thus, the drop (a 43 percent decline) in Alaska's rate has been more dramatic than that in the nation as a whole. Several factors contribute to Alaska's relatively high divorce rate, including the state's higher percentage of individuals within the prime age group for divorce (20 - 39) when compared to the nation as a whole and Alaska's relatively smaller percentage of individuals who are 50 and over—the age group least likely to divorce.

While divorce adversely impacts the financial resources of custodial mothers and their children, it is important to note that approximately 43 percent of the births in Alaska are to unmarried mothers and nearly half of the divorces involve no minors whatsoever. Approximately 73

percent of public assistance recipients in Alaska in 1996 were single-parent families; nevertheless, attempting to draw conclusions about the effect of divorce on public assistance participation is problematic given the high percentage of recipients who may have never married. Likewise, the approximate 17 percent of public assistance recipients classified as dual-parent families, can not be automatically equated with the "American Dream" family unit experiencing hard times. Nor can antisocial behavior be linked directly to divorce although at-risk youth are often from single-parent households.

The Divorce Rate in Alaska and the United States

The most commonly used measures of divorce are the number of divorces, the crude divorce rate (the number of divorces per 1,000 total population), and the divorce rate per 1,000 married women aged 15 and over. These measures are based on the numbers of divorces (including absolute divorces, annulments, and dissolutions of marriage) reported by states to the National Center for Health Statistics (NCHS) and population estimates generated by the U.S. Census Bureau, and they show recognizable and persistent patterns across the country.

According to the NCHS's most recent comprehensive analysis of detailed divorce data (1990), the crude divorce rate for the nation as a whole was 4.7 (that is, 4.7 divorces per 1,000 total population).[1] At that time, Alaska ranked 15th, with a crude divorce rate of 5.7.[2]

Provisional divorce data from the NCHS and population data from the U.S. Census Bureau have since that time shown a steady decline in the crude divorce rate of both the nation and the state of Alaska. According to recent provisional data, the crude divorce rate for the country as a whole in 1996 had dropped to 4.4.[3] By comparison, Alaska's crude divorce rate for the same year was 5.0. Based on provisional data from the NCHS, we estimate Alaska's rank among states for 1996 at between 13th and 20th in the nation.[4]

The following table shows U.S. and Alaska divorce rates at five-year intervals from 1965 through 1995. We have also included rates from 1971 and 1996 to provide a more complete picture of the trends in divorce rates both in Alaska and in the nation as a whole. The divorce rate rose steadily between 1965 and 1980, both in the United States and in Alaska; at that point, however, the rates began to decline. As you will see from the table and accompanying figure below, while Alaska's divorce rate was significantly higher than that in the rest of the country, the decline was far more dramatic. While the U.S. rate declined from a high of 5.2 in 1980 to 4.4 in 1996, representing a 15 percent drop, the rate in Alaska declined from a high of 8.8 in 1980 (the

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[1] Divorces/total population X 1,000 = crude divorce rate. The most recent comprehensive analyses of detailed divorce data were compiled for 1990. Because of decreased state and federal budgets, NCHS suspended collection of detailed data in January 1996. Data collected after 1990 is considered provisional. Currently, no federal or private organization completes the detailed analyses of nationwide divorce data previously provided by NCHS.

[2] National Center for Health Statistics, "Advanced Report of Final Divorce Statistics, 1989 and 1990," *Monthly Vital Statistics Report*, March 22, 1995.

[3] National Center for Health Statistics, "Births, Marriages, Divorces, and Deaths for June 1997," *Monthly Vital Statistics Report*, January 28, 1998. Preliminary data for 1997 show the divorce rate leveling off—the U.S. divorce rate for 1997 is 4.3; the Alaska divorce rate for 1997 is 5.1.

[4] To estimate state rankings for 1996, we used provisional divorce statistics from the NCHS and U.S. Census Bureau estimates of state populations for 1996 as reported in the *Congressional Quarterly's State Fact Finder, 1998: Rankings Across America*. Because divorce data were unavailable for seven states, we are unable to more precisely establish state rankings.

recession following the end of the pipeline construction boom) to 5.0 in 1996, a drop of 43 percent.

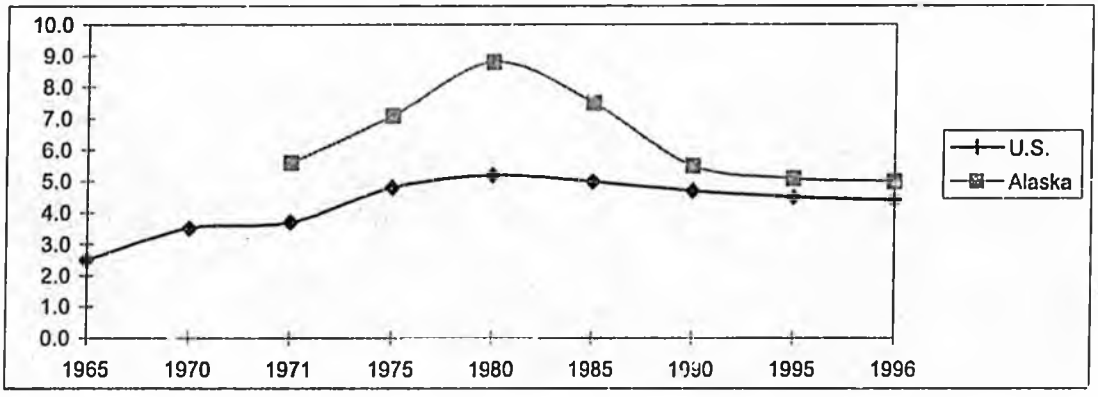
Table 1: Crude Divorce Rates, U.S. and Alaska, 1965-1996

Year	U.S.	Alaska
1965	2.5	
1970	3.5	
1971	3.7	5.6
1975	4 8	7.1
1980	5.2	8.8
1985	5.0	7.5
1990	4.7	5.5
1995	4.5	5.1
1996	4.4	5.0

Notes:
Because Alaska data for 1965 and 1970 were not readily available, we have included data from 1971. Alaska's crude divorce rate was uncharacteristically high during the recession following the pipeline construction boom: 7.8 in 1976; 8.7 in 1977; 8.3 in 1978; 8.6 in 1979; and peaking at 8.8 in 1980.

Sources:
National Center for Health Statistics, "Divorces and Annulments and Rates, United States, 1940-90," *Monthly Vital Statistics Report*, March 22, 1995; and Alaska Bureau of Vital Statistics, *Annual Reports*, various years.

Figure 1: Crude Divorce Rates, U.S. and Alaska, 1965-1996



Notes and Sources: See Table 1, above.

When examining Alaska's divorce rate, particularly in relation to that of the nation as a whole, it is important to note that a number of other factors impact the crude divorce rate. Age is the primary demographic characteristic that influences overall divorce rates.

According to NCHS demographers, the following patterns are persistent and recognizable across the country:

- Divorce occurs with the highest frequency among men who are between the ages of 20 and 24 and among women who are between the ages of 15 and 19.
- Divorce rates are characteristically high among men who are between the ages of 25 and 39 and women who are between the ages of 20 and 39.
- Divorce rates drop sharply with age.

As described in a report previously prepared by this agency, Alaska may have substantially the same divorce rates by age as the nation as a whole. However, because a relatively larger proportion of Alaska's population is between the ages of 20 and 39 (the highest divorce rate age group), and a relatively smaller proportion of the population is over the age of 50 (the lowest divorce rate age group), Alaska naturally has a higher overall divorce rate.[5] Furthermore, Alaska normally has one of the highest levels of in, out, and gross migration—largely a phenomenon of adults within the highest divorce rate age groups. Of particular note in this regard is the fact that divorce data are compiled by state of occurrence, not residence, so migration may artificially inflate Alaska's divorce rate. Table 2 shows the relative percentage of the U.S. and Alaska populations in the highest and lowest divorce rate age groups as of July 1, 1996.

Table 2: Percent of Population in High and Low Divorce Rate Age Groups, July 1, 1996

Ages 20 - 39		Ages 50 and Older	
U.S.	Alaska	U.S	Alaska
30	33	26	16

Sources:
"Resident Population of the United States: Estimates by Age and Sex," U.S. Bureau of the Census, May 29, 1998, *http://www.census.gov/population/estimates/nation/intfile2-1.txt*; and "Alaska Total Population Overview: 1996 Estimates," Alaska Department of Labor, Research and Analysis Section, Demographics Unit, *http://www.state.ak.us/local/akpages/LABOR/research/poplet.htm.*

Age and migration characteristics combine with peculiarities of Alaska's divorce laws—including convenient procedures and lenient grounds, residency requirement and waiting periods—and relatively uncongested courts to contribute to the state's relatively high overall divorce rate. Despite these factors, Alaska's divorce rate has dropped dramatically in the last several years—a trend that appears to be continuing.

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[5] Patricia Young, "Divorce in Alaska," Alaska Legislative Research Agency, 91.292, November 12, 1991; included as Attachment A.

Economic Impacts of Divorce on Women and Children in Alaska

According to a 1991 evaluation of the effectiveness and impact of Alaska's child support guidelines used by the Alaska Court System, in the majority of cases in which fathers were granted primary physical custody of children, their post-divorce per capita incomes remained relatively unchanged, increasing an aver ge of one percent; the non-custodial mothers' incomes dropped by 2 to 22 percent, an average of 11 percent. In cases in which mothers were awarded physical custody (approximately 72 percent of the cases studied), the families' per capita incomes declined by 17 to 33 percent, depending primarily on the number of children involved, for an average 28 percent decline from the pre-divorce level. In contrast, the non-custodial fathers' incomes increased by 31 to 118 percent, for an average 54 per cent. These changes were for cases in which child support obligations were paid. When average arrearages were considered, custodial mothers' incomes dropped by 35 to 42 percent while non-custodial fathers' incomes rose by 45 to 192 percent.[6]

Although the guidelines for establishing child support obligations and the methods for collecting such obligations have changed since the time of the study, it continues to be true that the financial resources of custodial mothers and their children diminish after divorce.

When attempting to correlate divorce rates with the impact of divorce on Alaska's children, it should be noted that a high proportion of children in Alaska are born to unmarried mothers (43 percent in 1996), and not all divorces involve minors.[7] According to the Alaska Bureau of Vital Statistics *Annual Reports*, approximately half of all divorces in the state involve no minor children.

Table 3: Percentage of Alaska Divorces Involving No Minor Children

Year	Percent
1976	46
1980	46
1986	50
1990	50
1996	49

SOURCE:
Alaska Bureau of Vital Statistics, *Annual Reports*, years as indicated.

[6] Ginny Fay and Emily Read, *Child Support in Alaska: An Evaluation of the Effectiveness and Impact of Alaska's Child Support Guidelines* (Alaska Women's Commission and the University of Alaska, July 1991).

[7] NCHS, *Monthly Vital Statistics Report*, Vol. 46, No. 1 Supplement, quoted in NCHS, "Alaska Health Facts," *FASTATS*, updated May 19, 1998, *http://www.cdc.gov/nchswww/fastats/alaska.htm* (June 11, 1998).

Single Parent Families on Public Assistance

According to data supplied by the Division of Public Assistance, the division handled an average of 12,198 Aid to Families with Dependent Children (AFDC) cases over the 18 month period from July 1995 through December 1996. The following table shows the percentage of each category of AFDC cases from March 1996, a month the Division considers representative of the year.

Table 4: Alaska AFDC Cases by Category, March 1996

	Basic Cases				Two-Parent Family Cases (e)	Totals
	Child Only/No parents (a)	Pregnant Women (b)	2 Parents/1 Incapacitated (c)	Single Parent Household (d)		
Number of Cases	1,066	160	128	9,304	2,127	12,784
Percent of all Cases	8.3	1.3	1.0	72.8	16.6	100.0

NOTES:
Until 1997, the cash assistance program was known as Aid to Families with Dependent Children; since its restructuring, it is known as Temporary Assistance to Needy Families, and eligibility rules have changed somewhat. We have used AFDC data to correspond with the 1996 population and divorce data used elsewhere in this report.
(a) Cases generally involving eligible children cared for by relatives who do not themselves qualify.
(b) Recipients qualify by household income and resources and because of pregnancy; they may or may not be married.
(c) One parent is unemployable because of disability.
(d) Cases include households in which the parent is single or divorced as well as households in which the other parent is absent.
(e) Cases include two-parent households in which one parent is unemployed.

SOURCE:
Alaska Department of Health and Social Services, Division of Public Assistance.

According to the regulations governing AFDC, the division classified approximately 73 percent of the public assistance cases as single-parent household cases, and approximately 17 percent two-parent households. Nevertheless, one should not conclude that 73 percent of these cases result from divorce. In addition to the fact that approximately 50 percent of all divorces in the state involve no minor children, national statistics show that nearly half of all AFDC mothers have never been married.[8]

On the national level, according to U.S. Department of Health and Human Services information on welfare for 1997, across the country two-parent households represented 6.9 percent of the welfare caseload. For the same time period, two-parent households represented 15.8 percent of

[8] "Mothers Who Receive AFDC Payments—Fertility and Socioeconomic Characteristics," *Statistical Brief*, Bureau of the Census, March 1995, *http://www.census.gov/socdemo/www/fsb2-95.html* (June 13, 1998); included as Attachment B.

Alaska's caseload.[9] In other words, proportionately, there are fewer single-parent households on welfare in Alaska than in the nation as a whole.

Correlation of Divorce to Antisocial Behavior

We contacted researchers with the Office of Juvenile Justice and Delinquency Prevention (OJJDP), as well as other national sources of information and statistics on families and youth, including the National Conference of State Legislatures and the Family Law section of the American Bar Association. In an effort to assist us in ascertaining if any data substantiates the notion that divorce leads to antisocial behavior, researchers with the OJJDP also contacted additional sources. We found no studies isolating and documenting the influence of divorce on children in regard to social, educational, and/or emotional behavior and achievement. The OJJDP provided a survey of juveniles and young adults in long-term, state-operated juvenile institutions, conducted in 1987. Results from the survey indicated that less than a third of the youth lived with both parents while they were growing up. The study did not, however, assess the number of those households that were single-parent households as a result of divorce. The following were among the survey findings:

> About 70 percent did not live with both parents while they were growing up. More than half (54%) reported having primarily lived in a single-parent family.
>
> Approximately 4 of 5 juveniles (82.2%) reported previously having been on probation, and 3 of 5 (58.5%) reported having been committed to a correctional institution at least once in the past.
>
> Almost 43 % of the juveniles had been arrested more than 5 times, with over 20% of them having been arrested more than 10 times in the past.[10]

On the other hand, according to OJJDP researchers, the majority of juveniles that come into contact with the court system do so only once. Furthermore, they note that since approximately 1980, the percentage of the overall population growing up in single-parent families is very similar to that of the offender population. Nevertheless, undoubtedly, a correlation exists between the dynamic of poverty, substance abuse, dysfunctional family structure and domestic abuse, and contact with the justice system.[11]

I hope you find this information useful. Please do not hesitate to contact us if you have questions or need additional information.

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[9] "Temporary Assistance for Needy Families (TANF)—Two Parent Families as Percentage of Total Families on Welfare by State," Administration for Children and Families, U.S. Department of Health and Human Services, September 1997, *http://www.adf.dhhs.gov/news/may97_2p.htm* (June 12, 1998).

[10] Allen J. Beck, Susan A. Kline, and Lawrence A. Greenfeld, "Survey of Youth in Custody, 1987," *Special Report*, Bureau of Justice Statistics, September 1988.

[11] Eric Peterson, Office of Juvenile Justice and Delinquency Prevention, U.S. Justice Department, referring to results of studies conducted in 1976 and 1991.

List of Attachments

Attachment A – Patricia Young, "Divorce in Alaska," Alaska Legislative Research Agency, 91.292, November 12, 1991.

Attachment B – "Mothers Who Receive AFDC Payments—Fertility and *Statistical Brief*, Bureau of the Census, March 1995, *http://www.census.gov/socdemo/www/sb2-95.html* (June 13, 1998).

Attachment A

Patricia Young, "Divorce in Alaska," Alaska Legislative Research Agency, 91.292, November 12, 1991.

Alaska State Legislature

Legislative Research Agency

P.O. Box Y
Juneau, AK 99811-3100
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November 12, 1991

MEMORANDUM

TO:

FROM: Patricia Young
Legislative Analyst

RE: Divorce in Alaska
Research Request 91.292

You asked this agency to provide information and statistics on divorce. You were particularly interested in knowing the Alaska divorce rate, the length of time typically needed to obtain a divorce when custody and/or property issues must be resolved, and the number of divorced couples who remarry each other.

The most common measures of divorce are the number of divorces, the crude divorce rate (the proportion of divorce per 1,000 of the entire population), and the divorce rate per 1,000 marriages. This rate is typically based on the number of married women aged 15 and over.[1] Such measures show recognizable and persistent patterns across the country. Nevertheless, divorce, like all human behavior, is more easily counted than accounted for.

Divorce Rates--Demographics

Data from 1988 have been used throughout this memorandum because later data are still considered provisional. Divorce rates are based on numbers of divorces (including absolute divorces, annulments, and dissolutions of marriage) reported by states to the National Center for Health Statistics (NCHS) and population estimates as of July 1, 1988, by the U.S. Bureau of Census.

According to the National Center for Health Statistics' final data on 1988 divorce statistics, the crude divorce rate for the U.S. in 1988 was 4.7 (i.e., 4.7 divorces per 1,000 population).[2] By comparison, Alaska ranked eighth in the nation, with a crude divorce rate of 6.4.[3] Alaska's rate of 6.4 was derived from the calculation of 3,342 divorces within a population of 524,000.

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[1]This rate can be calculated by the number of married women or men aged 15 and above; however, the resulting rates will differ slightly. Marital status is self-reported and not verified. Because individuals define their marital status differently, the number of married women and men do not match.

[2]Divorces/total population x 1,000 = crude divorce rate.

[3]National Center for Health Statistics, "Advance Report of Final Divorce Statistics, 1988," *Monthly Vital Statistics Report*, May 21, 1991.

More recent divorce and population data, supplied by the Alaska Bureau of Vital Statistics and the Alaska Department of Labor's *Alaska Population Overview: 1988 and Provisional 1989 Estimates*, 1990, show the number of divorces for that year at between 3,299 and 3,370 and the population at 531,000. The Alaska divorce rate based on these figures would be 6.2 or 6.3 per 1,000 population. Using either figure, however, Alaska's ranking among states would remain unchanged.[4]

Based on NCHS data, the U.S. divorce rate, which peaked at 5.3 per 1,000 population in the late 1970s and early 1980s, generally declined through the 1980s to 4.7 in 1988, a drop of 0.6 divorces per 1,000 population, or approximately 11 percent. The decline was more significant in Alaska. From 8.7 in 1978 (the recession following the pipeline construction boom) to 6.4 in 1988, the Alaska divorce rate dropped by approximately 2.3 divorces per 1,000 population, or 26 percent. (Using state data, the drop would be 2.4 divorces per 1,000 population, or approximately 28 percent.) Provisional data from NCHS show the U.S. rates for 1989 and 1990 holding at 4.7 but the Alaska rate dropping to 6.3 in 1989 and 5.5 in 1990. If these rates prove accurate, Alaska's rank among states for 1990 will be between 12th and 18th.[5]

Another way of measuring divorce is to compare the number of divorces to the total number of marriages within the population. The 1988 U.S. rate of divorce among married women at or above 15 years of age was 20.7 per 1,000. Thus, approximately 2 percent of the married couples in the U.S. divorced in 1988. Alaska's divorce rate per 1,000 married women 15 years and over for the same year was approximately 29.8.[6] In other words, approximately 3 percent of Alaska's married couples divorced in 1988. Provisional data for 1989 and 1990 suggest that this rate is also declining. The 1990 Alaska divorce rate is currently estimated to be 26.3 per 1,000 married women (based on 2,921 divorces among 110,862 married women).

Although helpful for broad comparisons, these rates are less meaningful than divorce rates by age, which show the number of divorces per 1,000 married women (or men) of a particular age group. The following table shows 1988 divorce

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[4]Unless specifically noted otherwise, subsequent calculations for Alaska divorce in 1988 will be based on 3,342--the number of 1988 Alaska divorces reported to NCHS--and 531,000--the Alaska Department of Labor's 1988 population count.

[5]National Center for Health Statistics, "Annual Summary of births, Marriages, Divorces, and Deaths: United States, 1990," *Monthly Vital Statistics Report*, August 28, 1991. Based on provisional data, six states and the District of Columbia have 1990 divorce rates of 5.5 per 1,000 population. Because population figures are not listed, these states cannot be precisely ranked.

[6]Divorces/married women x 1,000 = rate of divorce for married couples, or 3,342/112,236 x 1,000 = 29.77.

rates by age for men and women in the divorce registration area (DRA)--those 31 states and the District of Columbia which report detailed data to the NCHS. The DRA accounted for 49 percent of all divorces in 1988.

TABLE 1
DIVORCE RATES BY AGE, 1988; DIVORCE REGISTRATION AREA

	Men	Women
All ages	18.9	18.5
15-19	37.5	56.3
20-24	55.9	46.3
25-29	38.9	35.6
30-34	30.2	26.7
35-39	26.1	22.3
40-44	21.3	19.9
45-49	17.0	13.0
50-54	11.4	7.8
55-59	7.0	4.7
60-64	4.5	2.8
65+	1.9	1.5

Source: NCHS, "Advance Report of Final Divorce Statistics, 1988," Table 5.

Unfortunately, divorce rates by age are not generally available for individual states, including Alaska.[7] Barbara Wilson, demographer, Natality, Marriage, and Divorce, National Center for Health Statistics, notes that, nevertheless, the following patterns are persistent and recognizable across the country.

- Divorce occurs with the highest frequency among men between the ages of 20 and 24 and among women between the ages of 15 and 19.
- Divorce rates are characteristically high among men between the ages of 25 and 39 and women between the ages of 20 and 39. The majority of divorces take place among these same age groups.
- Divorce rates drop sharply with age.

Although we are unable to compare specific divorce rates by age, the table below shows the percent distribution of 1988 divorces by age of husband and

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[7]Divorce rates by age are calculated by dividing the total number of divorces among a given age group by the number of married women (or men) in that age group and multiplying by 1,000. Because the number of married men and women within each age group in Alaska is unavailable, we cannot compare our rates by age to the DRA rates.

wife at the time of decree for the divorce registration area and for Alaska.[8] As noted above, the majority of divorces occur among men between the ages of 25 and 39 (58 percent for the DRA; 59 percent for Alaska) and women between the ages of 20 and 39 (73 percent for the DRA; 78 percent for Alaska).

TABLE 2
PERCENT DISTRIBUTION OF DIVORCE BY AGE: DRA AND ALASKA

	Men		Women	
	DRA	Alaska	DRA	Alaska
15-19	0.4	0.3	1.7	1.9
20-24	8.7	11.1	14.4	16.6
25-29	19.8	20.8	22.6	23.2
30-34	20.8	19.1	20.4	21.4
35-39	17.2	19.0	15.8	16.8
40-44	13.3	13.3	11.4	10.5
45-49	8.4	7.8	6.5	5.6
50-54	4.9	4.6	3.3	2.2
55-59	2.9	2.0	1.8	0.8
60-64	1.8	(60-69) 1.7	1.1	(60-69) 0.8
65+	1.7	(70+) 0.2	1.0	(70+) 0.2
all ages	99.9	99.9	100.0	100.0

(Percentages may not add to 100 due to rounding.)

Source: NCHS, "Advance Report of Final Divorce Statistics, 1988," Table 5 and Alaska Division of Vital Statistics.

Alaska has a higher percentage of divorce among both men and women through age 39 than does the DRA. This means that in Alaska, a higher percentage of divorce occurs among age groups with characteristically high divorce rates, and a lower percentage of divorce occurs among age groups with characteristically low rates. To illustrate how this affects an overall divorce rate, consider the following. Given that individuals between the ages of 25 and 39 divorce at the rate of approximately 30 per 1,000 married women aged 15 and above, if a state has 100,000 such married women and 33 percent of them are within the high divorce rate ages (i.e., 33,000), then 990 divorces will occur in that age group. If, however, only 25 percent of the married women are within that age group (i.e., 25,000), then only 750 divorces will occur in that age group.

Age is the primary demographic characteristic that influences overall divorce rates. Migration is another important factor. Both are discussed below.

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[8]Percent distribution of divorce in Alaska was calculated from Division of Vital Statistics' data showing the total number of divorces in 1988 by age group (with a total of 3,297 divorces for men and 3,298 for women).

Alaska Age Characteristics

The following table shows the percent distribution of population by age for the U.S. and for Alaska. As you will see, a relatively large proportion of Alaska's population is between the ages of 20 and 39 and a relatively small proportion is over the age of 40. Alaska has a higher percentage of its population within each age bracket (except 15-19) through age 44 than does the U.S. as a whole, and Alaska has a lower percentage of its population within each age bracket after age 50.

TABLE 3
PERCENT DISTRIBUTION OF POPULATION BY AGE: U.S. AND ALASKA

	U.S.	Alaska
0-14	21.6	26.1
15-19	7.4	7.1
20-24	7.9	8.3
25-29	8.9	10.9
30-34	8.9	11.6
35-39	7.8	10.2
40-44	6.6	7.4
45-49	5.3	5.3
50-54	4.5	3.8
55-59	4.4	3.0
60-64	4.4	2.4
65+	12.3	3.6
all ages	99.7	100.0

(Percentages may not add to 100 due to rounding.)

Source: Based on U.S. Bureau of the Census 1988 figures reported in *Statistical Abstract of the United States, 1990*, 110th ed., p. 12 and Alaska Department of Labor, *Alaska Population Overview: 1988 and Provisional 1989 Estimates*, p. 31.

With the exception of one state, Alaska has the lowest median age.[9] In Alaska, 26 percent of the population is under 15 years of age, compared to 22 percent nationally; 48 percent is between 15 and 39 years of age, compared to 41 percent nationally; only 20 percent is 40 or above, compared to 37 percent nationally. In Alaska, only 4 percent is over 65, compared to 12 percent nationally.

Alaska may have substantially the same divorce rates by age as the nation as a whole, but because a larger proportion of the population is within high divorce rate age groups, and a smaller proportion of the population is within

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[9]*States in Profile: The State Policy Reference Book 1990*, 2nd edition (Alexandria, Virginia: Brizius & Foster and State Policy Research, Inc., 1990), Table A-6.

low divorce rate age groups, we naturally have a higher overall divorce rate. Furthermore, Alaska normally has one of the highest levels of in, out, and gross migration--largely a phenomenon of adults within the highest divorce rate age groups. Of particular note in this regard is the fact that divorce data are compiled by state of occurrence, not residence.

Alaska Migration Characteristics

According to the Alaska Department of Labor's *Alaska Population Overview: 1988 & Provisional 1989 Estimates*, during the early 1980s, Alaska was the most rapidly growing state in the union. Growth peaked in 1983 with construction and infrastructure development brought on by increased oil revenue. Since that time, the pace of growth has declined, but in almost any year at least ten percent of the population leaves and is replaced (p. 9). Migration includes the rotation of military personnel in and out of the state (estimated to account for about 20 percent of the migration flow each year). This high migration rate in part reflects--as does the size of the nontourist, nonresident population--economic opportunity in Alaska relative to that in other states. Migration is particularly high for individuals between the ages of 18 and 35, many of whom are presumed to bring few dependents with them (p. 26).

Because individuals who migrate tend to be within ages with typically high divorce rates under any circumstance, migration significantly affects divorce rates. Moving is generally considered a highly stressful event. Financial need, the legendary--and therefore anticipated, if not realized--inclemency of physical conditions and stress of being a newcomer to Alaska, and long separations undoubtedly exacerbate family problems and accelerate disintegration.

Unfortunately, length of domicile within the state is not collected with divorce records, and the military claims to track no information on divorce among military personnel (in 1988 there were more than 24,000 military personnel in the state). We are unable, therefore, to ascertain the number of divorces among the nonresident population, the military, or other individuals who tend to migrate.[10] According to a table supplied by the NCHS, however, only about 72 percent of Alaska's divorces in 1988, occurred between "resident" spouses, i.e., both spouses resided within the state.

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[10]According to Betty Mahoney, chief of the Survey, Market and Analysis Division of the U.S. Department of Defense Manpower Data Center, no information on divorce among military personnel is known, but long separation and stressful conditions unquestionably increase the likelihood of divorce.

Migration in and out of Alaska is largely a function of economic opportunity, but in some cases, individuals migrate for the purpose of divorce.[11] Given Nevada's relatively lenient divorce laws and high crude divorce rate (13.2 divorces per 1,000 population), it is reasonable to assume that a Nevada divorce is an attractive alternative to residents of states where divorces may take years due to long residency requirements, long periods of living separate and apart as grounds for divorce, and highly congested courts. In addition to the fact that a high proportion of the Nevada population falls within characteristically high divorce rate ages, Nevada does not particularly discourage migratory marriage and divorce as a matter of public policy. Instead, such events generate state tax revenue.

Using demographic patterns, one could predict that our divorce rate will drop as the state population grows older (Alaska has a high rate of increase in the older population) and that the nationwide trend to postpone marriage will also tend to reduce overall divorce rates. The "boom-bust" economy, however, tends to inflate divorce rates, as would increased numbers of marriages among teenagers (because the divorce rate among that age group is characteristically so high).

Additional Factors Which Influence Divorce Rates

Age and migration characteristics combine with peculiarities of Alaska's divorce law--including convenient procedures and lenient grounds, residency requirements and waiting periods--and relatively uncongested courts to contribute to the state's relatively high overall divorce rate. Pertinent factors are briefly described below.

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[11]According to Harry D. Krause in *Family Law in a Nutshell*, 2nd edition, although periods of liberality have alternated with periods of difficulty, some form of divorce has always been possible. When ecclesiastical courts had jurisdiction over family matters, divorce "from bed and board" (like contemporary legal separation) freed parties from each other but did not allow them to remarry. Annulments, however, were relatively available. Jurisdiction subsequently fell to the secular courts, and full divorce with the right to remarry became available, but the courts maintained the church's view that divorce was a remedy available to an innocent party only. Thus began a long period of what was, for the most part, consent divorce involving perjury and collusion over the grounds of adultery or cruelty (pp. 276 - 281). The decline of the traditional fault-based system and the advent of unilateral no-fault divorce has occasioned the decline but not the demise of migratory divorce. "Comparison shopping" for more liberal divorce laws and conditions continues to be a contributing factor in the calculation of crude divorce rates.

All states have implemented some form of no-fault divorce.[12] Alaska, like a few other states, also provides for a mutual consent divorce, or dissolution, when spouses agree on every issue. Parties are generally not represented by counsel and dissolutions typically proceed more quickly than in divorce proceedings. Uncharacteristically, in Alaska the dissolution process may be used even if children are involved. The dissolution process is often particularly attractive to financially or emotionally vulnerable individuals. For this reason, the Alaska legislature in 1990 enacted a provision which specifies that courts must give "heightened scrutiny" to dissolution agreements when one spouse is represented by counsel and one is not, when there is evidence of domestic violence during the marriage, when there are minor children of the marriage, or when there is a "patently inequitable division of the marital estate" [AS 25.24.220(h)]. The Alaska Supreme Court has further suggested that the legislature consider extending this provision to contested divorces.

Alaska is one of two states with no residency requirement. Twelve states require a one-year residency for the purpose of divorce (five of the twelve make that requirement only if the cause of the divorce occurred outside the state); half of all states require a six-month residency; six states require residency of three months; and seven--including Alaska--require two months or less.

As you may know, Alaska had a statutory one-year residency requirement for divorce until 1975 when it was declared unconstitutional. Since that time, the domicile (i.e., the physical presence with intent to remain) of one spouse has been deemed sufficient for divorce jurisdiction.[13]

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[12]By undermining the more dependent partner's platform for negotiating status and consequences such as property, alimony, and child custody, no-fault divorce has occasioned increased economic hardship for--in the overwhelming majority of cases--divorced women and their children. According to a recent study by Ginny Fay and Emily Read for the Alaska Department of Revenue, *Child Support in Alaska: An Evaluation of the Effectiveness and Impact of Alaska's Child Support Guidelines*, (Alaska Women's Commission and University of Alaska, July 1991), in the majority of cases in which fathers have primary custody of children, their post-divorce per capita incomes remains relatively unchanged; non-custodial mothers' incomes nevertheless drop by 2 to 22 percent. When mothers have primary custody of children (approximately 72 percent of the cases studied), their family per capita incomes decline by 17 to 33 percent (depending primarily on the number of children involved) while fathers' incomes increase by 31 to 118 percent. These percentages are for instances in which child support obligations are paid. When average arrearages are considered, the mothers' incomes drop by 35 to 42 percent while the fathers' incomes rise by 45 to 192 percent. That such disparity can exist and women and children can be so inadequately protected clearly shows that, as a practical matter, no-fault divorce has serious shortcomings.

[13]*Perito v. Perito*, 756 P.2d 895 (Alaska 1988).

Alaska is one of two states with a waiting period of 30-days. Although many states leave the imposition of conciliation periods to the discretion of the courts, others have made waiting periods between the time of service of process or filing of a petition for divorce and the hearing or trial mandatory, either by statue or rule. Twenty-seven states require waiting periods, ranging from 20 days to six months. In some cases waiting periods are lengthened if minor children are involved.

Family court caselcads and the length of the judicial process also affect divorce rates. Divorce may take years in states with highly congested courts. Although no-fault divorce has reduced the number of migratory divorces, the realities of court caseloads undoubtedly encourage the practice and, thus, impact state divorce rates. A recent study prepared by the Alaska Women's Commission and the University of Alaska for the Child Support Enforcement Division of the Department of Revenue reports that although it varies for different locations in the state, the average length of the judicial process involving child support and custody is approximately five months. The average for the dissolution process is approximately two months, while the average for the divorce process is approximately nine months.[14]

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[14]Ginny Fay and Emily Read, *Child Support in Alaska: An Evaluation of the Effectiveness and Impact of Alaska's Child Support Guidelines*, (The Alaska Women's Commission and the University of Alaska, July 1991).

By state of occurrence, divorce rates are highest in the nation's western and southern regions. The following table shows 1988 divorce rankings and rates; residency requirements and mandatory waiting periods; and rank by population, median age, and net migration for western region states.[15]

TABLE 4
WESTERN REGION STATES--DIVORCE IN 1988

State	Div. Rank	Crude Div. Rate	Resd. Rqmt.	Mand. Wait Period	Pop. Rank	Median Age Rank	Net Migration
Nevada	1	13.2	6 weeks	20 days	41	26	1
Arizona	2	7.1	3 months	60 days	24	38	3
Wyoming	5	6.9	60 days	20 days	50	48	50
Alaska	8	6.4	none	30 days	49	49	5
Idaho	9	6.0	6 weeks	none	42	43	38
Colorado	11	5.7	90 days	90 days	26	39	13
Washington	12	5.7	none	90 days	18	22	12
New Mexico	14	5.6	6 months	none	37	44	15
Oregon	16	5.5	6 months	90 days	30	9	28
Montana	18	5.1	3 months	20 days	44	19	45
Utah	24	4.8	3 months	90 days	35	50	32
Hawaii	26	4.6	6 months	none	39	29	19
California	34	4.2	6 months	6 months	1	36	6

Sources: NCHS, "Advance Report of Final Divorce Statistics, 1988"; "Family Law in the Fifty States: An Overview," *Family Law Quarterly*, Winter 1990; *Shepard's Lawyer's Reference Manual* (1986, with 1988 amendments); U.S. Bureau of the Census, as reported in *Statistical Abstract of the United States, 1990*; *States in Profile: The State Policy Reference Book 1990*, 2nd edition; and *The State Policy Data Book, 1989*.

As you can see, the rates of divorce in the 13 western states are high (8 states within the top 15, 11 within the top 25), the numbers of residents are low (8 states within the bottom 15, 10 within the bottom 25), and the populations (as of July 1, 1989) are young (8 states within the bottom 15, 10 within the bottom 25). Although less consistent, net migration is also relatively high within western region states, with 7 of the 13 ranked in the top 15 and 8 ranked in the top 25. Information on relative court caseloads is unavailable, but it can be assumed that courts are less backlogged in states with smaller populations. Nine of the 13 western region states require residency of three months or less whereas most states require six months to one year; nine of the 13 also require waiting periods of three months or less.

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[15]Net migration information comes from *The State Policy Data Book, 1989* (Alexandria, Virginia: Brizius & Foster and State Policy Research, Inc. 1989), Table A-11, which shows net migration from 1980 through 1988 as a percent of the 1980 population.

States with young resident populations, high migration rates, lenient residency requirements, and relatively low volume courts will have higher crude divorce rates. A high divorce rate is a complex phenomenon that does not lend itself to simple solutions. Waiting periods may be thought to compensate for relatively lenient residency requirements, and instituting longer waiting periods might appear to be a simple way to reduce divorce rates. Historically speaking, however--although serious family disfunction is notorious for prolonging relationships--nothing will deter people who truly wish to part.

Once a petition has been filed, the court may order interim custody and support; however, according to the study on child support in Alaska conducted by the Alaska Women's Commission and the University of Alaska, interim custody was ordered in under ten percent of all cases studied. Although interim child support orders should accompany interim custody orders, interim support was ordered in only 68 percent of those cases with custody orders.[16] Furthermore, many people separate before filing for divorce, and although individuals are obligated by common law to support family members until a divorce is granted, in many cases support stops or seriously diminishes at separation. Given these conditions (and the problems inherent in no-fault divorce), lengthening the waiting period or requiring separation prior to full divorce would further contribute to the impoverishment of children in Alaska and an increase in the number of women and children on welfare. On the other hand, encouraging couples to marry more advisedly would perhaps not be inappropriate.

Number of Remarriages to the Same Partner

Because states do not regularly track information which would answer this or related questions about remarriage to the same spouse, ascertaining the number of couples who divorce in Alaska but remarry while outside Alaska, or the number of couples who marry and divorce outside but remarry in Alaska is not possible. Thus, although light may be shed on this question, a definitive answer to the question of how many couples remarry each other is not possible.

Attachment A was prepared by Anthony Zenk, research analyst with the Alaska Bureau of Vital Statistics. Mr. Zenk searched marriage files for repeat marriages within the state from 1982 through 1990 (Table 1).[17] Mr. Zenk also compared divorce and marriage files to ascertain the number of couples who divorced and remarried in Alaska during that time (Table 2). Table 1 shows that during this nine-year period 235 marriage certificates were filed for couples remarrying spouses. This figure represents less than one percent (0.7) of the couples who divorced within the state within that time period. Table 2 shows that 318 couples, or approximately 1 percent (0.9) of those who divorced within the state during that time period, also remarried within the state during that time period. Because the numbers are duplicative if the couple married, divorced, and remarried within the state, data from the two searches were compared. Table 3 shows that 120 couples are represented in both

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[16]Fay and Read, p. 27.

[17]Data relating to 1988 through 1990 are provisional.

the previous tables. Thus, it appears that 433 couples engaged in some pattern of remarriage within the state during this time period. This figure represents approximately one percent (1.3) of those who divorced within the state during this time period.

I hope this information is useful. If you have questions or need further information, please call.

Attachment

MEMORANDUM ***STATE OF ALASKA***
HEALTH AND SOCIAL SERVICES

DATE: 10/14/91

TO: Patricia Young
State of Alaska
Legislative Research
Juneau, Alaska 99811-3100

FILE: SR91107

FROM: Anthony Zenk
Research Analyst III
Bureau of Vital Statistics
P.O. Box 110675
Juneau, Alaska 99811-0675

PHONE: (907) 465-3038

Attached is updated re-marriage and divorce and re-marriage information. I apologize that this request took so much time to complete. I caught a bug and have been out of the office. Also, as I mentioned on the phone, after looking at the number of re-marriages for the same couple, using more current data, I noticed significant discrepancies in the number of re-marriages from the number that I reported earlier. I was very surprised to find this significant change and I can't totally explain why this discrepancy exists. However, several corrections to marriage dates were made since the old set of numbers were provided.

Below is revised data for your review. If you would like to go over this data I would be more than willing to sit down and explain how I arrived at these numbers. In so doing, we both would better understand the information and the limitations of using the data to make inferences about a vital event in Alaska.

Tables below are from the marriage and divorce certificate files at the Bureau. Data was taken from the most current statistical tapes that are on the mainframe. Data provided is by <u>year of marriage</u>.

Table 1
Re-marriages in Alaska, for the same couple, by year of marriage, 1982-1990, (selection and sort was by GDOB, BDOB, GBSTATE, BBSTATE).

1982	1983	1984	1985	1986	1987	1988	1989	1990
9	13	26	27	38	27	42	28	25

Table 2

Divorce and then marriage certificate filed in Alaska, for the same couple, data is by year of marriage, 1982-1990.

1982	1983	1984	1985	1986	1987	1988	1989	1990
18	36	41	29	44	37	50	31	32

Table 3

Matched marriage certificates, in both Table 1 and Table 2, above, which reflects the occurrence of a divorce, marriage, marriage, or a marriage, divorce, marriage, for the same couple.

1982	1983	1984	1985	1986	1987	1988	1989	1990
2	5	10	8	15	13	31	18	18

Again, if this data is not clear, please give me a call, so that we can review it together, soon.

Attachment B

"Mothers Who Receive AFDC Payments~~Fertility~~ and Socioeconomic Characteristics," ***Statistical Brief*****, Bureau of the Census, March 1995,** ***http://www.census.gov/socdemo/www/sb2-95.html*** **(June 13, 1998).**

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Bureau of the Census **Statistical Brief**

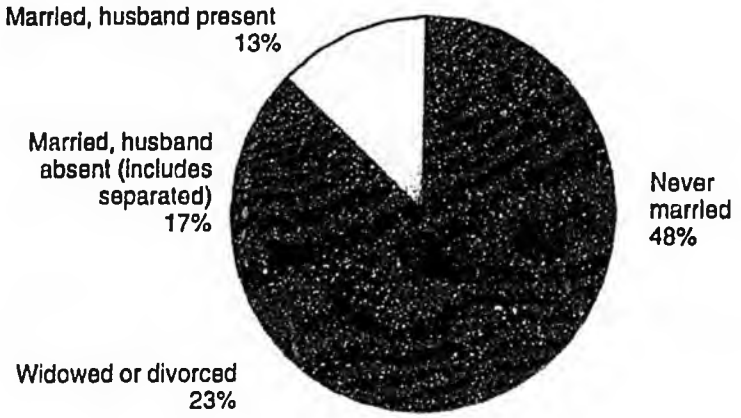
Mothers Who Receive AFDC Payments — Fertility and Socioeconomic Characteristics

In summer 1993, the Nation had 36 million mothers 15 to 44 years old; 3.8 million of them (10 percent) were receiving AFDC (Aid to Families with Dependent Children) payments to help with the rearing of 9.7 million children. (An additional 0.5 million women over 45 years old and 0.3 million fathers living with their dependent children also received AFDC.)

This Brief examines fertility and socioeconomic characteristics of mothers in their childbearing years (aged 15 to 44) who received AFDC and compares them to mothers of those ages who were not receiving payments. The statistics were collected in the Survey of Income and Program Participation (SIPP) between June and September 1993.

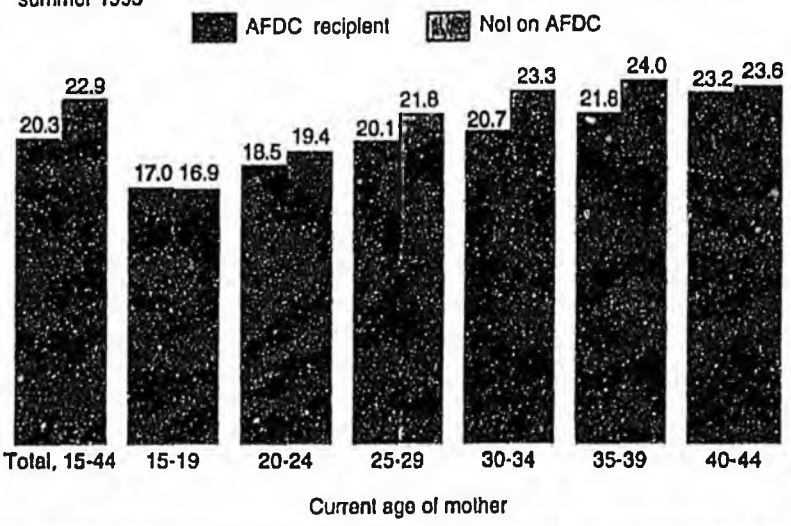
Nearly Half of AFDC Mothers Have Never Been Married

Percent distribution of mothers currently on AFDC, by marital status: summer 1993



AFDC Mothers Were Younger When They Had Their First Child

Mean age at first birth among mothers, by current AFDC status and current age: summer 1993



SB/95-2
Issued March 1995

U.S. Department of Commerce
Economics and Statistics Administration
BUREAU OF THE CENSUS

AFDC mothers are younger.

On average, mothers receiving AFDC payments were 30 years old; those not receiving them were 34. (See table, page 4.) AFDC mothers were nearly 3 times as likely as their non-AFDC counterparts to be under 25 years old (28 percent versus 10 percent).

AFDC mothers were also younger (an average of 20 years old) than non-AFDC mothers (23 years) when they gave birth for the first time. (See graph on page 1 and table.) In fact, 29 percent of mothers on AFDC had their first birth under age 18; the same was true for only 15 percent of non-AFDC mothers.

AFDC mothers have more children.

Mothers on AFDC had an average of 2.6 children each; non-AFDC mothers averaged 2.1. The difference varied by age of mother, ranging from about 0.5 children for women aged 20 to 24 to about 1.0 for those 35 years old and over. (See graph below and table.)

The chances of receiving AFDC payments differ by race and Hispanic origin, but not the nativity of the mother.

■ *Race:* About 1 in 4 Black mothers of childbearing ages (1.5 million) were AFDC recipients, higher than the 7 percent of corresponding White mothers (2.1 million). Despite these differences in recipiency rates, Black AFDC mothers did not have significantly more children than their White counterparts.

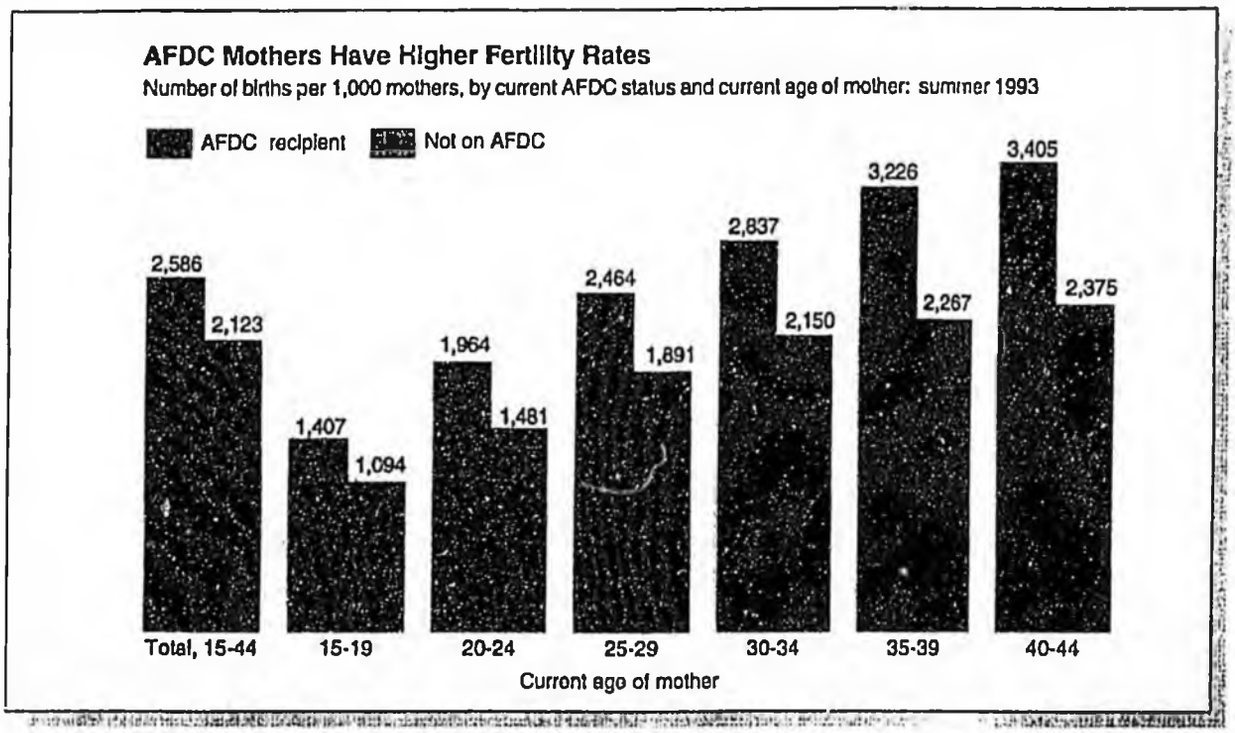
■ *Hispanic origin:* Nearly 1 in 5 Hispanic mothers (784,000) aged 15 to 44 were on AFDC. By comparison, about 1 in 10 (3.0 million) non-Hispanic mothers were AFDC recipents. Although both Hispanic and non-Hispanic mothers on AFDC were an average of 20 years old when they had their first child, Hispanic women had almost 0.7 more children than non-Hispanic women. About 3 in 10 Hispanic mothers on AFDC were born outside the United States.

■ *Nativity:* About 9 percent (392,000) of the Nation's 4.2 million foreign-born mothers aged 15-44 were on AFDC, not statistically different from the 11 percent (3.4 million) of U.S.-born mothers who were AFDC recipients. Native- and foreign-born mothers on AFDC each had higher fertility rates than their counterparts who were not AFDC participants. Incidentally, about three-quarters of all foreign-born mothers on AFDC were not citizens of the United States.

Nearly one-half of AFDC mothers have never been married.

About 1.8 million of the Nation's 3.8 million mothers (48 percent) receiving AFDC payments had never been married. These never-married AFDC mothers had an average of 2.4 children each.

Another 30 percent of AFDC mothers were currently married. (See chart on the first page.) They had an average of 2.8 children each. Most of these women (58 percent, or 648,000) either were separated or had absent husbands. However, about half a million women in intact marriages needed AFDC payments to help make ends meet.



The remaining 23 percent of mothers receiving AFDC payments were either widowed or divorced.

Almost half of AFDC mothers do not have a high school diploma.

An additional 38 percent had completed high school (but did not attend college) and another 19 percent had attended college for at least 1 year.

About 1 in 7 AFDC mothers were currently enrolled in school; these women, on average, had 2.1 children each and were 28 years old. Only 11 percent of these students were teenagers; this suggests that a large proportion of mothers on AFDC who are enrolled in school are trying to resume their education while raising a family under severe economic circumstances.

Most AFDC mothers are jobless ....

Unlike mothers not getting AFDC payments, most AFDC mothers (87 percent) didn't have a job. On average, jobless AFDC mothers supported 2.6 children each, no more than AFDC mothers who had a job for all or part of the month preceding the survey.

.... and have very low family incomes.

Nearly three-quarters of mothers on AFDC lived in families with monthly incomes of less than $1,000; these low-income mothers supported an average of 2.7 children each. In contrast, only 10 percent of non-AFDC mothers lived in families with such low incomes; these low-income non-AFDC mothers had an average of 2.2 children each. About 4 in every 5 AFDC mothers were below the poverty level.

Most AFDC mothers reside in central cities ....

AFDC mothers were more likely than non-AFDC mothers to live in metro areas (81 percent versus 77 percent). About 70 percent of metropolitan AFDC mothers lived in central cities. In contrast, nearly 2 in 3 metropolitan non-AFDC mothers lived in the suburbs.

.... and 1 in 5 live in a Pacific Coast State.

The Pacific Division is comprised of five States: Washington, Oregon, California, Alaska, and Hawaii. It was home to 787,000 — or 21 percent — of the Nation's AFDC mothers. Most (625,000) lived in California. Though about one-quarter of Pacific Division AFDC mothers were born outside the United States, they had an average of only 2.6 children, not significantly different from that of AFDC mothers nationally.

Upcoming Briefs

Many mothers also participated in other programs designed to assist families needing economic support to provide basic nutrition for themselves and their children. About 5.3 million received food stamps; 2.4 million received support from the Women, Infants, and Children (WIC) program. Additional Briefs about these mothers will be issued later this year.

Contacts:

AFDC mothers —
Amara Bachu (301-457-2449) or
Martin O'Connell (301-457-2416)

Statistical Briefs —
Robert Bernstein
301-457-1221

This Brief is one of a series that presents information of current policy interest. It may include data from businesses, households, or other sources. All statistics are subject to sampling variability, as well as survey design flaws, respondent classification errors, and data processing mistakes. The Census Bureau has taken steps to minimize errors, and analytical statements have been tested and meet statistical standards. However, because of methodological differences, use caution when comparing these data with data from other sources.

What is AFDC?

AFDC (Aid to Families with Dependent Children) is a program administered and funded by Federal and State governments to provide financial assistance to needy families. In an average State, more than half (55 percent) of the total costs of AFDC payments are funded by the Federal government. The States provide the balance of these payments, manage the program, and determine who receives benefits and how much they get.

In order to be eligible to receive AFDC payments, a family must have a dependent child who is —

- Under age 18 and living with them. (An 18 year-old who is expected to complete secondary school or its equivalent before turning 19 may also be covered.)
- Deprived of financial support from one of their parents due to the parent's death, continued absence, or incapacity. (This includes children in two-parent families where the principal family earner is unemployed.)
- A resident of the State they live in.
- A U.S. citizen or an alien who is permanently and lawfully residing in the United States.

AFDC Mothers Versus Non-AFDC Mothers

Mothers 15 to 44 years old, by AFDC status and selected fertility and socioeconomic characteristics: summer 1993

Characteristic	Receiving AFDC					Not receiving AFDC				
	Mothers			Mean age of mother in years ...		Mothers			Mean age of mother in years ...	
	Number (in thousands)	Percent	Births per 1,000 mothers	at time of survey	at first birth	Number (in thousands)	Percent	Births per 1,000 mothers	at time of survey	at first birth
Total	3,754	100.0	2,586	29.5	20.3	32,022	100.0	2,123	34.0	22.9
Age										
15 to 19 years	191	5.1	1,407	18.1	17.0	554	1.7	1,094	18.1	16.9
20 to 24 years	866	23.1	1,964	22.2	18.5	2,615	8.2	1,481	22.3	19.4
25 to 29 years	865	23.0	2,464	27.3	20.1	5,020	15.7	1,891	27.2	21.8
30 to 34 years	921	24.5	2,837	31.9	20.7	7,508	23.4	2,150	32.1	23.6
35 to 39 years	604	16.1	3,226	36.9	21.8	8,389	26.2	2,267	37.0	24.0
40 to 44 years	307	8.2	3,405	41.5	23.2	7,936	24.8	2,375	42.0	23.6
Race										
White	2,074	55.2	2,536	29.9	20.8	26,352	82.3	2,108	34.1	23.1
Black	1,471	39.2	2,694	29.0	19.5	4,258	13.3	2,165	33.4	20.9
Hispanic Origin										
Hispanic[1]	784	20.9	3,114	30.2	20.3	3,406	10.6	2,408	32.9	21.7
Not Hispanic	2,970	79.1	2,447	29.3	20.3	28,616	89.4	2,089	34.2	23.0
Marital Status										
Currently married	1,120	29.8	2,827	31.0	20.7	25,322	79.1	2,185	34.4	23.3
Married, husband present	472	12.6	2,929	31.1	20.6	23,827	74.4	2,175	34.5	23.4
Married, husband absent[2]	648	17.3	2,753	30.9	20.8	1,495	4.7	2,352	33.7	21.3
Widowed or divorced	851	22.7	2,728	32.9	21.0	4,009	12.5	2,078	36.2	21.7
Never married	1,783	47.5	2,366	26.9	19.6	2,691	8.4	1,598	27.1	20.5
Educational Attainment										
Not a high school graduate	1,633	43.5	2,890	28.8	19.2	4,631	14.5	2,464	31.9	19.6
High school, 4 years	1,422	37.9	2,361	29.6	20.8	12,900	40.3	2,094	33.8	21.9
College: 1 or more years	698	18.6	2,333	30.7	21.6	14,490	45.3	2,040	34.9	24.8
Enrollment in School										
Enrolled in school	527	14.0	2,128	28.3	20.1	2,682	8.4	1,950	31.8	21.7
Not enrolled in school	3,226	85.9	2,661	29.7	20.3	29,340	91.6	2,138	34.2	23.0
Labor Force Status										
Worked all or some weeks	474	12.6	2,372	31.3	20.4	21,889	68.4	2,061	34.7	23.0
No job last month	3,280	87.4	2,617	29.2	20.2	10,133	31.6	2,255	32.5	22.6
Monthly Family Income[3]										
Less than $500	1,351	36.1	2,574	29.7	20.3	889	2.8	2,045	31.2	21.0
$500 to $999	1,360	36.3	2,770	29.7	20.2	2,190	6.9	2,308	31.9	21.0
$1,000 to $1,499	479	12.8	2,431	29.8	20.5	3,159	10.0	2,153	32.3	21.5
$1,500 and over	552	14.8	2,293	28.0	20.0	25,309	80.2	2,107	34.6	23.6
Poverty Level[3]										
Below poverty level	3,004	80.3	2,696	29.6	20.2	4,178	13.2	2,489	31.5	20.8
Above poverty level	737	19.7	2,135	29.0	20.5	27,368	86.8	2,068	34.5	23.2
Division										
New England	185	4.9	(B)	(B)	(B)	1,496	4.7	2,022	34.8	24.3
Mid Atlantic	542	14.4	2,689	29.9	20.4	4,388	13.7	2,023	34.2	23.7
East North Central	748	19.9	2,537	29.0	20.6	5,669	17.7	2,107	33.8	22.8
West North Central	222	5.9	3,027	29.1	19.5	2,363	7.4	2,168	34.2	23.1
South Atlantic	591	15.7	2,472	28.9	19.6	5,720	17.9	2,025	34.1	22.7
East South Central	191	5.1	(B)	(B)	(B)	2,006	6.3	2,026	34.0	21.7
West South Central	369	9.8	2,744	29.8	20.3	3,512	11.0	2,220	33.9	22.2
Mountain	119	3.2	(B)	(B)	(B)	1,634	5.1	2,400	34.2	22.8
Pacific	787	21.0	2,596	30.2	20.9	5,234	16.3	2,223	33.7	23.0
Metropolitan Residence										
Metropolitan	3,039	81.0	2,595	29.4	20.3	24,519	76.6	2,101	34.1	23.1
In central cities	2,117	56.4	2,697	29.7	20.0	8,688	27.1	2,125	33.5	22.5
Suburbs	922	24.6	2,362	28.8	20.8	15,830	49.4	2,088	34.4	23.5
Nonmetropolitan	715	19.0	2,547	29.8	20.2	7,503	23.4	2,194	33.8	22.0
Place of Birth										
Native born	3,362	89.6	2,536	29.2	20.0	28,171	88.0	2,095	34.0	22.8
Foreign born	392	10.4	3,014	31.8	22.4	3,850	12.0	2,328	33.9	23.1

(B)Base too small to show derived measure. [1]Persons of Hispanic origin may be of any race. [2]Includes separated women. [3]Excludes those who did not report income.

HB

197

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: April 25, 2001 **FURTHER REFERRALS:**

Date of Committee Action: 4.10.02

The JUDICIARY Committee considered: **HB 197**

HOUSE BILL NO. 197 **HEALTH CARE SERVICES DIRECTIVES**

"An Act relating to directives for personal health care services and for medical treatment."

Recommends it be replaced with CS HB 197 (JUD) [ ] Same Title [✓] New Title

For Senate Bills with new title: [ ] *Technical Title* [ ] *New Title: HCR*_____

[ ] attach amendments

[ ] add new referral to _____ Committee

[ ] Letter of Intent _____ Committee

List of Abbrev. For Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LAA
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES *For Chief Clerk's Office Use Only				
FN# *	List by Dept(s):	Fiscal	Indet.	Zero
	ALL			✓

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN #	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	Berkowitz			✓	
	Meyer			✓	
	Coghill			✓	
	Davies			✓	
	Kookesh			✓	
Chair: Rokeberg	Rokeberg			✓	
Chair:					

Adopted as amended 4.10.02

22-LS0712\P.2
Bannister
4/9/02

AMENDMENT #1

OFFERED IN THE HOUSE

TO: CSHB 197(JUD), Draft Version "P"

Page 6, line 26, following "conscience":

Insert ", except for a do not resuscitate order"

Page 7, lines 18 - 22:

Delete all material and insert:

"**Sec. 13.52.060. Do not resuscitate protocol and identification requirements.** (a) An attending physician may issue a do not resuscitate order for a patient of the physician. The physician shall document the grounds for the order in the patient's medical file.

(b) The department shall by regulation adopt a protocol, subject to the approval of the State Medical Board, for do not resuscitate orders that set out a standardized method of procedure for the withholding of cardiopulmonary resuscitation by health care providers and health care institutions.

(c) The department shall develop standardized designs and symbols for do not resuscitate identification cards, forms, necklaces, and bracelets that signify, when carried or worn, that the carrier or wearer is an individual for whom a physician has issued a do not resuscitate order.

(d) A health care provider other than a physician shall comply with the protocol adopted under (b) of this section for do not resuscitate orders when the health care provider is presented with a do not resuscitate identification, an oral do not resuscitate order issued directly by a physician, or a written do not resuscitate order entered on and as required by a form prescribed by the department.

(e) Notwithstanding (d) of this section, if an individual has made a donation of a body part to occur at death and is in a hospital when a do not resuscitate order is to

be implemented for the individual, the do not resuscitate order may not be implemented until the donated body part can be evaluated to determine if it is suitable for donation.

(f) A physician may not revoke a do not resuscitate order at the request of a person, and a person may not make a do not resuscitate order ineffective, unless the person making the request or proposing to make the order ineffective is the person for whom the order has been issued. However, if the person for whom the order has been issued is not capable of expressing an opinion on the subject, the request or proposal may be made by

(1) the parent or guardian of the person for whom the order has been issued if the person for whom the order has been issued is under 18 years of age; or

(2) an agent, guardian, or surrogate of the person for whom the order has been issued to whom the person for whom the order has been issued has communicated the decision to make the order ineffective."

Page 8, line 4:

Delete "or"

Page 8, line 6, following "terminated":

Insert ";

(4) participating in the withholding or withdrawal of cardiopulmonary resuscitation or other life-sustaining procedures under the direction or with the authorization of a physician or upon discovery of do not resuscitate identification upon an individual; or

(5) causing or participating in providing cardiopulmonary resuscitation or other life-sustaining procedures

(A) under AS 13.52.060(e) when an individual has made a donation of a body part; or

(B) because an individual has made a do not resuscitate order ineffective under AS 13.52.060(f) or another provision of this chapter."

Page 8, following line 25:

Amendment to Amend #1

Insert a new subsection to read: who is a qualified patient

"(c) An individual, including an individual for whom a physician has issued a do not resuscitate order, has the right to make a decision regarding the use of cardiopulmonary resuscitation and other life-sustaining procedures as long as the individual is able to make the decision. If an individual, including an individual for whom a physician has issued a do not resuscitate order, is not able to make the decision, the protocol adopted under AS 13.52.060 for do not resuscitate orders governs a decision regarding the use of cardiopulmonary resuscitation and other life-sustaining procedures."

Page 9, lines 1 - 4:

Delete all material and insert:

"(b) Notwithstanding any other provision of law, if the withholding or withdrawal of cardiopulmonary resuscitation or other life-sustaining procedures is consistent with this chapter, death resulting from the withholding or withdrawal of cardiopulmonary resuscitation or other life-sustaining procedures under a do not resuscitate order, under the protocol for do not resuscitate orders established under AS 13.52.060, or under a do not resuscitate identification found on an individual does not, for any purpose, constitute a suicide or homicide.

(c) The issuance of a do not resuscitate order under this chapter, the possession of do not resuscitate identification under this chapter, or the making of a health care directive under this chapter does not affect in any manner the sale, procurement, or issuance of a policy of life insurance, and does not modify the terms of an existing policy of life insurance. A policy of life insurance is not legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining procedures from an insured individual or the withholding or withdrawal of cardiopulmonary resuscitation from an individual who possesses do not resuscitate identification or for whom a do not resuscitate order has been issued, notwithstanding any term of the policy to the contrary.

(d) This chapter does not create a presumption concerning the intention or

intended treatment of an individual who does not have do not resuscitate identification, has not executed a health care directive, or for whom a do not resuscitate order has not been issued with respect to the use, withholding, or withdrawal of cardiopulmonary resuscitation or other life-sustaining procedures.

(e) This chapter does not increase or decrease the right of an individual to make decisions regarding the use of cardiopulmonary resuscitation or other life-sustaining procedures as long as the individual is able to do so, and does not impair or supersede any right or responsibility that a person has to effect the withholding or withdrawal of medical care in a lawful manner."

Reletter the following subsections accordingly.

Page 9, following line 17:

Insert a new section to read:

"**Sec. 13.52.125. Prohibited requirements.** As a condition of receiving or being insured for health care services, a health care provider, a health care institution, a health care service plan, an insurer issuing health insurance, a self-insured employee welfare benefit plan, or a nonprofit hospital plan may not require an individual to execute a health care directive, obtain a do not resuscitate order from a physician, or possess do not resuscitate identification."

Page 9, following line 25:

Insert a new section to read:

"**Sec. 13.52.145. Do not resuscitate orders and identification of other jurisdictions.** A do not resuscitate order or a do not resuscitate identification executed, issued, or authorized in another state or a territory or possession of the United States in compliance with the law of that jurisdiction is effective for the purposes of this chapter."

Page 9, line 31, following "form":

Insert "or otherwise complies with this chapter"

Page 10, line 9, following "form":

Insert "or otherwise complies with the requirements of AS 13.52"

Page 13, line 23, following "want.":

Insert "There is a state protocol that governs the use of do not resuscitate orders by physicians and other health care providers. You may obtain a copy of the protocol from the state Department of Health and Social Services."

Page 18, following line 31:

Insert new paragraphs to read:

"(6) "department" means the Department of Health and Social Services;

(7) "do not resuscitate identification" means an identification card, form, necklace, or bracelet that carries the standardized design or symbol developed by the department under AS 13.52.060 to signify, when carried or worn, that the carrier or wearer is an individual for whom a physician has issued a do not resuscitate order;"

Renumber the following paragraphs accordingly.

Page 27, line 13:

Delete "AS 13.52.120(b)"

Insert "AS 13.52.120(c)"

Page 27, following line 20:

Insert a new bill section to read:

"* **Sec. 18.** The uncodified law of the State of Alaska is amended by adding a new section to read:

CONTINUING EFFECT OF CURRENT REGULATIONS. (a) The regulations found at 7 AAC 16, as modified by (b) of this section, continue in effect on and after

January 1, 2003, until the Department of Health and Social Services adopts the regulations authorized under sec. 17 of this Act.

(b) The regulations attorney in the Department of Law shall

(1) in 7 AAC 16.010(a), replace the reference to "AS 18.12.035(b)" with "AS 13.52.060(b)";

(2) in 7 AAC 16.010(d)(4), replace the reference to "AS 18.12.090" with "AS 13.52.145";

(3) in 7 AAC 16.010(f), replace the reference to "AS 18.12" with "AS 13.52";

(4) in 7 AAC 16.090(1), replace the reference to "AS 18.12.100" with "AS 13.52.190";

(5) in 7 AAC 16.090(3), replace ""do-not-resuscitate order" in AS 18.12.100" with ""do not resuscitate order" in AS 18.12.190."

Renumber the following bill sections accordingly.

Page 27, line 22:

Delete "Sec. 18"

Insert "Sec. 19"

STATE OF ALASKA

Department of Health & Social Services
Division of Public Health
Section of Community Health and Emergency Medical Services

TONY KNOWLES, GOVERNOR

P.O. Box 110616
Juneau, Alaska 99811-0616

Telephone: (907) 465-3027
Telefax: (907) 465-4101

April 10, 2002

Representative Norman Rokeberg
Room 118 State Capitol
Juneau, AK 99801-1182

RE: CSHB 197(JUD), Draft Version "P": 22-LS0712\P (3/20/02) and
Amendment P.2: 22-LS0712\P.2 (4/9/02)

Dear Representative Rokeberg;

On behalf of the Section of Community Health and Emergency Medical Services, Division of Public Health, Alaska Dept. of Health and Social Services, I would like to express support for CS HB 197(p) and Amendment P.2. The intention of the bill is to provide a mechanism for advance planning for end-of-life care and to carry out a patient's wishes when the patient is no longer able to speak for himself or herself. Emergency Medical Services providers seek to save lives but not to prolong the suffering of terminally-ill patients, and we support the goal of this bill to provide as much autonomy as possible for patients and families in arranging for humane and compassionate end-of-life care.

We have worked closely with the sponsor to evaluate the effects of the bill on the existing Comfort One Do Not Resuscitate Program which we feel is working and would like to continue. There is one change we would like to see made to the bill which I believe is supported by the Sponsor. Amendment P.2 (4/9/02) on page 3, starting at line 3 states:
"(c) An individual, including an individual for whom a physician has issued a do not resuscitate order, has the right to make a decision regarding the use of cardiopulmonary resuscitation and other life-sustaining procedures as long as the individual is able to make the decision."

The problem with the first use of the word "individual" in section (c) is that it would allow a person who is not otherwise terminally ill to refuse life-saving treatment, such as a young person who has attempted suicide and wishes to refuse life-saving treatment. We don't believe this is consistent with the goal of the bill to provide for autonomy in end-of life decisions. Existing law reads "A **qualified patient** or a patient for whom a physician has issued a do not resuscitate order...." The term "qualified patient" is defined in AS 18.12.100(11) and is retained in CSHB 197 in proposed section 13.52.190(6)(A) as "a terminal condition," which is further defined in 13.52.190(6)(B). A suggestion for amending the provision would be to state, "An individual who is a qualified patient, including an individual for whom a physician has issued a do not

resuscitate order, has the right to make a decision regarding the use of cardiopulmonary resuscitation...."

Thank you for the opportunity to comment on this important legislation.

Sincerely,

Shelley K. Owens
Health Program Manager

22-LS0712\P
Bannister
3/20/02

Adopted 4-10-02

CS FOR HOUSE BILL NO. 197(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES HUDSON, Kerttula, Crawford, Lancaster

A BILL

FOR AN ACT ENTITLED

"An Act relating to health care decisions, including do not resuscitate orders and the donation of body parts, and to powers of attorney relating to health care, including the donation of body parts; and providing for an effective date."

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

*** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

PURPOSE. A principal purpose of this Act is to provide a comprehensive coordinated approach to the making of health care decisions, including the donation of body parts. To achieve this purpose, this Act repeals the current statutory devices that cover health care decisions and consolidates the subject into one chapter.

*** Sec. 2.** AS 12.65.100 is amended to read:

Sec. 12.65.100. Unclaimed bodies. When a person dies and no person appears to claim the body for burial, and no provision is made for the body under **AS 13.52** [AS 13.50], the Department of Health and Social Services, upon

notification, shall request a court order authorizing the body to be plainly and decently buried or cremated and the remains decently interred. A judicial officer shall issue the requested order upon the sworn testimony or statement of a representative of the Department of Health and Social Services that a person has not appeared to claim the body for burial and provision is not made for the body under **AS 13.52** [AS 13.50].

*** Sec. 3.** AS 13 is amended by adding a new chapter to read:

Chapter 52. Health Care Decisions Act.

Sec. 13.52.010. Advance health care directives. (a) An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.

(b) An adult or emancipated minor may execute a power of attorney for health care, which may authorize the agent to make any health care decision the principal could have made while having capacity. The power remains in effect notwithstanding the principal's later incapacity and may include individual instructions. The power must be in writing, contain the date of its execution, be signed by the principal, and be witnessed by one of the following methods:

(1) signed by at least two individuals, each of whom witnessed either the signing of the instrument by the principal or the principal's acknowledgment of the signature of the instrument; or

(2) acknowledged before a notary public at a place in this state.

(c) Unless related to the principal by blood, marriage, or adoption, an agent under a power of attorney for health care may not be an owner, operator, or employee of the health care institution at which the principal is receiving care.

(d) A witness for a power of attorney for health care may not be

(1) a health care provider;

(2) an employee of a health care provider or facility; or

(3) the agent.

(e) At least one of the individuals used as a witness for a power of attorney for health care shall be someone who is not

(1) related to the principal by blood, marriage, or adoption; or

(2) entitled to a portion of the estate of the principal upon the principal's death under a will or codicil of the principal existing at the time of execution of the power of attorney for health care or by operation of law then existing.

(f) Unless otherwise specified in the power of attorney for health care, the authority of an agent becomes effective only upon a determination that the principal lacks capacity and ceases to be effective upon a determination that the principal has recovered capacity.

(g) Unless otherwise specified in a written advance health care directive, a determination that an individual lacks or has recovered capacity, or that another condition exists that affects an individual instruction or the authority of an agent, shall be made by the primary physician.

(h) An agent shall make a health care decision in accordance with the principal's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the agent's determination of the principal's best interest. In determining the principal's best interest, the agent shall consider the principal's personal values to the extent known to the agent.

(i) A health care decision made by an agent for a principal is effective without judicial approval.

(j) A written advance health care directive may include the individual's nomination of a guardian of the person.

(k) An advance health care directive is valid for purposes of this chapter if it complies with this chapter or if it was executed in compliance with the laws of the state where it was executed.

Sec. 13.52.020. Revocation of advance health care directive. (a) An individual may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.

(b) An individual may revoke all or part of an advance health care directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke.

(c) A health care provider, agent, guardian, or surrogate who is informed of a

revocation shall promptly communicate the fact of the revocation to the supervising health care provider and to any health care institution at which the patient is receiving care.

(d) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as agent unless otherwise specified in the decree or in a power of attorney for health care.

(e) An advance health care directive that conflicts with an earlier advance health care directive revokes the earlier directive to the extent of the conflict.

Sec. 13.52.030. Decisions by surrogate. (a) A surrogate may make a health care decision for a patient who is an adult or emancipated minor if the patient has been determined by the primary physician to lack capacity and an agent or guardian has not been appointed or the agent or guardian is not reasonably available.

(b) An adult or emancipated minor may designate an individual to act as surrogate by personally informing the supervising health care provider. In the absence of a designation, or if the designee is not reasonably available, a member of the following classes of the patient's family who is reasonably available, in descending order of priority, may act as surrogate:

(1) the spouse, unless legally separated;

(2) an adult child;

(3) a parent; or

(4) an adult sibling.

(c) If none of the individuals eligible to act as surrogate under (b) of this section is reasonably available, an adult who has exhibited special care and concern for the patient, who is familiar with the patient's personal values, and who is reasonably available may act as surrogate.

(d) A surrogate shall communicate the surrogate's assumption of authority as promptly as practicable to the members of the patient's family specified in (b) of this section who can be readily contacted.

(e) If more than one member of a class under (b)(2) - (4) of this section assumes authority to act as surrogate, the members of that class do not agree on a health care decision, and the supervising health care provider is informed of the

disagreement, the supervising health care provider shall comply with the decision of a majority of the members of that class who have communicated their views to the provider. If the class is evenly divided concerning the health care decision and the supervising health care provider is informed of the even division, that class and all individuals having a lower priority under (b)(2) - (4) of this section are disqualified from making the decision.

(f) A surrogate shall make a health care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the patient's best interest. In determining the patient's best interest, the surrogate shall consider the patient's personal values to the extent known to the surrogate.

(g) A health care decision made by a surrogate for a patient is effective without judicial approval.

(h) An individual may, at any time, disqualify another person, including a member of the individual's family, from acting as the individual's surrogate by a signed writing or by personally informing the supervising health care provider of the disqualification.

(i) Unless related to the patient by blood, marriage, or adoption, a surrogate may not be an owner, operator, or employee of a residential long-term health care institution at which the patient is receiving care.

(j) A supervising health care provider may require an individual claiming the right to act as a surrogate for a patient to provide a written declaration under penalty of perjury stating facts and circumstances reasonably sufficient to establish the claimed authority.

Sec. 13.52.040. Decisions by guardian. (a) A guardian shall comply with the ward's individual instructions and may not revoke a ward's advance health care directive executed before the ward's incapacity unless expressly authorized by a court.

(b) Unless there is a court order to the contrary, a health care decision of an agent takes precedence over that of a guardian.

(c) Except as provided in (a) of this section, a health care decision made by a

guardian for the ward is effective without judicial approval.

Sec. 13.52.050. Obligations of health care provider. (a) Before implementing a health care decision made for a patient, a supervising health care provider, if possible, shall promptly communicate to the patient the decision made and the identity of the person making the decision.

(b) A supervising health care provider who knows of the existence of an advance health care directive, a revocation of an advance health care directive, or a designation or disqualification of a surrogate shall promptly record its existence in the patient's health care record, shall request a copy if it is in writing, and shall arrange for its maintenance in the health care record if a copy is furnished.

(c) A supervising health care provider who makes or is informed of a determination that a patient lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of an agent, a guardian, or a surrogate, shall promptly record the determination in the patient's health care record and communicate the determination to the patient, if possible, and to any person then authorized to make health care decisions for the patient.

(d) Except as provided in (e) and (f) of this section, a health care provider or institution providing care to a patient shall comply with

(1) an individual instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the patient; and

(2) a health care decision for the patient made by a person then authorized to make health care decisions for the patient to the same extent as if the decision had been made by the patient while having capacity.

(e) A health care provider may decline to comply with an individual instruction or a health care decision for reasons of conscience. A health care institution may decline to comply with an individual instruction or health care decision if the instruction or decision is contrary to a policy of the institution that is expressly based on reasons of conscience and if the policy was timely communicated to the patient or to a person then authorized to make health care decisions for the patient.

(f) A health care provider or institution may decline to comply with an

individual instruction or a health care decision that requires medically ineffective health care or health care contrary to generally accepted health care standards applicable to the health care provider or institution.

(g) A health care provider or institution that declines to comply with an individual instruction or a health care decision shall

(1) promptly inform the patient, if possible, and any person then authorized to make health care decisions for the patient that the provider or institution has declined to comply with the instruction or decision;

(2) provide continuing care to the patient until a transfer is effected; and

(3) unless the patient or person then authorized to make health care decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another health care provider or institution that is willing to comply with the instruction or decision.

(h) A health care provider or institution may not require or prohibit the execution or revocation of an advance health care directive as a condition for providing health care.

Sec. 13.52.060. Do not resuscitate protocol. The Department of Health and Social Services shall by regulation adopt a protocol for do not resuscitate orders that sets out a standardized method of procedure for the withholding of cardiopulmonary resuscitation by health care providers and health care institutions. The regulations may not be adopted unless they have been approved by the State Medical Board.

Sec. 13.52.070. Health care information. Unless otherwise specified in an advance health care directive, a person then authorized to make health care decisions for a patient has the same rights as the patient to request, receive, examine, copy, and consent to the disclosure of medical or other health care information.

Sec. 13.52.080. Immunities. (a) A health care provider or institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for

(1) complying with a health care decision of a person apparently

having authority to make a health care decision for a patient, including a decision to withhold or withdraw health care;

(2) declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or

(3) complying with an advance health care directive and assuming that the directive was valid when made and has not been revoked or terminated.

(b) An individual acting as an agent, a guardian, or a surrogate under this chapter is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.

Sec. 13.52.090. Statutory damages. (a) A health care provider or institution that intentionally violates this chapter is liable to the aggrieved individual or the individual's estate for damages of $500 or actual damages resulting from the violation, whichever is greater, plus attorney fees as provided by court rule.

(b) A person who intentionally falsifies, forges, conceals, defaces, or obliterates an individual's advance health care directive or a revocation of an advance health care directive without the individual's consent, or who coerces or fraudulently induces an individual to give, revoke, or not to give an advance health care directive, is liable to that individual for damages of $2,500 or actual damages resulting from the action, whichever is greater, plus attorney fees as provided by court rule.

Sec. 13.52.100. Capacity. (a) This chapter does not affect the right of an individual to make health care decisions while having capacity to make health care decisions.

(b) An individual is rebuttably presumed to have capacity to make a health care decision, to give or revoke an advance health care directive, and to designate or disqualify a surrogate.

Sec. 13.52.110. Status of copy. A copy of a written advance health care directive, revocation of an advance health care directive, or designation or disqualification of a surrogate has the same effect as the original.

Sec. 13.52.120. Effect of this chapter. (a) This chapter does not create a presumption concerning the intention of an individual who has not made or who has revoked an advance health care directive.

(b) Death resulting from the withholding or withdrawal of health care under this chapter does not, for any purpose, constitute a suicide or homicide or legally impair or invalidate a policy of insurance or an annuity providing a death benefit, notwithstanding any term of the policy or annuity to the contrary.

(c) This chapter does not authorize mercy killing, assisted suicide, euthanasia, or the provision, withholding, or withdrawal of health care, to the extent prohibited by other statutes of this state.

(d) This chapter does not authorize or require a health care provider or institution to provide health care contrary to generally accepted health care standards applicable to the health care provider or institution.

(e) This chapter does not authorize an agent or a surrogate to consent to the admission of an individual to a mental health facility unless the individual's written advance health care directive expressly so provides.

(f) This chapter does not affect other statutes of this state governing treatment for mental illness of an individual involuntarily committed to a mental health facility.

(g) In this section, "mental health facility" has the meaning given to "designated treatment facility" in AS 47.30.915.

Sec. 13.52.130. Judicial relief. On petition of a patient, the patient's agent, guardian, or surrogate, or a health care provider or institution involved with the patient's care, the superior court may enjoin or direct a health care decision or order other equitable relief. A proceeding under this section is governed by AS 13.26.165 - 13.26.320.

Sec. 13.52.140. Uniformity of application and construction. This chapter shall be applied and construed to carry out its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

Sec. 13.52.150. Optional form. The following sample form may be used to create an advance health care directive. The other sections of this chapter govern the effect of this or any other writing used to create an advance health care directive. This form may be duplicated. This form may be modified to suit the needs of the person, or a completely different form may be used that contains the substance of the following form:

ADVANCE HEALTH CARE DIRECTIVE

Explanation

You have the right to give instructions about your own health care. You also have the right to name someone else to make health care decisions for you. This form lets you do either or both of these things. It also lets you express your wishes regarding the designation of your health care provider. If you use this form, you may complete or modify all or any part of it. You are free to use a different form if the form contains the substance of this form.

Part 1 of this form is a power of attorney for health care. Part 1 lets you name another individual as an agent to make health care decisions for you if you become incapable of making your own decisions or if you want someone else to make those decisions for you now even though you are still capable. You may name an alternate agent to act for you if your first choice is not willing, able, or reasonably available to make decisions for you. Unless related to you, your agent may not be an owner, operator, or employee of a health care institution where you are receiving care.

Unless the form you sign limits the authority of your agent, your agent may make all health care decisions for you. This form has a place for you to limit the authority of your agent. You do not have to limit the authority of your agent if you wish to rely on your agent for all health care decisions that may have to be made. If you choose not to limit the authority of your agent, your agent will have the right to

(a) consent or refuse consent to any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a physical or mental condition;

(b) select or discharge health care providers and institutions;

(c) approve or disapprove diagnostic tests, surgical procedures, programs of medication, and do not resuscitate orders; and

(d) direct the provision, withholding, or withdrawal of artificial

nutrition and hydration and all other forms of health care; and

(e) donate your body parts at your death.

Part 2 of this form lets you give specific instructions about any aspect of your health care. Choices are provided for you to express your wishes regarding the provision, withholding, or withdrawal of treatment to keep you alive, including the provision of artificial nutrition and hydration, as well as the provision of pain relief medication. Space is provided for you to add to the choices you have made or for you to write out any additional wishes.

Part 3 of this form lets you express an intention to donate your body parts following your death.

Part 4 of this form lets you designate a physician to have primary responsibility for your health care.

After completing this form, sign and date the form at the end and have the form witnessed by one of the two alternative methods listed below. Give a copy of the signed and completed form to your physician, to any other health care providers you may have, to any health care institution at which you are receiving care, and to any health care agents you have named. You should talk to the person you have named as your agent to make sure that the person understands your wishes and is willing to take the responsibility.

You have the right to revoke this advance health care directive or replace this form at any time.

PART 1

DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS

(1) DESIGNATION OF AGENT: I designate the following individual as my agent to make health care decisions for me:

_____

(name of individual you choose as agent)

_____

(address) (city) (state) (zip code)

_____ _____

(home phone) (work phone)

OPTIONAL: If I revoke my agent's authority or if my agent is not willing, able, or reasonably available to make a health care decision for me, I designate as my first alternate agent

_____

(name of individual you choose as first alternate agent)

_____

(address) (city) (state) (zip code)

_____

(home phone) (work phone)

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able, or reasonably available to make a health care decision for me, I designate as my second alternate agent

_____

(name of individual you choose as second alternate agent)

_____ _____

(address) (city) (state) (zip code)

_____

(home phone) (work phone)

(2) AGENT'S AUTHORITY: My agent is authorized to make all health care decisions for me, including decisions to provide, withhold, or withdraw artificial nutrition and hydration, and all other forms of health care to keep me alive, except as I state here:

_____

_____

_____

(Add additional sheets if needed.)

(3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my

primary physician determines that I am unable to make my own health care decisions unless I mark the following box. If I mark this box [ ], my agent's authority to make health care decisions for me takes effect immediately.

(4) AGENT'S OBLIGATION: My agent shall make health care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form, and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) NOMINATION OF GUARDIAN: If a guardian of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able, or reasonably available to act as guardian, I nominate the alternate agents whom I have named under (1) above, in the order designated.

PART 2

INSTRUCTIONS FOR HEALTH CARE

If you are satisfied to allow your agent to determine what is best for you in making end-of-life decisions, you do not need to fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want.

(6) END-OF-LIFE DECISIONS: I direct that my health care providers and others involved in my care provide, withhold, or withdraw treatment in accordance with the choice I have marked below: (Check only one box.)

[ ] (A) Choice To Prolong Life

I want my life to be prolonged as long as possible within the limits of generally accepted health care standards; OR

[ ] (B) Choice Not To Prolong Life

I do not want my life to be prolonged if (i) I have an incurable and irreversible condition that will result in my death within a relatively short time; (ii) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness; or (iii) the likely risks and burdens of treatment would outweigh the expected benefits.

(7) ARTIFICIAL NUTRITION AND HYDRATION: Artificial nutrition and hydration must be provided, withheld, or withdrawn in accordance with the choice I have made in paragraph (6) unless I mark the following box. If I mark this box [ ], artificial nutrition and hydration must be provided regardless of my condition and regardless of the choice I have made in paragraph (6).

(8) RELIEF FROM PAIN: If I mark this box [ ], I direct that treatment to alleviate pain or discomfort should be provided to me even if it hastens my death.

(9) OTHER WISHES: (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that

_____

_____

(Add additional sheets if needed.)

PART 3

DONATION OF BODY PARTS AT DEATH

(OPTIONAL)

If you are satisfied to allow your agent to determine whether to donate your body parts at your death, you do not need to fill out this part of the form.

(10) Upon my death: (mark applicable box)

[ ] (A) I give any needed organs, tissues, or

other body parts, OR

[ ] (B) I give the following organs, tissues, or other body parts only

_____

[ ] (C) My gift is for the following purposes (strike any of the following you do not want):

(i) transplant;

(ii) therapy;

(iii) research;

(iv) education;

PART 4

PRIMARY PHYSICIAN

(OPTIONAL)

(11) I designate the following physician as my primary physician:

_____

(name of physician)

_____

(address) (city) (state) (zip code)

_____

(phone)

OPTIONAL: If the physician I have designated above is not willing, able, or reasonably available to act as my primary physician, I designate the following physician as my primary physician:

_____

(name of physician)

_____

(address) (city) (state) (zip code)

_____

(phone)

(12) EFFECT OF COPY: A copy of this form has the

same effect as the original.

(13) SIGNATURES: Sign and date the form here:

_____ _____

(date) (sign your name)

_____ _____

(address) (print your name)

_____

(city) (state)

(14) WITNESSES: This power of attorney will not be valid for making health care decisions unless it is

(A) signed by two qualified adult witnesses who are personally known to you and who are present when you sign or acknowledge your signature; or

(B) acknowledged before a notary public in the state.

ALTERNATIVE NO. 1

Witness

I swear under penalty of perjury under AS 11.56.200 that the principal is personally known to me, that the principal signed or acknowledged this power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as agent by this document, and that I am not a health care provider or an employee of a health care provider or facility. I am not related to the principal by blood, marriage, or adoption, and, to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.

_____ _____

(date) (signature of witness)

_____ _____

(address) (printed name of witness)

_____

(city) (state)

Witness

I swear under penalty of perjury under AS 11.56.200 that the principal is personally known to me, that the principal signed or acknowledged this power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as agent by this document, and that I am not a health care provider, or an employee of a health care provider or facility. I am not related to the principal by blood, marriage, or adoption, and, to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.

_____ _____

(date) (signature of witness)

_____ _____

(address) (printed name of witness)

_____

(city) (state)

ALTERNATIVE NO. 2

State of Alaska

_____ Judicial District

On this ____ day of _____, in the year _____, before me, _____ (insert name of notary public) appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that the person executed it.

Notary Seal

_____

(Signature of Notary Public)

Sec. 13.52.190. Definitions. In this chapter, unless the context otherwise requires,

(1) "advance health care directive" means an individual instruction or a power of attorney for health care;

(2) "agent" means an individual designated in a power of attorney for health care to make a health care decision for the individual granting the power;

(3) "best interest" means that the benefits to the individual resulting from a treatment outweigh the burdens to the individual resulting from that treatment and includes

(A) the effect of the treatment on the physical, emotional, and cognitive functions of the patient;

(B) the degree of physical pain or discomfort caused to the individual by the treatment or the withholding or withdrawal of the treatment;

(C) the degree to which the individual's medical condition, the treatment, or the withholding or withdrawal of treatment, results in a severe and continuing impairment;

(D) the effect of the treatment on the life expectancy of the patient;

(E) the prognosis of the patient for recovery, with and without the treatment;

(F) the risks, side effects, and benefits of the treatment or the withholding of treatment; and

(G) the religious beliefs and basic values of the individual receiving treatment, to the extent that these may assist in determining benefits and burdens;

(4) "capacity" means an individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision;

(5) "cardiopulmonary resuscitation" means cardiopulmonary resuscitation or a component of cardiopulmonary resuscitation;

(6) "do not resuscitate order" means a directive from a licensed physician that emergency cardiopulmonary resuscitation should not be administered to a qualified patient; in this paragraph,

(A) "qualified patient" means a patient who has been determined by the attending physician to be in a terminal condition;

(B) "terminal condition" means a progressive incurable or irreversible condition that, without the administration of life-sustaining procedures, will, in the opinion of two physicians, when available, who have personally examined the patient, one of whom must be the attending physician, result in death within a relatively short time; in this subparagraph, "life-sustaining procedures" means medical procedures or interventions that, when administered to a qualified patient, will serve only to prolong the dying process;

(7) "emancipated minor" means a minor whose disabilities have been removed under AS 09.55.590 or who has arrived at the age of majority as determined under AS 25.20.020;

(8) "generally accepted health care standards" includes the protocol for do not resuscitate orders that is adopted under AS 13.52.060;

(9) "guardian" means a judicially appointed guardian or conservator having authority to make a health care decision for an individual;

(10) "health care" means any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect an individual's physical or mental condition, including

(A) selection and discharge of health care providers and institutions;

(B) approval or disapproval of diagnostic tests, surgical procedures, programs of medication, and do not resuscitate orders;

(C) direction to provide, withhold, or withdraw artificial nutrition and hydration if withholding or withdrawing artificial nutrition or hydration is in accord with generally accepted health care standards applicable to health care providers or institutions; and

(D) donation of body parts at death.

(11) "health care decision" means a decision made by an individual or the individual's agent, guardian, or surrogate regarding the individual's health care;

(12) "health care institution" means an institution, facility, or agency licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business;

(13) "health care provider" means an individual licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession;

(14) "individual instruction" means an individual's direction concerning a health care decision for the individual;

(15) "person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, instrumentality, or another legal or commercial entity;

(16) "physician" means an individual authorized to practice medicine or osteopathy under AS 08.64;

(17) "power of attorney for health care" means the designation of an agent to make health care decisions for the individual granting the power;

(18) "primary physician" means a physician designated by an individual, or by the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility;

(19) "reasonably available" means able to be contacted with a level of diligence appropriate to the seriousness and urgency of a patient's health care needs, and willing and able to act in a timely manner considering the urgency of the patient's health care needs;

(20) "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States;

(21) "supervising health care provider" means the primary physician or

the physician's designee, or the health care provider or the provider's designee who has undertaken primary responsibility for an individual's health care;

(22) "surrogate" means an individual, other than a patient's agent or guardian, authorized under this chapter to make a health care decision for the patient.

Sec. 13.52.195. Short title. This chapter may be cited as the Health Care Decisions Act.

* **Sec. 4.** AS 18.65.311 is amended to read:

Sec. 18.65.311. Donation of body parts [ANATOMICAL GIFT OR LIVING WILL DOCUMENT]. (a) The department shall provide, at the time that an identification card is issued, a form for a document by which the card holder may make **a donation of body parts** [AN ANATOMICAL GIFT] under **AS 13.52** [AS 13.50 (UNIFORM ANATOMICAL GIFTS ACT) OR A LIVING WILL UNDER AS 18.12 (LIVING WILLS AND DO NOT RESUSCITATE ORDERS)]. The document (1) may not be larger than an identification card, (2) must contain sufficient space for the signature of two witnesses [OR A PERSON WHO IS QUALIFIED TO TAKE ACKNOWLEDGMENTS UNDER AS 09.63.010], **and** (3) [MUST USE THE FORMS AND DESIGNS DEVELOPED UNDER AS 18.12.037, AND (4)] must provide a means by which the card holder may cancel the gift [OR THE LIVING WILL]. If the document is executed by the applicant, it shall be sealed in plastic and attached to the identification card. [A SYMBOL DEVELOPED UNDER AS 18.12.037 INDICATING THE EXISTENCE OF THE ANATOMICAL GIFT OR LIVING WILL DOCUMENT MUST BE DISPLAYED IN THE LOWER RIGHT-HAND CORNER ON THE FACE OF THE IDENTIFICATION CARD.]

(b) An employee of the department who processes an identification card application, other than an application received by mail, shall ask the applicant orally whether the applicant wishes to execute **a donation of body parts** [AN ANATOMICAL GIFT OR A LIVING WILL]. The department shall, by placement of posters and brochures in the office where the application is taken, and by oral advice, if requested, make known to the applicant the procedure necessary to execute a **donation of body parts** [GIFT] under **AS 13.52** [AS 13.50 OR A LIVING WILL UNDER AS 18.12].

* **Sec. 5.** AS 28.10.021(c) is amended to read:

(c) An employee of the department who processes an application for registration or renewal of registration, other than an application received by mail or an application for registration under AS 28.10.152, shall ask the applicant orally whether the applicant wishes to execute **a donation of body parts** [AN ANATOMICAL GIFT OR A LIVING WILL]. The department shall make known to all applicants the procedure for executing a **donation of body parts** [GIFT] under **AS 13.52 (Health Care Decisions Act)** [AS 13.50 (UNIFORM ANATOMICAL GIFTS ACT) OR A LIVING WILL UNDER AS 18.12 (LIVING WILLS AND DO NOT RESUSCITATE ORDERS)] by displaying posters in the offices in which applications are taken, by providing a brochure or other written information to each person who applies in person or by mail, and, if requested, by providing oral advice.

* **Sec. 6.** AS 28.15.061(d) is amended to read:

(d) An employee of the department who processes a driver's license application, other than an application received by mail, shall ask the applicant orally whether the applicant wishes to execute **a donation of body parts** [AN ANATOMICAL GIFT OR A LIVING WILL]. The department shall make known to all applicants the procedure for executing a **donation of body parts** [GIFT] under **AS 13.52 (Health Care Decisions Act)** [AS 13.50 (UNIFORM ANATOMICAL GIFTS ACT) OR A LIVING WILL UNDER AS 18.12 (LIVING WILLS AND DO NOT RESUSCITATE ORDERS)] by displaying posters in the offices in which applications are taken, by providing a brochure or other written information to each person who applies in person or by mail, and, if requested, by providing oral advice.

* **Sec. 7.** AS 28.15.111(b) is amended to read:

(b) The department shall provide, at the time that an operator's license is issued, a form for a document by which the owner of a license may make **a donation of body parts** [AN ANATOMICAL GIFT] under **AS 13.52** [AS 13.50 OR A LIVING WILL UNDER AS 18.12]. The document (1) may not be larger than an operator's license, (2) must contain sufficient space for the signature of two witnesses [OR A PERSON WHO IS QUALIFIED TO TAKE ACKNOWLEDGMENTS UNDER AS 09.63.010], **and** (3) [MUST USE THE FORMS AND DESIGNS DEVELOPED

UNDER AS 18.12.037, AND (4)] must provide a means by which the owner may cancel the **donation** [GIFT OR THE LIVING WILL]. If the document is executed by the applicant, it shall be sealed in plastic and attached to the license. [A SYMBOL DEVELOPED UNDER AS 18.12.037 INDICATING THE EXISTENCE OF THE ANATOMICAL GIFT OR LIVING WILL DOCUMENT MUST BE DISPLAYED IN THE LOWER RIGHT-HAND CORNER ON THE FACE OF THE DRIVER'S LICENSE.]

* **Sec. 8.** AS 47.30.825(b) is amended to read:

(b) The patient and the following persons, at the request of the patient, are entitled to participate in formulating the patient's individualized treatment plan and to participate in the evaluation process as much as possible, at minimum to the extent of requesting specific forms of therapy, inquiring why specific therapies are or are not included in the treatment program, and being informed as to the patient's present medical and psychological condition and prognosis: (1) the patient's counsel, (2) the patient's guardian, (3) a mental health professional previously engaged in the patient's care outside of the evaluation facility or designated treatment facility, (4) a representative of the patient's choice, (5) a person designated as the patient's **agent or surrogate** [ATTORNEY-IN-FACT] with regard to mental health treatment decisions under **AS 13.52** [AS 13.26.332 - 13.26.358, AS 47.30.950 - 47.30.980, OR OTHER POWER-OF-ATTORNEY], and (6) the adult designated under AS 47.30.725. The mental health care professionals may not withhold any of the information described in this subsection from the patient or from others if the patient has signed a waiver of confidentiality or has designated the person who would receive the information as an **agent or surrogate under AS 13.52** [ATTORNEY-IN-FACT] with regard to mental health treatment.

* **Sec. 9.** AS 47.30.825(f) is amended to read:

(f) A patient capable of giving informed consent has the absolute right to accept or refuse electroconvulsive therapy or aversive conditioning. A patient who lacks substantial capacity to make this decision may not be given this therapy or conditioning without a court order unless the patient expressly authorized that particular form of treatment in **an advance health care directive** [A

DECLARATION] properly executed under **AS 13.52** [AS 47.30.950 - 47.30.980] or has authorized an **agent or surrogate under AS 13.52** [ATTORNEY-IN-FACT] to make this decision and the **agent or surrogate** [ATTORNEY-IN-FACT] consents to the treatment on behalf of the patient.

*** Sec. 10.** AS 47.30.836 is amended to read:

Sec. 47.30.836. Psychotropic medication in nonemergencies. An evaluation facility or designated treatment facility may not administer psychotropic medication to a patient in a situation that does not involve a crisis under AS 47.30.838(a)(1) unless the patient

(1) has the capacity to give informed consent to the medication, as described in AS 47.30.837, and gives that consent; the facility shall document the consent in the patient's medical chart;

(2) authorized the use of psychotropic medication in **an advance health care directive** [A DECLARATION] properly executed under **AS 13.52** [AS 47.30.950 - 47.30.980] or authorized an **agent or surrogate under AS 13.52** [ATTORNEY-IN-FACT] to consent to the use of psychotropic medication for the patient and the **agent or surrogate** [ATTORNEY-IN-FACT] does consent; or

(3) is determined by a court to lack the capacity to give informed consent to the medication and the court approves use of the medication under AS 47.30.839.

*** Sec. 11.** AS 47.30.838(d) is amended to read:

(d) An evaluation facility or designated treatment facility may administer psychotropic medication to a patient without the patient's informed consent if the patient is unable to give informed consent but has authorized the use of psychotropic medication in **an advance health care directive** [A DECLARATION] properly executed under **AS 13.52** [AS 47.30.950 - 47.30.980] or has authorized an **agent or surrogate under AS 13.52** [ATTORNEY-IN-FACT] to consent to this form of treatment for the patient and the **agent or surrogate** [ATTORNEY-IN-FACT] does consent.

*** Sec. 12.** AS 47.30.839(d) is amended to read:

(d) Upon the filing of a petition under (b) of this section, the court shall direct

the office of public advocacy to provide a visitor to assist the court in investigating the issue of whether the patient has the capacity to give or withhold informed consent to the administration of psychotropic medication. The visitor shall gather pertinent information and present it to the court in written or oral form at the hearing. The information must include documentation of the following:

(1) the patient's responses to a capacity assessment instrument administered at the request of the visitor;

(2) any expressed wishes of the patient regarding medication, including wishes that may have been expressed in a power of attorney, a living will, **an advance health care directive under AS 13.52,** or oral statements of the patient, including conversations with relatives and friends that are significant persons in the patient's life as those conversations are remembered by the relatives and friends; oral statements of the patient should be accompanied by a description of the circumstances under which the patient made the statements, when possible.

* **Sec. 13.** AS 47.33.070(a) is amended to read:

(a) An assisted living home shall maintain, for each resident of the home, a file that includes

(1) the name and birth date, and, if provided by the resident, the social security number of the resident;

(2) the name, address, and telephone number of the resident's closest relative, service coordinator, if any, and representative, if any;

(3) a statement of what actions, if any, the resident's representative is authorized to take on the resident's behalf;

(4) a copy of the resident's assisted living plan;

(5) a copy of the residential services contract between the home and the resident;

(6) a notice, as required under AS 47.33.030, regarding the depository in which the resident's advance payment money is being held;

(7) written **acknowledgment** [ACKNOWLEDGEMENT] by the resident or the resident's representative that the resident has received a copy of and has read, or has been read the

(A) resident's rights under AS 47.33.300;

(B) resident's right to pursue a grievance under AS 47.33.340;

(C) resident's right to protection from retaliation under AS 47.33.350;

(D) provisions of AS 47.33.510, regarding immunity; and

(E) home's house rules;

(8) an **acknowledgment** [ACKNOWLEDGEMENT] and agreement relating to home safekeeping and management of the resident's money, as required by AS 47.33.040;

(9) a copy of the resident's living will, if any**, or an advance health care directive made under AS 13.52, if any**; and

(10) a copy of a power of attorney or other written designation**, including an advance health care directive made under AS 13.52,** of an agent, representative, or surrogate by the resident.

*** Sec. 14.** AS 13.26.332(L), 13.26.335(1), 13.26.344(l); AS 13.50.010, 13.50.014, 13.50.016, 13.50.020, 13.50.030, 13.50.040, 13.50.050, 13.50.060, 13.50.065, 13.50.068, 13.50.070, 13.50.080, 13.50.090; AS 18.12.010, 18.12.020, 18.12.030, 18.12.035, 18.12.037, 18.12.040, 18.12.050, 18.12.060, 18.12.070, 18.12.080, 18.12.090, 18.12.100; AS 47.30.950, 47.30.952, 47.30.954, 47.30.956, 47.30.958, 47.30.960, 47.30.962, 47.30.964, 47.30.966, 47.30.968, 47.30.970, 47.30.972, and 47.30.980 are repealed.

*** Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to read:

CONTINUING EFFECT OF EXISTING DOCUMENTS. (a) A donation of body parts made under AS 13.50 or AS 18.12, repealed by sec. 14 of this Act, before the effective date of secs. 1 - 14 of this Act continues in effect under AS 13.50 or AS 18.12, as those chapters exist before the effective date of secs. 1 - 14 of this Act, until the donation is revoked.

(b) A power of attorney that is made under AS 13.26.332(L), 13.26.335(1), or 13.26.344(l), repealed by sec. 14 of this Act, before the effective date of secs. 1 - 14 of this Act and that contains authority for health care services under AS 13.26.332(L), AS 13.26.335(1), or 13.26.344(l), repealed by sec. 14 of this Act, continues in effect under

AS 13.26.332(L), 13.26.335(1), and 13.26.344(l), as those provisions exist before the effective date of secs. 1 - 14 of this Act, until the power of attorney is revoked.

(c) A declaration made under AS 18.12, repealed by sec. 14 of this Act, before the effective date of secs. 1 - 14 of this Act continues in effect under AS 18.12, as that chapter exists before the effective date of secs. 1 - 14 of this Act, until the declaration is revoked.

(d) A declaration made under AS 47.30.950 - 47.30.980, repealed by sec. 14 of this Act, before the effective date of secs. 1 - 14 of this Act continues in effect under AS 47.30.950 - 47.30.980, as those sections exist before the effective date of secs. 1 - 14 of this Act, until the declaration is revoked.

* **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to read:

EFFECT ON EXISTING INSURANCE POLICIES AND ANNUITIES. AS 13.52.120(b), added by sec. 3 of this Act, does not apply to a policy of insurance or an annuity that was entered into before the effective date of secs. 1 - 14 of this Act.

* **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: REGULATIONS. The Department of Health and Social Services may proceed to adopt regulations necessary to implement the changes made by secs. 1 - 14 of this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before January 1, 2003.

* **Sec. 18.** Section 17 of this Act takes effect immediately under AS 01.10.070(c).

* **Sec. 19.** Except as provided in sec. 18 of this Act, this Act takes effect January 1, 2003.

Moved by Rep. Coghill
Adopted — 3.20.02

22-LS0712\O.1
Bannister
3/20/02

AMENDMENT #1

OFFERED IN THE HOUSE

TO: CSHB 197( ), Draft Version "O"

Page 7, line 19:

Delete "do not resuscitate protocol"

Insert "protocol for do not resuscitate orders"

Page 10, line 30:

Delete "orders not to resuscitate"

Insert "do not resuscitate orders"

Page 18, following line 29:

Insert new paragraphs to read:

"(4) "cardiopulmonary resuscitation" means cardiopulmonary resuscitation or a component of cardiopulmonary resuscitation;

(5) "do not resuscitate order" means a directive from a licensed physician that emergency cardiopulmonary resuscitation should not be administered to a qualified patient; in this paragraph,

(A) "qualified patient" means a patient who has been determined by the attending physician to be in a terminal condition;

(B) "terminal condition" means a progressive incurable or irreversible condition that, without the administration of life-sustaining procedures, will, in the opinion of two physicians, when available, who have personally examined the patient, one of whom must be the attending physician, result in death within a relatively short time; in this subparagraph, "life-sustaining procedures" means medical procedures or interventions that, when

administered to a qualified patient, will serve only to prolong the dying process; "

Renumber the following paragraphs accordingly.

Page 19, lines 2 - 3:

Delete "do not resuscitate protocol"

Insert "protocol for do not resuscitate orders that is"

Page 19, line 12:

Delete "orders not to resuscitate"

Insert "do not resuscitate orders"

STATE OF ALASKA

Department of Health & Social Services
Division of Public Health
Section of Community Health and Emergency Medical Services

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March 19, 2002

Melanie Lesh
Office of Rep. Bill Hudson
Room 502 State Capitol
Juneau, AK 99801-1182

RE: CS HB 197

Dear Melanie,

Thank you for meeting with Matt Anderson and me on March 13th to discuss how HB 197 interacts with the Comfort One Do-Not-Resuscitate (DNR) program. We found the meeting to be both enjoyable and helpful. During the meeting, you requested that we provide you with a written summary of our recommendations and concerns. They are found below.

1. Restoration of DNR statutory sections.

With the exception of AS 18.12.035(b), the DNR statutory provisions would be repealed, including the provision for entry of a DNR order by the attending physician, the requirement that a health care provider comply with a DNR order, and penalties for refusing to comply with a DNR order. We would like the language in the current DNR law to remain in place, to the greatest extent possible for reasons explained below in the Discussion section.

2. Restoration of definitions pertaining to DNR order (AS 18.12.100)

We would like the definitions contained in AS 18.12.100 to be retained in the bill, particularly the definitions of 'cardiopulmonary resuscitation,' 'qualified patient' and 'terminal condition.'

3. Deletion of the provisions which would seem to allow a health care provider to decline to comply with a do-not resuscitate order. (Sec. 13.52.050(e)-(g))

Discussion

Removal of the DNR sections from the bill would eliminate the requirement that a DNR order be the directive of a licensed physician. AS 18.12.100(6). This change in the statute would appear to allow a health care decision which includes a DNR order to be made by a competent patient, an agent, a guardian or a surrogate. This does not seem to be the intent of the Uniform Health-Care Decisions Act or CS HB 197. The definitions section defines "health care" to include the "approval or disapproval of diagnostic tests, surgical procedures, programs of medication, and

orders not to resuscitate" (emphasis added). A lay advocate cannot order diagnostic tests, surgical procedures, or medication, and similarly, a DNR order is a power which should remain the authority of a physician.

Another and related concern is the elimination of the requirement that a DNR order be issued only for a terminally-ill ("qualified") patient. AS 18.12.100. If a physician is not involved in a decision to allow a life to extinguish without cardio-pulmonary resuscitation, the result could be that an ill or injured person who is under the influence of alcohol or drugs, mentally impaired due to a head injury or diabetic hypoglycemia, or suffering from suicidal depression, could refuse life-saving treatment for a treatable condition. In an extreme example, it is conceivable that an abusive spouse could refuse treatment on behalf of an incapacitated partner. Even terminally-ill patients change their minds about DNR orders and it is essential that a physician be involved to ensure that the decision to withhold resuscitation is medically-informed. We may be willing to support an expanded definition of a 'qualified patient' which lists certain medical conditions which are not necessarily classified as terminal illnesses, such as advanced Alzheimer's Disease, if diagnosed and approved by a physician.

The existing DNR law has protections for implementing the patient's wishes which may be lost by repealing the DNR sections of law, as provided for in the current draft of CS HB 197. AS 18.12.040 provides that a patient for whom a DNR order has issued has the right to make decisions regarding CPR as long as the patient is able to do so, and if the patient is not competent, the declaration (living will) or DNR protocol governs. This statutory provision is enhanced by Section 13.52.190(9)(B) in CS HB 197 which defines "health care" to include the right of a patient or proxy to approve or disapprove DNRs. Unfortunately, the provision in Section 13.52.050(e)-(g) authorizing a health care provider to decline to comply with a health care directive for reasons of conscience, when applied to a DNR could result in a medic arriving on scene and performing CPR on a patient who, through a DNR order has expressed the desire not to be resuscitated. This result would be contrary to the intent of the bill and it is important to recognize the unique demands of the pre-hospital environment in which the DNR program is applied. Instantaneous life and death decisions are made without the opportunity to transfer the patient to another care provider or seek a court order regarding health care directives, all good protections otherwise provided for in the bill but inapplicable to the pre-hospital emergency medical environment.

We support the goals of the bill to allow maximum autonomy for patients and families in expressing and implementing humane and compassionate end-of-life care. We are concerned, however, that by removing the role of the physician in establishing a do-not-resuscitate order, removing the requirement that a patient be terminally ill before a DNR can be entered, and allowing health care providers to decline to honor a health care directive that the Comfort One Do-Not-Resuscitate program would become ineffective.

Thank you for the opportunity to provide comments on this important bill.

Sincerely,

Shelley K. Owens
Health Program Manager

cc: Matt Anderson, EMS Unit Manager
Mark Johnson, MPA, Chief, Section of Community Health & EMS
Karen E. Pearson, MS, Director, Division of Public Health
Elmer Lindstrom, Deputy Commissioner, Dept. of Health & Social Services