

ALR 6th

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From the editor

Child custody and visitation rights are a constant source of litigation. Volume 5 of ALR6th addresses the construction and application of the Interstate Compact on the Placement of Children and child support obligations of former same-sex partners, and volume 6 of ALR6th addresses the issues of the right of a parent to regain custody of a child after a temporary conditional relinquishment of custody, the right of a jailed or imprisoned parent to a visit from a minor child, and the determination that a child is neglected or dependent, or that parental rights should be terminated, on the basis that the parent has failed to provide for the child's education.

Jason B. Binimow, J.D.

Highlights

CUSTODY AND SUPPORT OF CHILDREN

Construction and Application of Interstate Compact on the Placement of Children (ICPC)

The Interstate Compact on the Placement of Children (ICPC) consists of 10 articles which define the types of placements subject to the ICPC, the procedures to be followed in making an interstate placement, and the specific protections, services, and requirements under the ICPC. This annotation collects the cases construing and applying the Interstate Compact on the Placement of Children. [5 A.L.R.6th 193](#)



been to enact criminal statutes so as to outlaw certain types of behavior that would unduly affect the voting process or the rights of particular individuals to vote. Courts have reached a variety of conclusions on this issue, depending on the particular nature of

the statutes involved and the circumstances presented, as this annotation illustrates. [5 A.L.R.6th 1](#)

FREEDOM OF INFORMATION ACTS

What Constitutes Commercial or Financial Information, Exclusive of Trade Secrets, Exempt from Disclosure Under State Freedom of Information Acts—General Rules of Construction

Virtually all states have an information act and most have an exemption thereto applicable to commercial or financial information. In construing these exemptions to determine whether they apply, courts look to several factors, the most complex of which is whether the information is confidential. Courts

ELECTIONS AND VOTING

Validity, Construction, and Application of State Statutory Voting Offenses

For almost as long as there have been democratic elections, there have been attempts by unscrupulous individuals to alter the results through a wide variety of unethical means. One response by society has

apply several different tests to determine whether particular requested information is confidential. This annotation collects and discusses all of the cases which have considered what rules to apply in construing exemptions to state information acts to determine whether they apply to protect from disclosure commercial and/or financial information requested from government agencies. [5 A.L.R.6th 327](#)

MALPRACTICE BY MEDICAL OR HEALTH PROFESSIONS

Validity of Medical Malpractice Statutes of Repose

A statute of repose establishes the maximum length of time available to commence litigation under a statute

of limitations that begins to run at a point, such as the discovery of the injury, that may occur a substantial time after the alleged negligence. Because such statutes can preclude a claim before the patient discovers his or her injury, the validity of medical malpractice statutes of repose has been frequently litigated. This annotation collects and analyzes all of the state cases, and the federal cases arising under diversity jurisdiction, discussing the validity of a state medical malpractice statute of repose, other than one applicable only to minors. [5 A.L.R.6th 133](#)

Coming Soon

Listed below are a few of the topics scheduled to be published in 6 A.L.R.6th in August 2005. Some of the annotations listed may be rescheduled.



CUSTODY AND SUPPORT OF CHILDREN

Right of Parent to Regain Custody of Child After Temporary Conditional Relinquishment of Custody

The divorce courts have the power to award custody of a minor child to a stranger to the action, such as a grandparent. However, a court may not place the custody of children with a third party who is not seeking it and objects to it. Custody is properly awarded to a stranger to an action for divorce if both parents are unfit or if the only parent who contests the issue with a stranger is unfit. Even though a parent is fit to have custody, he or she may be denied custody if this custody is clearly inimical to the best interests of the child. "Legal custody" refers to the responsibility for making major decisions affecting the child's welfare and is a status that may be held by a parent who does not have "physical custody," which refers to the responsibility for the physical care and immediate supervision of the child. There is a fundamental constitutional right to the custody of one's children. The custody, care, and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder. The legal custody of a minor is in the parents, or the surviving parent, unless there has been a court adjudication awarding custody to a third person. Since the right of parents to the custody of their minor children is

both a natural and a legal right, the law should not disturb the parent-child relationship except for the strongest reasons and only upon a clear showing of a parent's gross misconduct or unfitness, or of other extraordinary circumstances affecting the welfare of the

child. The issue arises as to the right of a parent to regain custody of a child after the temporary conditional relinquishment of custody. This annotation collects and analyzes the state and federal cases in which the courts have discussed the right of a parent, who has voluntarily relinquished custody of a child due to a circumstance of a temporary nature, to regain the custody of that child after the condition which required relinquishment has been resolved. [6 A.L.R.6th](#)

PRISONS AND PRISONERS

Right of Jailed or Imprisoned Parent to Visit from Minor Child

Prisons are institutions where public access is generally limited, and inmates do not have an absolute right to visitation, since such privileges are subject to the prison authorities' discretion, provided that visitation policies meet legitimate penological objectives. While prison officials may permit inmates to receive visits from only those individuals who prison officials believe are most likely to aid in their rehabilitation, keeping visitations at a manageable level that will not jeopardize institutional security, there must be a showing of a substantial governmental interest serving legitimate and reasonable needs and exigencies of the institutional environment to warrant limitations on an individual inmate's right to communicate with family and friends. Penal authorities are entitled to the exercise of discretion in adopting visitation policies, as

a result of which limitations on the number of visits may be reasonable and do not constitute cruel and unusual punishment. Contact visitation restrictions, including the prohibition of such visits, are generally valid exercises of penological discretion, although prohibiting contact visits between attorneys and their death row clients may violate the inmates' constitutional right to meaningful legal counsel. However, a prohibition of contact visits does not deprive prison inmates of due process rights under the Fourteenth Amendment where the policy meets legitimate security interests. This annotation collects and analyzes the state and federal cases in which the courts have specifically considered the right of a jailed or imprisoned parent to visits from his or her minor children. **6 A.L.R.6th**

TERMINATION OF PARENTAL RIGHTS

Failure to Provide for Child's Education

The failure of a parent to provide for a child's education may be a ground for a determination, under the provisions of a state's juvenile court legislation, that the child is dependent or neglected. Such conduct may also warrant a termination of the parent's rights to the child. This annotation collects and analyzes those cases which consider whether a child is neglected or dependent, or whether parental rights should be terminated, on the ground that a parent failed to provide for the child's education. **6 A.L.R.6th**

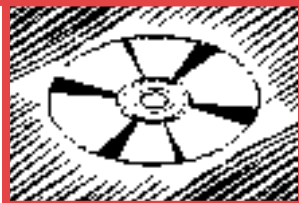
MALPRACTICE BY MEDICAL OR HEALTH PROFESSIONS

Appropriateness of "Error in Judgment" Charge in Medical Malpractice Actions

In malpractice cases, as in civil actions generally, the jury must be instructed as to the issues framed by the pleadings, in the light of the evidence adduced at the trial. It is ordinarily necessary and proper to instruct the jury as to the standard of skill and care applicable to the particular practitioner in the circumstances presented by the case. An instruction in an action for malpractice against a specialist is erroneous in holding the defendant bound to exercise only the degree of skill and care required of a general practitioner. An instruction in an action against a physician for malpractice is not misleading or confusing in requiring the jury to base its verdict on the evidence in the case, and not on mere surmise, guesswork, and speculation. Where, for example, a plaintiff has presented direct evidence that damage occurred during an operation, but only circumstantial evidence on the issue of whether such damage was caused by negligence, the failure of the court to give an instruction on the sufficiency of circumstantial evidence may be prejudicial error. The issue also arises as to the appropriateness of an "error in judgment," "error of judgment," "honest error," "honest mistake," "best judgment," "honest judgment," "multiple methods of treatment," or similar jury instruction in a medical malpractice action. This annotation collects and discusses all of the cases which have considered the appropriateness of an "error in judgment" or similar jury charge in medical malpractice actions. **6 A.L.R.6th**

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The following is a complete list, arranged alphabetically by topic, of annotations contained in the current volume 5 A.L.R.6th or scheduled for publication in 6 A.L.R.6th. Some of the annotations listed may be rescheduled.



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