

29-LS1409\N
Bruce
4/5/16

CS FOR HOUSE BILL NO. 334()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES MUÑOZ, Vazquez, LeDoux, Millett

A BILL

FOR AN ACT ENTITLED

"An Act relating to visitation and child custody."

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

*** Section 1.** AS 25.20.060(a) is amended to read:

(a) If there is a dispute over child custody, either parent may petition the superior court for resolution of the matter under AS 25.20.060 - 25.20.130. The court shall award custody on the basis of the best interests of the child. In determining the best interests of the child, the court shall consider all relevant factors, including those factors enumerated in AS 25.24.150(c) [, AND THE PRESUMPTION ESTABLISHED IN AS 25.24.150(g)]. In a custody determination under this section, the court shall provide for visitation by a grandparent or other person if that is in the best interests of the child.

*** Sec. 2.** AS 25.20.061 is amended to read:

Sec. 25.20.061. Visitation in proceedings involving domestic violence. If visitation is awarded to a parent who the court finds by clear and convincing evidence has a history of perpetrating [COMMITTED A CRIME INVOLVING]

domestic violence or been convicted of a crime involving domestic violence, against the other parent or a child of the two parents, within the five years preceding the award of visitation, the court may set conditions for the visitation, including

(1) the transfer of the child for visitation must occur in a protected setting;

(2) visitation shall be supervised by another person or agency and under specified conditions as ordered by the court;

(3) the perpetrator shall attend and complete, to the satisfaction of the court, a program for the rehabilitation of perpetrators of domestic violence that meets the standards set by the Department of Corrections under AS 44.28.020(b), or other counseling; the perpetrator shall be required to pay the costs of the program or other counseling;

(4) the perpetrator shall abstain from possession or consumption of alcohol or controlled substances during the visitation and for 24 hours before visitation;

(5) the perpetrator shall pay costs of supervised visitation as set by the court;

(6) the prohibition of overnight visitation;

(7) the perpetrator shall post a bond to the court for the return and safety of the child; and

(8) any other condition necessary for the safety of the child, the other parent, or other household member.

* **Sec. 3.** AS 25.20.070 is amended to read:

Sec. 25.20.070. Temporary custody of the child. Unless it is shown to be detrimental to the welfare of the child considering the factors under AS 25.24.150(c) [, OR UNLESS THE PRESUMPTION UNDER AS 25.24.150(g) IS PRESENT], the child shall have, to the greatest degree practical, equal access to both parents during the time that the court considers an award of custody under AS 25.20.060 - 25.20.130.

* **Sec. 4.** AS 25.20.095(g) is amended to read:

(g) In making a determination of the best interests of the child, the court shall consider the factors under AS 25.24.150(c) [AND APPLY THE REBUTTABLE

1 PRESUMPTION UNDER AS 25.24.150(g) TO VISITATION, DELEGATION, AND
2 CUSTODY ORDERS ISSUED UNDER THIS SECTION]. In addition, there is a
3 rebuttable presumption that a deployed parent's visitation rights may not be delegated
4 to a family member who has been convicted of a crime involving [A HISTORY OF
5 PERPETRATING] domestic violence against a spouse, a child, or a domestic living
6 partner, or to a family member with an individual in the family member's household
7 who has been convicted of a crime involving [A HISTORY OF PERPETRATING]
8 domestic violence against a spouse, a child, or a domestic living partner.

9 * **Sec. 5.** AS 25.20.110(e) is amended to read:

10 (e) A court may provide for a temporary modification of a custody or
11 visitation order during the period of a parent's deployment to military service to make
12 reasonable accommodation for the deployment. The temporary order must specify that
13 deployment is the basis of the order and include provisions for

14 (1) custody or reasonable visitation during a period of leave granted to
15 the deployed parent if the custody or visitation is in the child's best interest;

16 (2) termination of the temporary order and resumption of the
17 permanent order within 10 days after notification of the deployed parent's ability to
18 resume custody or visitation unless the court finds that resumption of the custody or
19 visitation order in effect before deployment is no longer in the child's best interest; the
20 nondeployed parent shall bear the burden of proving that resumption of the order is no
21 longer in the child's best interest;

22 (3) a hearing if a child of a deployed parent has been moved out of
23 state and the nondeployed parent has filed a motion that alleges that resumption of the
24 permanent custody order will result in immediate danger of irreparable harm to the
25 child [OR THAT THE PRESUMPTION UNDER AS 25.24.150(g) EXISTS];

26 (4) delegation, on request of the deployed parent, of the deployed
27 parent's visitation rights under an existing order, if any, to another family member who
28 has an existing close relationship to the child if the delegation is in the child's best
29 interest; and

30 (5) immediate notification by each parent of a change of address or
31 contact information to the other parent and to the court; if a valid court order issued

under AS 12.61.120 or AS 25.20.060 or an equivalent provision in another jurisdiction is in effect that requires that the address or contact information of the parent be kept confidential, the notification shall be made to the court only, and a copy of the order shall be included in the notification.

* **Sec. 6.** AS 25.20.110(g) is amended to read:

(g) In making a determination of the best interests of the child, the court shall consider the factors under AS 25.24.150(c) [AND APPLY THE REBUTTABLE PRESUMPTION UNDER AS 25.24.150(g) TO VISITATION, DELEGATION, AND CUSTODY ORDERS ISSUED UNDER THIS SECTION]. In addition, there is a rebuttable presumption that a deployed parent's visitation rights may not be delegated to a family member who has **been convicted of a crime involving** [A HISTORY OF PERPETRATING] domestic violence against a spouse, a child, or a domestic living partner, or to a family member with an individual in the family member's household who has **been convicted of a crime involving** [A HISTORY OF PERPETRATING] domestic violence against a spouse, a child, or a domestic living partner.

* **Sec. 7.** AS 25.24.150(c) is amended to read:

(c) The court shall determine custody in accordance with the best interests of the child under AS 25.20.060 - 25.20.130. In determining the best interests of the child the court shall consider

(1) the physical, emotional, mental, religious, and social needs of the child;

(2) the capability and desire of each parent to meet these needs;

(3) the child's preference if the child is of sufficient age and capacity to form a preference;

(4) the love and affection existing between the child and each parent;

(5) the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;

(6) **clear and convincing** [THE WILLINGNESS AND ABILITY OF EACH PARENT TO FACILITATE AND ENCOURAGE A CLOSE AND CONTINUING RELATIONSHIP BETWEEN THE OTHER PARENT AND THE CHILD, EXCEPT THAT THE COURT MAY NOT CONSIDER THIS

1 WILLINGNESS AND ABILITY IF ONE PARENT SHOWS THAT THE OTHER
2 PARENT HAS SEXUALLY ASSAULTED OR ENGAGED IN DOMESTIC
3 VIOLENCE AGAINST THE PARENT OR A CHILD, AND THAT A
4 CONTINUING RELATIONSHIP WITH THE OTHER PARENT WILL
5 ENDANGER THE HEALTH OR SAFETY OF EITHER THE PARENT OR THE
6 CHILD;

7 (7) ANY] evidence of domestic violence, child abuse, or child neglect
8 in the proposed custodial household or a history of violence between the parents;

9 (7) [(8)] evidence that substance abuse by either parent or other
10 members of the household directly affects the emotional or physical well-being of the
11 child;

12 (8) [(9)] other factors that the court considers pertinent.

13 * **Sec. 8.** AS 25.24.150 is amended by adding new subsections to read:

14 (m) If the court finds by clear and convincing evidence that a parent has a
15 history of perpetrating domestic violence or, if a parent has been convicted of a crime
16 of domestic violence against the other parent or a child of the two parents, within the
17 five years preceding the award of visitation, the court may set conditions for the
18 visitation under AS 25.20.061.

19 (n) If the court finds that both parents have committed a crime involving
20 domestic violence against the other parent or a child of the two parents, within the five
21 years preceding the award of custody, the court shall determine custody to minimize
22 the risk that either parent will perpetrate further domestic violence. In determining
23 custody, the court may

24 (1) award legal and physical custody to the parent who is less likely to
25 continue to perpetrate the violence and require that the custodial parent complete a
26 program under AS 25.20.061(3); or

27 (2) if necessary to protect the welfare of the child, award sole legal or
28 physical custody, or both, to a suitable third person if the person would not allow
29 access to a violent parent except as ordered by the court.

30 * **Sec. 9.** AS 25.24.150(g), 25.24.150(h), 25.24.150(i), and 25.24.150(j) are repealed.

31 * **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to

- 1 read:
- 2 APPLICABILITY. This Act applies to visitation and custody orders issued on or after
- 3 the effective date of this Act.