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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, or a domestic living partner [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 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 the court finds by clear and convincing evidence has 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 the court finds by clear and convincing evidence has a history of perpetrating domestic violence against a spouse, a child, or a domestic living partner.

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

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

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

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

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

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

(5) immediate notification by each parent of a change of address or

1 contact information to the other parent and to the court; if a valid court order issued
2 under AS 12.61.120 or AS 25.20.060 or an equivalent provision in another jurisdiction
3 is in effect that requires that the address or contact information of the parent be kept
4 confidential, the notification shall be made to the court only, and a copy of the order
5 shall be included in the notification.

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

7 (g) In making a determination of the best interests of the child, the court shall
8 consider the factors under AS 25.24.150(c) [AND APPLY THE REBUTTABLE
9 PRESUMPTION UNDER AS 25.24.150(g) TO VISITATION, DELEGATION, AND
10 CUSTODY ORDERS ISSUED UNDER THIS SECTION]. In addition, there is a
11 rebuttable presumption that a deployed parent's visitation rights may not be delegated
12 to a family member who the court finds by clear and convincing evidence has a
13 history of perpetrating domestic violence against a spouse, a child, or a domestic
14 living partner, or to a family member with an individual in the family member's
15 household who the court finds by clear and convincing evidence has a history of
16 perpetrating domestic violence against a spouse, a child, or a domestic living partner.

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

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

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

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

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

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

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

29 (6) the willingness and ability of each parent to facilitate and
30 encourage a close and continuing relationship between the other parent and the child [,
31 EXCEPT THAT THE COURT MAY NOT CONSIDER THIS WILLINGNESS AND

ABILITY IF ONE PARENT SHOWS THAT THE OTHER PARENT HAS SEXUALLY ASSAULTED OR ENGAGED IN DOMESTIC VIOLENCE AGAINST THE PARENT OR A CHILD, AND THAT A CONTINUING RELATIONSHIP WITH THE OTHER PARENT WILL ENDANGER THE HEALTH OR SAFETY OF EITHER THE PARENT OR THE CHILD];

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

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

(9) other factors that the court considers pertinent.

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

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

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

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

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

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

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

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