

**SENATE BILL NO. 156**

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY SENATOR GREEN

Introduced: 4/12/95

Referred: HES, JUD, FIN

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act requiring mandatory mediation of child custody disputes except in  
2 extraordinary circumstances; relating to modification of child custody or visitation  
3 rights; amending Alaska Rule of Civil Procedure 100; and providing for an  
4 effective date."

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

6 \* **Section 1.** AS 25.20.080 is amended to read:

7           Sec. 25.20.080. MEDIATION OF CHILD CUSTODY MATTER. (a) At any  
8 time within 30 days after a petition for child custody is filed under AS 25.20.060 **or**  
9 **a petition to modify an award of custody or visitation is filed under AS 25.20.110,**  
10 the court **shall** [MAY] order the parties to submit to mediation **unless the court finds**  
11 **extraordinary cause for not ordering mediation in a particular case. The parties**  
12 **may determine by agreement the number and identity of the mediator or**  
13 **mediators. If the parties do not agree with each other, the court may appoint up**  
14 **to three mediators who have experience in law, child psychology, social work, or**

1 other areas appropriate to the particular case. Each party shall have the right to  
2 challenge peremptorily one mediator appointed by the court.

3 (b) Mediation shall be conducted informally as a conference, or by telephone,  
4 or series of conferences, as determined by the mediators [MEDIATOR]. The parties  
5 to the action and a court-appointed representative of the minor children shall attend.  
6 An agreement by the parties to the mediation on an issue relating to child custody  
7 or visitation shall be reduced to writing and submitted to the court for approval  
8 as a court order. The court shall approve an agreement reached between the  
9 parties under this subsection unless it finds, based on clear and convincing  
10 evidence, that the agreement is not in the best interests of the child. When  
11 determining the best interests of the child, the parties to the mediation, the  
12 mediators, and the court shall consider the relevant factors set out in  
13 AS 25.20.090 and 25.20.150(c).

14 (c) If the mediators determine [MEDIATOR DETERMINES] that mediation  
15 efforts are unsuccessful, the mediators [MEDIATOR] shall terminate mediation and  
16 notify the court that mediation efforts have failed. If the mediators agree that  
17 mediation efforts have failed because one party refuses to attend mediation  
18 sessions or refuses to negotiate in good faith, the mediators shall notify the court  
19 as to which party has caused the mediation efforts to fail. The custody proceeding  
20 shall proceed in the usual manner after mediation fails except that, if the mediators  
21 agree that the failure of mediation is due to one party's refusal to attend  
22 mediation sessions or to negotiate in good faith, then the court shall award  
23 custody as requested by the other party unless the court finds, based on clear and  
24 convincing evidence, that the award would not be in the best interests of the child.

25 (d) Upon submission of the parties to mediation under this section, a pending  
26 child custody proceeding shall be stayed for a period of 90 [30] days or until the court  
27 is notified that mediation efforts have failed. All court orders made during the pending  
28 custody proceeding remain in effect during the period of mediation.

29 (e) Costs of mediation shall be paid as ordered by the court by one party, by  
30 both parties, or by the state if both parties are indigent. In making its order under  
31 this subsection, the court shall consider the relative financial resources of the

1            **parties and whether the parties have acted in good faith.**

2        \* **Sec. 2.** AS 25.20.110 is amended by adding new subsections to read:

3            (c) If the parties reach an agreement to modify custody or visitation through  
4            the mediation ordered under AS 25.20.080, the court shall approve the modification  
5            without requiring that a change in circumstances be shown unless the court finds,  
6            based on clear and convincing evidence, that the modification would not be in the best  
7            interests of the child.

8            (d) For purposes of this section, there is a rebuttable presumption that a change  
9            of circumstances has occurred that requires modification of a child custody award  
10           involving shared physical custody if the

11                    (1) child who is the subject of the award is relocated, or is intended to  
12                    be relocated, from residence in this state to another state by a person sharing physical  
13                    custody; and

14                    (2) other person sharing physical custody is a resident of this state.

15            (e) For purposes of this section, there is a rebuttable presumption that a change  
16            of circumstances has occurred that requires modification of a child custody award  
17            involving visitation rights if the custodial parent has frequently, without good cause,  
18            denied or curtailed visitation with the child by the person entitled to visitation under  
19            the order.

20        \* **Sec. 3.** APPLICABILITY. This Act applies to petitions for child custody or for  
21        modification of child custody awards that are filed on or after the effective date of this Act.

22        \* **Sec. 4.** COURT RULE CHANGES. AS 25.20.080, as amended by sec. 1 of this Act,  
23        and AS 25.20.110(c), added by sec. 2 of this Act, have the effect of changing Rule 100,  
24        Alaska Rules of Civil Procedure, by changing the circumstances under which mediation must  
25        be used in child custody cases and by changing a number of details relating to the mediation  
26        process and the effect of the mediation process.

27        \* **Sec. 5.** AS 25.20.080, as amended by sec. 1 of this Act, and AS 25.20.110(c), added by  
28        sec. 2 of this Act, take effect if and only if sec. 4 of this Act receives the two-thirds majority  
29        vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

30        \* **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).