

**HOUSE BILL NO. 385**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - SECOND SESSION

**BY REPRESENTATIVE MCGUIRE**

**Introduced: 1/20/04**  
**Referred: Judiciary**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to awarding child custody; and providing for an effective date."**

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

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

4 (a) If there is a dispute over child custody, either parent may petition the  
5 superior court for resolution of the matter under AS 25.20.060 - 25.20.130. The court  
6 shall award custody on the basis of the best interests of the child. In determining the  
7 best interests of the child, the court shall consider all relevant factors, including those  
8 factors enumerated in AS 25.24.150(c), **and the presumption established in**  
9 **AS 25.24.150(g)**. In a custody determination under this section, the court shall  
10 provide for visitation by a grandparent or other person if that is in the best interests of  
11 the child.

12 \* **Sec. 2.** AS 25.20.070 is amended to read:

13 **Sec. 25.20.070. Temporary custody of the child. If [UNLESS] it is in the**  
14 **best interests** [SHOWN TO BE DETRIMENTAL TO THE WELFARE] of the child  
15 **under AS 25.24.150(c), and the presumption under AS 25.24.150(g) is not**

1        **present**, the child shall have, to the greatest degree practical, equal access to both  
 2        parents during the time that the court considers an award of custody under  
 3        AS 25.20.060 - 25.20.130.

4        \* **Sec. 3.** AS 25.20.090 is amended to read:

5                **Sec. 25.20.090. Factors for consideration in awarding shared child**  
 6        **custody.** In determining whether to award shared custody of a child the court shall  
 7        consider

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

10                      (2) the needs of the child;

11                      (3) the stability of the home environment likely to be offered by each  
 12        parent;

13                      (4) the education of the child;

14                      (5) the advantages of keeping the child in the community where the  
 15        child presently resides;

16                      (6) the optimal time for the child to spend with each parent considering

17                                (A) the actual time spent with each parent;

18                                (B) the proximity of each parent to the other and to the school  
 19        in which the child is enrolled;

20                                (C) the feasibility of travel between the parents;

21                                (D) special needs unique to the child that may be better met by  
 22        one parent than the other;

23                                (E) **the willingness and ability of each** [WHICH] parent [IS  
 24        MORE LIKELY] to **facilitate and** encourage **a close** [FREQUENT] and  
 25        continuing **relationship between** [CONTACT WITH] the other parent **and**  
 26        **the child, except that the court may not consider this willingness and**  
 27        **ability if one parent shows that the other parent has sexually assaulted or**  
 28        **engaged in a pattern of abusive behavior against the parent or a child, and**  
 29        **that a continuing relationship with the other parent will endanger the**  
 30        **health or safety of either the parent or the child;**

31                                (F) **the desirability of placing the child with the child's**

1                    **primary caregiver if the caregiver is considered a fit caregiver by the**  
 2                    **court;**

3                    (7) any findings and recommendations of a neutral mediator;

4                    (8) any evidence of domestic violence, child abuse, or child neglect in  
 5 the proposed custodial household or a history of violence between the parents;

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

8                    (10) other factors the court considers pertinent.

9                    \* **Sec. 4.** AS 25.24.150(c) is amended to read:

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

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

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

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

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

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

21                    (6) the **willingness** [DESIRE] and ability of each parent to **facilitate**  
 22 [ALLOW AN OPEN] and **encourage a close** [LOVING FREQUENT  
 23 RELATIONSHIP BETWEEN THE CHILD] and **continuing relationship between**  
 24 the other parent **and the child, except that the court may not consider this**  
 25 **willingness and ability if one parent shows that the other parent has sexually**  
 26 **assaulted or engaged in a pattern of abusive behavior against the parent or a**  
 27 **child, and that a continuing relationship with the other parent will endanger the**  
 28 **health or safety of either the parent or the child;**

29                    (7) any evidence of domestic violence, child abuse, or child neglect in  
 30 the proposed custodial household or a history of violence between the parents;

31                    (8) evidence that substance abuse by either parent or other members of

1 the household directly affects the emotional or physical well-being of the child;

2 (9) **the desirability of placement of the child with the child's**  
 3 **primary caregiver if the caregiver is considered a fit caregiver by the court;**

4 **(10)** other factors that the court considers pertinent.

5 \* **Sec. 5.** AS 25.24.150 is amended by adding new subsections to read:

6 (g) There is a rebuttable presumption that a parent who has a history of  
 7 perpetrating domestic violence may not be awarded sole legal custody, sole physical  
 8 custody, joint legal custody, or joint physical custody of a child.

9 (h) A parent has a history of perpetrating domestic violence under (g) of this  
 10 section if the court finds that, during one incident of domestic violence, the parent  
 11 caused serious bodily injury or the court finds that the parent has engaged in more than  
 12 one incident of domestic violence. The presumption may be overcome only by clear  
 13 and convincing evidence that the perpetrating parent has successfully completed an  
 14 intervention program for batterers, that the parent does not engage in substance abuse,  
 15 and that the best interests of the child require that parent's participation as a custodial  
 16 parent because the other parent is absent, suffers from a diagnosed mental illness that  
 17 affects parenting abilities, or engages in substance abuse that affects parenting  
 18 abilities, or because of other circumstances that affect the best interests of the child.

19 (i) If the court finds that both parents have a history of perpetrating domestic  
 20 violence under (g) of this section, the court shall either

21 (1) award sole legal and physical custody to the parent who is less  
 22 likely to continue to perpetrate the violence and require that the custodial parent  
 23 complete a treatment program; or

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

27 (j) If the court finds that a parent has a history of perpetrating domestic  
 28 violence under (g) of this section, the court shall allow only supervised visitation by  
 29 that parent with the child, conditioned on that parent's participating in and successfully  
 30 completing an intervention program for batterers and a parenting education program,  
 31 except that the court may allow unsupervised visitation if it is shown by a

1           preponderance of the evidence that the violent parent has completed a substance abuse  
2           treatment program, is not abusing alcohol or psychoactive drugs, does not pose a  
3           danger of mental or physical harm to the child, and unsupervised visitation is in the  
4           child's best interests.

5                     (k) The fact that an abused parent suffers from the effects of the abuse does  
6           not constitute a basis for denying custody to the abused parent.

7   \* **Sec. 6.** This Act takes effect July 1, 2004.