

CS FOR HOUSE BILL NO. 385(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/3/04

Referred: Rules

Sponsor(s): REPRESENTATIVES MCGUIRE, Holm, Anderson, Heinze, Kerttula, Dahlstrom, Lynn

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.** Unless it is shown to be
14 detrimental to the welfare of the child **considering the factors under**
15 **AS 25.24.150(c), or unless the presumption under AS 25.24.150(g) is present,** the

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

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

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

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

9 (2) the needs of the child;

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

12 (4) the education of the child;

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

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

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

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

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

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

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

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

31 (8) any evidence of domestic violence, child abuse, or child neglect in

1 the proposed custodial household or a history of violence between the parents;

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

4 (10) other factors the court considers pertinent.

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

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

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

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

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

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

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

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

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

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

29 (9) other factors that the court considers pertinent.

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

31 (g) There is a rebuttable presumption that a parent who has committed an act

1 of domestic violence against the other parent, a child, or a domestic living partner may
2 not be awarded sole legal custody, sole physical custody, joint legal custody, or joint
3 physical custody of a child.

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

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

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

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

23 (j) If the court finds that a parent has a history of perpetrating domestic
24 violence under (g) of this section, the court shall allow only supervised visitation by
25 that parent with the child, conditioned on that parent's participating in and successfully
26 completing an intervention program for batterers, and a parenting education program,
27 where reasonably available, except that the court may allow unsupervised visitation if
28 it is shown by a preponderance of the evidence that the violent parent has completed a
29 substance abuse treatment program if the court considers it appropriate, is not abusing
30 alcohol or psychoactive drugs, does not pose a danger of mental or physical harm to
31 the child, and unsupervised visitation is in the child's best interests.

1 (k) The fact that an abused parent suffers from the effects of the abuse does
2 not constitute a basis for denying custody to the abused parent unless the court finds
3 that the effects of the domestic violence are so severe that they render the parent
4 unable to safely parent the child.

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