

HOUSE BILL NO. 368

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES LEDOUX, Eastman

Introduced: 2/21/18

Referred: State Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to child custody; and amending Rule 90.3, Alaska Rules of Civil**
2 **Procedure."**

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

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

5 (a) If there is a dispute over child custody, either parent may petition the
6 superior court for resolution of the matter under AS 25.20.060 - 25.20.130. The court
7 shall award custody on the basis of the best interests of a [THE] child. **There is a**
8 **rebuttable presumption that shared physical custody, in which the child resides**
9 **with each parent for 50 percent of the year, and joint legal custody of the child is**
10 **in the best interests of the child. The presumption may be overcome by a**
11 **preponderance of the evidence that it is not in the best interests of the child to**
12 **reside with a parent for 50 percent of the year or for a parent to have legal**
13 **custody of the child.** In determining the best interests of the child, the court shall
14 consider all relevant factors, including those factors enumerated in AS 25.24.150(c),

1 and the presumption established in AS 25.24.150(g). In a custody determination under
 2 this section, the court shall provide for visitation by a grandparent or other person if
 3 that is in the best interests of the child.

4 * **Sec. 2.** AS 25.20.060(c) is amended to read:

5 (c) The court may award shared **physical** custody to both parents **that is not**
 6 **equal** if shared **physical** custody is determined by the court to be in the best interests
 7 of the child. An award of shared **physical** custody shall **ensure** [ASSURE] that the
 8 child has frequent and continuing contact with each parent to the maximum extent
 9 possible.

10 * **Sec. 3.** AS 25.20 is amended by adding a new section to read:

11 **Sec. 25.20.075. Relocation of a child.** (a) A person who has custody of a child
 12 may not relocate the child out of state unless

13 (1) all persons entitled to custody of the child consent to the relocation
 14 in writing; or

15 (2) a court with jurisdiction over the child determines that relocation is
 16 in the best interests of the child.

17 (b) In determining the best interests of the child under (a)(2) of this section,
 18 the court shall consider all relevant factors, including the factors enumerated in
 19 AS 25.24.150(c) and the presumption established in AS 25.24.150(g).

20 (c) If the court finds that a person relocated a child out of state in violation of
 21 (a) of this section, the court shall issue a temporary order compelling the person to
 22 return the child to the state until the court determines whether relocation is in the best
 23 interests of the child.

24 * **Sec. 4.** AS 25.20.090 is amended to read:

25 **Sec. 25.20.090. Factors for consideration in awarding shared child**
 26 **custody.** In determining whether to award shared **physical** custody **or joint legal**
 27 **custody** of a child, the court shall consider

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

30 (2) the needs of the child;

31 (3) the stability of the home environment likely to be offered by each

1 parent;

2 (4) the education of the child;

3 (5) the advantages of keeping the child in the community where the
4 child presently resides;

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

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

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

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

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

12 (E) the willingness and ability of each parent to facilitate and
13 encourage a close and continuing relationship between the other parent and the
14 child, except that the court may not consider this willingness and ability if one
15 parent shows that the other parent has sexually assaulted or engaged in
16 domestic violence against the parent or a child, and that a continuing
17 relationship with the other parent will endanger the health or safety of either
18 the parent or the child;

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

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

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

24 (10) other factors the court considers pertinent.

25 * **Sec. 5.** AS 25.20.095(g) is amended to read:

26 (g) In making a determination of the best interests of the child, the court shall
27 **apply the rebuttable presumption under AS 25.20.060(a)**, consider the factors
28 under AS 25.24.150(c), and apply the rebuttable presumption under AS 25.24.150(g)
29 to visitation, delegation, and custody orders issued under this section. In addition,
30 there is a rebuttable presumption that a deployed parent's visitation rights may not be
31 delegated to a family member who has a history of perpetrating domestic violence

1 against a spouse, a child, or a domestic living partner, or to a family member with an
 2 individual in the family member's household who has a history of perpetrating
 3 domestic violence against a spouse, a child, or a domestic living partner.

4 * **Sec. 6.** AS 25.20.100 is amended to read:

5 **Sec. 25.20.100. Reasons for denial to be set out.** If a parent or the guardian
 6 ad litem requests shared **physical** custody **or joint legal custody** of a child and the
 7 court denies the request, the reasons for the denial shall be stated on the record.

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

9 (g) There is a rebuttable presumption that a parent who has a history of
 10 perpetrating domestic violence against the other parent, a child, or a domestic living
 11 partner may not be awarded sole legal custody, sole physical custody, joint legal
 12 custody, or **shared** [JOINT] physical custody of a child.

13 * **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to
 14 read:

15 **INDIRECT COURT RULE AMENDMENT.** The provisions of AS 25.20.060(a), as
 16 amended by sec. 1 of this Act, AS 25.20.060(c), as amended by sec. 2 of this Act, and
 17 AS 25.20.095(g), as amended by sec. 5 of this Act, have the effect of changing Rule 90.3,
 18 Alaska Rules of Civil Procedure, by changing the procedure for awarding child custody.

19 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to
 20 read:

21 **APPLICABILITY.** This Act applies to custody orders issued on or after the effective
 22 date of this Act.