

HOUSE BILL NO. 85

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES RAUSCHER, Eastman, Jackson

Introduced: 3/6/19

Referred: Health and Social Services, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to shared child custody; relating to relocation of a child out of state;**
2 **and relating to a presumption of the best interests of the child in child custody and**
3 **visitation determinations."**

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

5 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
6 to read:

7 LEGISLATIVE INTENT. It is the intent of the legislature to ensure the frequent,
8 continuing, and meaningful contact of a child with each parent of the child who has shown the
9 ability to act in the best interests of the child and to encourage parents who have separated or
10 dissolved their marriage to share the rights and responsibilities of raising their child. It is
11 further the intent of the legislature to encourage parents to participate in making decisions
12 affecting the health, education, and welfare of their child and to resolve a dispute involving
13 their child amicably through mediation.

14 * **Sec. 2.** AS 25.20.060(a) is amended to read:

1 (a) If there is a dispute over child custody, either parent may petition the
 2 superior court for resolution of the matter under AS 25.20.060 - 25.20.130. The court
 3 shall award custody on the basis of the best interests of a [THE] child. **There is a**
 4 **rebuttable presumption that shared physical custody, joint legal custody, and**
 5 **substantially equal parenting time for each parent of the child are in the best**
 6 **interests of the child. The court shall advise parents in a dispute over child**
 7 **custody of the rebuttable presumption. The presumption may be overcome by**
 8 **clear and convincing evidence that shared physical custody, joint legal custody,**
 9 **and substantially equal parenting time are not in the best interests of the child.** In
 10 determining the best interests of the child, the court shall consider all relevant factors,
 11 including those factors enumerated in AS 25.24.150(c), and the presumption
 12 established in AS 25.24.150(g). In a custody determination under this section, the
 13 court shall provide for visitation by a grandparent or other person if that is in the best
 14 interests of the child. **In this subsection, "parenting time" means the time during**
 15 **which each parent of a child has access to the child and is responsible for**
 16 **providing the child with food, clothing, and shelter and making routine decisions**
 17 **concerning the child's care.**

18 * **Sec. 3.** AS 25.20.060 is amended by adding new subsections to read:

19 (e) Unless the presumption under (a) of this section is overcome, the court
 20 shall enter an order for shared physical custody and joint legal custody of a child that

21 (1) includes a housing arrangement that provides, in accordance with
 22 the needs of the child, for the child to reside for a substantially equal amount of time
 23 with each parent; and

24 (2) requires each parent to consult with the other parent when making a
 25 major decision regarding the child's health, education, or general welfare.

26 (f) In awarding joint legal custody of a child, the court may designate one
 27 parent to make a specific decision relating to the child. However, each parent retains
 28 equal rights and responsibilities to make decisions relating to the child that the court
 29 has not specifically designated one parent to make in an order under this subsection. A
 30 parent designated to make a specific decision under this subsection shall consult with
 31 the other parent and consider the other parent's opinions when making a major

1 decision relating to the child.

2 * **Sec. 4.** AS 25.20 is amended by adding new sections to read:

3 **Sec. 25.20.075. Relocation of a child.** (a) A person may not relocate a child
4 out of state unless

5 (1) the person has custody of the child and all other persons entitled to
6 custody of the child consent in writing to the relocation; or

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

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

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

16 **Sec. 25.20.078. Parenting plan.** (a) Before awarding shared physical custody
17 or joint legal custody of a child, the court shall require the parents of the child to
18 submit, either individually or jointly, a proposed parenting plan that

19 (1) describes the manner in which the parents will make a decision that
20 may affect the child;

21 (2) describes the manner in which the parents will share responsibility
22 for the daily tasks associated with raising the child;

23 (3) provides a housing arrangement for the child that includes
24 designating the address to be used for school registration and determining school
25 residency;

26 (4) provides a schedule of the child's time, including holidays, with
27 each parent;

28 (5) describes the methods and technologies through which each parent
29 will communicate with the child and the other parent;

30 (6) describes the manner in which each parent will facilitate the child's
31 time with the other parent;

1 (7) includes a financial arrangement that provides for payment of the
2 child's expenses, consistent with a child support order involving the child;

3 (8) describes the manner in which the parents will assign authority and
4 responsibility regarding the child's involvement in academic, religious, civic, cultural,
5 athletic, and other activities and decisions related to the child's medical care, including
6 dental, vision, and mental health treatment;

7 (9) describes the manner in which the parents will address a major
8 change in the child's life, including a change that arises because of the child's age or
9 developmental needs, or resolve a disagreement that may affect the child; and

10 (10) addresses other issues the court considers pertinent.

11 (b) There is a rebuttable presumption that a parenting plan that each parent
12 agrees to is in the best interests of the child. Unless the court finds by clear and
13 convincing evidence that a parenting plan is not in the best interests of the child, the
14 court shall adopt the parenting plan in its final order or modification of a custody
15 order. In determining the best interests of the child, the court shall consider all relevant
16 factors, including those factors enumerated in AS 25.24.150(c) and the presumption
17 established in AS 25.24.150(g).

18 * **Sec. 5.** AS 25.20.090 is amended to read:

19 **Sec. 25.20.090. Factors for consideration in awarding shared physical**
20 **[CHILD] custody or joint legal custody.** In determining whether to award shared
21 **physical custody or joint legal custody of a child,** the court shall consider

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

24 (2) the needs of the child;

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

27 (4) the education of the child;

28 (5) the advantages of keeping the child in the community where the
29 child presently resides;

30 (6) the optimal time for the child to spend with each parent,
31 considering

- 1 (A) the actual time spent with each parent;
- 2 (B) the proximity of each parent to the other and to the school
3 in which the child is enrolled;
- 4 (C) the feasibility of travel between the parents;
- 5 (D) special needs unique to the child that may be better met by
6 one parent than the other;
- 7 (E) the willingness and ability of each parent to facilitate and
8 encourage a close and continuing relationship between the other parent and the
9 child, except that the court may not consider this willingness and ability if one
10 parent shows that the other parent has sexually assaulted or engaged in
11 domestic violence against the parent or a child, and that a continuing
12 relationship with the other parent will endanger the health or safety of either
13 the parent or the child;
- 14 (7) any findings and recommendations of a neutral mediator;
- 15 (8) any evidence of domestic violence, child abuse, or child neglect in
16 the proposed custodial household or a history of violence between the parents;
- 17 (9) evidence that substance abuse by either parent or other members of
18 the household directly affects the emotional or physical well-being of the child;
- 19 (10) **a parenting plan submitted under AS 25.20.078;**
- 20 **(11)** other factors the court considers pertinent.

21 * **Sec. 6.** AS 25.20.095(g) is amended to read:

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

31 * **Sec. 7.** AS 25.20.100 is amended to read:

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

4 * **Sec. 8.** AS 25.20.110 is amended by adding a new subsection to read:

5 (i) Except as provided under (e) of this section, a court may provide for a
 6 temporary modification of a custody or visitation order while a parent is deployed only
 7 if the court finds that the modification is in the best interests of the child.

8 * **Sec. 9.** AS 25.20.115 is amended to read:

9 **Sec. 25.20.115. Attorney fee awards in custody and visitation matters.** In
 10 an action to modify, vacate, or enforce that part of an order providing for custody of a
 11 child or visitation with a child, the court may, upon request of a party, award attorney
 12 fees and costs of the action. In awarding attorney fees and costs under this section, the
 13 court shall consider the relative financial resources of the parties, [AND] whether the
 14 parties have acted in good faith, **and whether a party made a false or frivolous**
 15 **allegation under AS 25.24.150(m).**

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

17 **Sec. 25.20.200. Definitions.** In this chapter,

18 (1) "joint legal custody" means each parent of a child is awarded by a
 19 court of competent jurisdiction equal rights and responsibilities regarding major
 20 decisions concerning the child, including decisions relating to the child's education,
 21 health care, and religious and cultural training;

22 (2) "shared physical custody" means a child resides with or is under
 23 the care and supervision of one parent for an amount of time that is significant but not
 24 necessarily equal to the amount of time the child resides with or is under the care and
 25 supervision of the other parent.

26 * **Sec. 11.** AS 25.24.150(c) is amended to read:

27 (c) The court shall determine custody in accordance with the best interests of
 28 the child under AS 25.20.060 - 25.20.130. In determining the best interests of the
 29 child, the court shall consider

30 (1) the physical, emotional, mental, religious, and social needs of the
 31 child;

- 1 (2) the capability and desire of each parent to meet these needs;
- 2 (3) the child's preference if the child is of sufficient age and capacity to
- 3 form a preference;
- 4 (4) the love and affection existing between the child and each parent;
- 5 (5) the length of time the child has lived in a stable, satisfactory
- 6 environment and the desirability of maintaining continuity;
- 7 (6) the willingness and ability of each parent to facilitate and
- 8 encourage a close and continuing relationship between the other parent and the child,
- 9 except that the court may not consider this willingness and ability if one parent shows
- 10 that the other parent has sexually assaulted or engaged in domestic violence against
- 11 the parent or a child, and that a continuing relationship with the other parent will
- 12 endanger the health or safety of either the parent or the child;
- 13 (7) any evidence of domestic violence, child abuse, or child neglect in
- 14 the proposed custodial household or a history of violence between the parents;
- 15 (8) evidence that substance abuse by either parent or other members of
- 16 the household directly affects the emotional or physical well-being of the child;
- 17 (9) **the distance between the child's residence and each parent's**
- 18 **residence;**
- 19 **(10) if a parent is incarcerated, the incarceration of the parent;**
- 20 **(11)** other factors that the court considers pertinent.

21 * **Sec. 12.** AS 25.24.150(g) is amended to read:

22 (g) There is a rebuttable presumption that a parent who has a history of

23 perpetrating domestic violence against the other parent, a child, or a domestic living

24 partner may not be awarded sole legal custody, sole physical custody, joint legal

25 custody, or **shared** [JOINT] physical custody of a child.

26 * **Sec. 13.** AS 25.24.150 is amended by adding a new subsection to read:

27 (m) If, during a court proceeding relating to child custody, a parent

28 intentionally makes a false or frivolous allegation of sexual assault, domestic violence,

29 child abuse, child abandonment, or child neglect, or provides false or deceptive

30 financial information to the court, the court shall consider those actions in determining

31 the best interests of the child.

1 * **Sec. 14.** AS 25.24.230(b) is amended to read:

2 (b) If the petition is filed under AS 25.24.200(a) and is subject to
3 AS 25.24.220(h), the court may grant the spouses a final decree of dissolution and
4 shall order other relief as provided in this section if the court, upon consideration of
5 the information contained in the petition and the testimony of the spouse or spouses at
6 the hearing, finds that

7 (1) the spouses understand fully the nature and consequences of their
8 action;

9 (2) the written agreements, **including a parenting plan under**
10 **AS 25.20.078**, between the spouses concerning child custody, child support, and
11 visitation are in the best interest of the children of the marriage, constitute the entire
12 agreement of the parties on child custody, child support, and visitation and, as between
13 the spouses, are just;

14 (3) the written agreements between the spouses concerning spousal
15 maintenance and tax consequences, if any, division of property, including retirement
16 benefits, and allocation of obligations are just and constitute the entire agreement
17 between the parties;

18 (4) the spousal maintenance and division of property fairly allocate the
19 economic effect of dissolution and take into consideration the factors listed in
20 AS 25.24.160(a)(2) and (4);

21 (5) each spouse entered the agreement voluntarily and free from the
22 coercion of another person; and

23 (6) the conditions in AS 25.24.200(a) have been met.

24 * **Sec. 15.** AS 25.20.060(c) is repealed.

25 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 APPLICABILITY. This Act applies to custody orders issued on or after the effective
28 date of this Act.