

Original sponsor: Rules Committee by request
of the Governor

Offered: 4/14/77
Referred: Rules

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 208 am S

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to child custody jurisdiction; and
7 providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 25 is amended by adding a new chapter to read:

10 CHAPTER 30. UNIFORM CHILD CUSTODY JURISDICTION ACT.

11 Sec. 25.30.010. PURPOSE. The general purposes of this chapter are
12 to:

13 (1) avoid jurisdictional competition and conflict with
14 courts of other states in matters of child custody which have in the
15 past resulted in the shifting of children from state to state with
16 harmful effects on their well-being;

17 (2) promote cooperation with the courts of other states to
18 the end that a custody decree is rendered in the state which can best
19 decide the case in the interest of the child;

20 (3) assure that litigation concerning the custody of a child
21 takes place ordinarily in the state with which the child and his family
22 have the closest connection and where significant evidence concerning
23 his care, protection, training, and personal relationships is most
24 readily available, and that courts of this state decline the exercise of
25 jurisdiction when the child and his family have a closer connection with
26 another state;

27 (4) discourage continuing controversies over child custody in
28 the interest of greater stability of home environment and of secure
29 family relationships for the child;

1 (5) deter abductions and other unilateral removals of chil-
2 dren undertaken to obtain custody awards;

3 (6) avoid re-litigation of custody decisions of other states
4 in this state insofar as feasible;

5 (7) facilitate the enforcement of custody decrees of other
6 states;

7 (8) promote and expand the exchange of information and other
8 forms of mutual assistance between the courts of this state and those of
9 other states concerned with the same child; and

10 (9) make uniform the law of those states which enact it.

11 Sec. 25.30.020. JURISDICTION. (a) The superior court has juris-
12 diction to make a child custody determination by initial or modification
13 decree if the conditions set out in any of the following paragraphs are
14 met:

15 (1) this state (A) is the home state of the child at the time
16 of commencement of the proceeding, or (B) had been the child's home
17 state within six months before commencement of the proceeding and the
18 child is absent from this state because of his removal or retention by
19 a person claiming his custody or for other reasons, and a parent or
20 person acting as parent continues to live in this state; or

21 (2) the child is physically present in this state and (A) the
22 child has been abandoned, or (B) it is necessary in an emergency to
23 protect the child because he has been subjected to child abuse or
24 neglect as defined in AS 47.17.070(1) and (5) or because he is a depen-
25 dent minor as defined in AS 47.10.290(3); or

26 (3) it (A) appears that no other state would have juris-
27 diction under prerequisites substantially in accordance with (1) or (2)
28 of this subsection, or another state has declined to exercise jurisdic-
29 tion on the ground that this state is the more appropriate forum to

1 determine the custody of the child, and (B) is in the best interest of
2 the child that this court assume jurisdiction.

3 (b) Except under (a)(2) and (3) of this section, physical presence
4 in this state of the child, or of the child and one of the contestants,
5 is not alone sufficient to confer jurisdiction on a court of this state
6 to make a child custody determination.

7 (c) Physical presence of the child, while desirable, is not a
8 prerequisite for jurisdiction to determine his custody.

9 Sec. 25.30.030. NOTICE AND OPPORTUNITY TO BE HEARD. Before
10 making a decree under this chapter, reasonable notice and opportunity to
11 be heard, taking into account education and language differences which
12 are known or reasonably ascertainable, shall be given to the contes-
13 tants, any parent whose parental rights have not been previously termi-
14 nated, and any person who has physical custody of the child. If any of
15 these persons is outside this state, notice and opportunity to be heard
16 shall be given to him under sec. 40 of this chapter.

17 Sec. 25.30.040. NOTICE TO PERSONS OUTSIDE THIS STATE; SUBMISSION
18 TO JURISDICTION. (a) Notice required for the exercise of jurisdiction
19 over a person outside this state shall be given in accordance with the
20 provisions of Rule 4, Alaska Rules of Civil Procedure.

21 (b) Notice under this section shall be served, mailed, delivered,
22 or published at least 20 days before any hearing in this state.

23 (c) Proof of service outside this state shall be made according
24 to the provisions of Rule 4, Alaska Rules of Civil Procedure.

25 (d) Notice is not required if a person submits to the jurisdiction
26 of the court.

27 Sec. 25.30.050. SIMULTANEOUS PROCEEDINGS IN OTHER STATES. (a)
28 The superior court may not exercise its jurisdiction under this chapter
29 if at the time of filing the petition a proceeding concerning the

1 custody of the child was pending in a court of another state exercising
2 jurisdiction substantially in conformity with this chapter, unless the
3 proceeding is stayed by the court of the other state because this state
4 is a more appropriate forum or for other reasons.

5 (b) Before hearing the petition in a custody proceeding the court
6 shall examine the pleadings and other information supplied by the par-
7 ties under sec. 80 of this chapter and shall consult the child custody
8 records maintained under sec. 150 of this chapter concerning the pen-
9 dency of proceedings with respect to the child in other states. If the
10 court has reason to believe that proceedings may be pending in another
11 state, it shall direct an inquiry to the state court administrator or
12 other appropriate official of the other state.

13 (c) If the court is informed during the course of the proceeding
14 that a proceeding concerning the custody of the child was pending in
15 another state before the court assumed jurisdiction, it shall stay the
16 proceeding and communicate with the court in which the other proceeding
17 is pending so that the issue may be litigated in the more appropriate
18 forum and information may be exchanged in accordance with secs. 180 -
19 210 of this chapter. If a court of this state has made a custody decree
20 before being informed that a proceeding was commenced in another state
21 after it assumed jurisdiction, it shall likewise inform the other court
22 to the end that the issues may be litigated in the more appropriate
23 forum.

24 Sec. 25.30.060. INCONVENIENT FORUM. (a) The superior court may
25 decline to exercise its jurisdiction any time before issuing a decree if
26 it finds that it is an inconvenient forum to make a custody determina-
27 tion under the circumstances of the case and that a court of another
28 state is a more appropriate forum.

29 (b) A finding of inconvenient forum may be made upon the court's

1 own motion or upon motion of a party or a guardian ad litem or other
2 representative of the child.

3 (c) In determining if it is an inconvenient forum, the court shall
4 consider if it is in the interest of the child that another state assume
5 jurisdiction. For this purpose it may take into account the following
6 factors, among others:

7 (1) if another state is or recently was the child's home
8 state;

9 (2) if another state has a closer connection with the child
10 and his family or with the child and one or more of the contestants;

11 (3) if better evidence concerning the child's present or
12 future care, protection, training, and personal relationships is avail-
13 able in another state, or if equally substantial evidence is more
14 readily available in another state;

15 (4) if the parties have agreed on another forum which is no
16 less appropriate; and

17 (5) if the exercise of jurisdiction by a court of this state
18 would contravene any of the purposes stated in sec. 10 of this chapter.

19 (d) Before determining whether to decline or retain jurisdiction
20 the court may communicate with a court of another state and exchange
21 information pertinent to the assumption of jurisdiction by either court
22 with a view to assuring that jurisdiction will be exercised by the more
23 appropriate court and that a forum will be available to the parties.

24 (e) If the court finds that it is an inconvenient forum and that
25 a court of another state is a more appropriate forum, it may dismiss the
26 proceedings, or it may stay the proceedings upon condition that a
27 custody proceeding be promptly commenced in another named state or upon
28 any other conditions which may be just and proper, including the condi-
29 tion that a moving party stipulate his consent and submission to the

1 jurisdiction of the other forum.

2 (f) The court may decline to exercise its jurisdiction under this
3 chapter if a custody determination is incidental to an action for
4 divorce or dissolution of marriage or another proceeding while retaining
5 jurisdiction over the divorce or other proceeding.

6 (g) If it appears to the court that it is clearly an inappropriate
7 forum, it may require the party who commenced the proceedings to pay, in
8 addition to the costs of the proceedings in this state, necessary travel
9 and other expenses, including attorney fees, incurred by other parties
10 or their witnesses. Payment is to be made to the clerk of the court for
11 remittance to the proper party.

12 (h) Upon dismissal or stay of proceedings under this section the
13 court shall inform the court found to be the more appropriate forum of
14 this fact, or, if the court which would have jurisdiction in the other
15 state is not certainly known, shall transmit the information to the
16 court administrator or other appropriate official of the other state for
17 forwarding to the appropriate court.

18 (i) Any communication received from another state informing this
19 state of a finding of inconvenient forum because a court of this state
20 is the more appropriate forum shall be filed in the custody records of
21 the court in the appropriate judicial district. Upon assuming juris-
22 diction, the superior court of this state shall inform the original
23 court of this fact.

24 Sec. 25.30.070. JURISDICTION DECLINED BY REASON OF CONDUCT. (a)
25 If the petitioner for an initial decree has wrongfully taken the child
26 from another state or has engaged in similar reprehensible conduct, the
27 court may not exercise its jurisdiction unless it is necessary in an
28 emergency to protect the child for reasons set out in sec. 20(2) of
29 this chapter.

1 (b) If the petitioner for a modification decree has, without the
2 consent of the person entitled to custody, improperly removed the child
3 from the physical custody of the person entitled to custody or has
4 improperly retained the child after a visit or other temporary relin-
5 quishment of physical custody, the court may not exercise its jurisdic-
6 tion to modify a custody decree of another state unless it is necessary
7 in an emergency to protect the child for reasons set out in sec. 20(2)
8 of this chapter. If the petitioner has violated any other provision of
9 a custody decree of another state, the court may decline to exercise its
10 jurisdiction if this is just and proper under the circumstances.

11 (c) In appropriate cases a court dismissing a petition under this
12 section may charge the petitioner with necessary travel and other
13 expenses, including attorney fees, incurred by other parties or their
14 witnesses.

15 Sec. 25.30.080. INFORMATION UNDER OATH TO BE SUBMITTED TO THE
16 COURT. (a) Every party in a custody proceeding in his first pleading
17 or in an affidavit attached to that pleading shall give information
18 under oath as to the child's present address, the places where the child
19 has lived within the last five years, and the names and present adres-
20 ses of the persons with whom the child has lived during that period. In
21 this pleading or affidavit every party shall further declare under oath
22 whether:

23 (1) he has participated, as a party, witness, or in any other
24 capacity, in any other litigation concerning the custody of the same
25 child in this or any other state;

26 (2) he has information of any custody proceeding concerning
27 the child pending in a court of this or any other state; and

28 (3) he knows of any person not a party to the proceedings who
29 has physical custody of the child or claims to have custody or visita-

1 tion rights with respect to the child.

2 (b) If the declaration as to any of the matters specified in
3 (a)(1) - (3) of this section is in the affirmative, the declarant shall
4 give additional information under oath as required by the court. The
5 court may examine the parties under oath as to details of the informa-
6 tion furnished and as to other matters pertinent to the court's juris-
7 diction and the disposition of the case. All information obtained by
8 the court shall be made available to counsel for the parties.

9 (c) Each party has a continuing duty to inform the court of any
10 other custody proceeding concerning the child in this or any other state
11 of which he obtained information during this proceeding.

12 Sec. 25.30.090. ADDITIONAL PARTIES. If the court learns from
13 information furnished by the parties under sec. 80 of this chapter or
14 from other sources that a person not a party to the custody proceeding
15 has physical custody of the child or claims to have custody or visita-
16 tion rights with respect to the child, it shall order that person to be
17 joined as a party and to be properly notified of the pendency of the
18 proceeding and of his joinder as a party. If the person joined as a
19 party is outside this state, he shall be served with process or other-
20 wise notified in accordance with sec. 40 of this chapter.

21 Sec. 25.30.100. APPEARANCE OF PARTIES AND THE CHILD. (a) The
22 court may order any party to the proceeding who is in this state to
23 appear personally before the court. If that party has physical custody
24 of the child, the court may order that he appear personally with the
25 child.

26 (b) If a party to the proceeding whose presence is desired by the
27 court is outside this state with or without the child, the court may
28 order that the notice given under sec. 40 of this chapter include a
29 statement directing that party to appear personally with or without the

1 child and declaring that failure to appear may result in a decision
2 adverse to that party.

3 (c) If a party to the proceeding who is outside this state is
4 directed to appear under (b) of this section or desires to appear
5 personally before the court with or without the child, the court may
6 require another party to pay to the clerk of the court travel and other
7 necessary expenses of the party so appearing and of the child if this is
8 just and proper under the circumstances.

9 Sec. 25.30.110. BINDING FORCE AND RES JUDICATA EFFECT OF CUSTODY
10 DECREE. A custody decree rendered by the superior court of this state
11 having jurisdiction under sec. 20 of this chapter binds all parties who
12 have been served in this state or notified in accordance with sec. 40 of
13 this chapter or who have submitted to the jurisdiction of the court, and
14 who have been given an opportunity to be heard. As to these parties the
15 custody decree is conclusive as to all issues of law and fact decided
16 and as to the custody determination made until that determination is
17 modified in accordance with law, including the provisions of this chap-
18 ter.

19 Sec. 25.30.120. RECOGNITION OF OUT-OF-STATE CUSTODY DECREES. The
20 superior court of this state shall recognize and enforce an initial or
21 modification decree of a court of another state which had assumed
22 jurisdiction under statutory provisions substantially in accordance with
23 this chapter or which was made under factual circumstances meeting the
24 jurisdictional standards of this chapter.

25 Sec. 25.30.130. MODIFICATION OF CUSTODY DECREE OF ANOTHER STATE.
26 (a) If a court of another state has made a custody decree, a superior
27 court of this state may not modify that decree unless (1) it appears to
28 the court of this state that the court which rendered the decree does
29 not now have jurisdiction under jurisdictional prerequisites substan-

1 tially in accordance with this chapter or has declined to assume juris-
2 diction to modify the decree, and (2) the court of this state has
3 jurisdiction.

4 (b) If a court of this state is authorized under (a) of this
5 section and sec. 70 of this chapter to modify a custody decree of
6 another state it shall consider the transcript of the record and other
7 documents of all previous proceedings submitted to it in accordance with
8 sec. 210 of this chapter.

9 Sec. 25.30.140. FILING AND ENFORCEMENT OF CUSTODY DECREE OF
10 ANOTHER STATE. (a) A certified copy of a custody decree of another
11 state may be filed in the office of the clerk of the trial courts of any
12 judicial district of this state. A custody decree so filed has the same
13 effect and shall be enforced in the same manner as a custody decree
14 rendered by a court of this state.

15 (b) A person violating a custody decree of another state, which
16 makes it necessary to enforce the decree in this state, may be required
17 to pay necessary travel and other expenses, including attorney fees,
18 incurred by the party entitled to the custody or his witness.

19 Sec. 25.30.150. MAINTENANCE OF OUT-OF-STATE CUSTODY DECREES AND
20 PROCEEDINGS. The clerk of the trial courts for each judicial district
21 shall maintain the following:

22 (1) certified copies of custody decrees of other states
23 received for filing;

24 (2) communications as to the pendency of custody proceedings
25 in other states;

26 (3) communications concerning a finding of inconvenient forum
27 by a court of another state; and

28 (4) other communications or documents concerning custody
29 proceedings in another state which may affect the jurisdiction of a

1 court of this state or the disposition to be made by it in a custody
2 proceeding.

3 Sec. 25.30.160. CERTIFIED COPIES OF CUSTODY DECREE. The clerk of
4 the trial courts for each judicial district of this state, at the
5 request of the court of another state or at the request of any person
6 who is affected by or has a legitimate interest in a custody decree,
7 shall certify and forward a copy of the decree to that court or person,
8 upon payment of a prescribed fee.

9 Sec. 25.30.170. TAKING TESTIMONY IN ANOTHER STATE. In addition to
10 other procedural devices available to a party, any party to the pro-
11 ceeding or a guardian ad litem or other representative of the child may
12 adduce testimony of witnesses, including parties and the child, by
13 deposition or otherwise, in another state. The court on its own motion
14 may direct that the testimony of a person be taken in another state and
15 may prescribe the manner in which and the terms upon which the testimony
16 shall be taken.

17 Sec. 25.30.180. HEARINGS AND STUDIES IN ANOTHER STATE; ORDERS TO
18 APPEAR. (a) The superior court of this state may request the appro-
19 priate court of another state to hold a hearing to adduce evidence, to
20 order a party to produce or give evidence under other procedures of that
21 state, or to have social studies made with respect to the custody of a
22 child involved in proceedings pending in the court of this state, and
23 may request the other court to forward to the superior court of this
24 state certified copies of the transcript of the record of the hearing,
25 the evidence otherwise adduced, or any social studies prepared in
26 compliance with the request. The cost of the services may be assessed
27 against the parties or, if a party against whom the costs are assessed
28 is determined by the court to be indigent, paid by the court.

29 (b) The superior court of this state may request the appropriate

1 court of another state to order a party to custody proceedings pending
2 in the superior court of this state to appear in the proceedings, and if
3 that party has physical custody of the child, to appear with the child.
4 The request may state that travel and other necessary expenses of the
5 party and of the child whose appearance is desired will be assessed
6 against another party or, if that party is determined by a court of this
7 state to be indigent, that the costs will be paid by the court.

8 Sec. 25.30.190. ASSISTANCE TO COURTS OF OTHER STATES. (a) Upon
9 request of the court of another state the superior court of this state
10 may order a person in this state to appear at a hearing to adduce
11 evidence or to produce or give evidence under other procedures available
12 in this state or may order social studies to be made for use in a
13 custody proceeding in another state. A certified copy of the transcript
14 of the record of the hearing or the evidence otherwise adduced and any
15 social studies prepared shall be forwarded by the clerk of the court to
16 the requesting court upon receipt of payment from the requesting court.

17 (b) A person in this state may voluntarily give his testimony or
18 statement in this state for use in a custody proceeding outside this
19 state.

20 (c) Upon request of the court of another state, the superior court
21 of this state may order a person in this state to appear alone or with
22 the child in a custody proceeding in another state. The court may
23 condition compliance with the request upon assurance by the other state
24 that travel and other necessary expenses will be advanced or reimbursed.

25 Sec. 25.30.200. PRESERVATION OF DOCUMENTS FOR USE IN OTHER STATES.
26 In any custody proceeding in this state, the court shall preserve the
27 pleadings, orders and decrees, any record that has been made of its
28 hearings, social studies, and other pertinent documents or a micro-
29 photographic film print or copy of any of the above papers until the

1 child has reached majority or is emancipated under applicable law. Upon
2 appropriate request of and payment from the court of another state, the
3 court shall forward to the other court certified copies of any or all of
4 those documents.

5 Sec. 25.30.210. REQUEST FOR COURT RECORDS OF ANOTHER STATE. If a
6 custody decree has been rendered in another state concerning a child
7 involved in a custody proceeding pending in a court of this state, the
8 superior court of this state upon taking jurisdiction of the case shall
9 request of the court of the other state a certified copy of the trans-
10 cript of any court record and other documents mentioned in sec. 200 of
11 this chapter and send payment for them.

12 Sec. 25.30.220. INTERNATIONAL APPLICATION. The general policies
13 of this chapter extend to the international area. The provisions of
14 this chapter relating to the recognition and enforcement of custody
15 decrees of other states apply to custody decrees and decrees involving
16 legal institutions similar in nature to custody rendered by appropriate
17 authorities of other nations if reasonable notice and opportunity to be
18 heard were given to all affected persons.

19 Sec. 25.30.230. PRIORITY. Upon the request of a party to a
20 custody proceeding which raises a question of existence or exercise of
21 jurisdiction under this chapter, the case shall be given calendar
22 priority to the extent allowed by law and court rules, and shall be
23 handled expeditiously.

24 Sec. 25.30.900. DEFINITIONS. As used in this chapter:

25 (1) "contestant" means a person, including a parent, who
26 claims a right to custody or visitation rights with respect to a child;

27 (2) "custody determination" means a court decision and court
28 orders providing for the custody of a child, including visitation
29 rights; it does not include a decision relating to child support or any

1 other monetary obligation of any person;

2 (3) "custody proceeding" means a proceeding in which a
3 determination of custody of a child is an issue, including an action for
4 divorce, dissolution of marriage, legal separation, and dependency
5 proceedings;

6 (4) "decree" or "custody decree" means a custody determina-
7 tion contained in a judicial decree or order made in a custody pro-
8 ceeding, and includes an initial decree and a modification decree;

9 (5) "home state" means the state in which the child, immedi-
10 ately preceding the time involved, lived with his parents, a parent, or
11 a person acting as parent, for at least six consecutive months, and, in
12 the case of a child less than six months old, the state in which the
13 child lived from birth with any of the persons mentioned; periods of
14 temporary absence of any of the named persons are counted as part of
15 the six-month or other period;

16 (6) "initial decree" means the first custody decree con-
17 cerning a particular child;

18 (7) "modification decree" means a custody decree which
19 modifies or replaces a prior decree, whether made by the court which
20 rendered the prior decree or by another court;

21 (8) "physical custody" means actual possession and control of
22 a child;

23 (9) "person acting as parent" means a person, other than a
24 parent, who has physical custody of a child and who has either been
25 awarded custody by a court or claims a right to custody;

26 (10) "state" means any state, territory, or possession of the
27 United States, the Commonwealth of Puerto Rico, and the District of
28 Columbia.

29 Sec. 25.30.910. SHORT TITLE. This chapter may be cited as the

1 Uniform Child Custody Jurisdiction Act.

2 * Sec. 2. AS 09.55.205 is amended to read:

3 Sec. 09.55.205. JUDGMENTS FOR CUSTODY. In an action for divorce
4 or for legal separation the court may, if it has jurisdiction under AS
5 25.30.020, and is an appropriate forum under AS 25.30.050 and 25.30.060,
6 during the pendency of the action, or at the final hearing or at any
7 time thereafter during the minority of any child of the marriage, make,
8 modify or vacate an order for the custody of or visitation with the
9 minor child which may seem necessary or proper [AND MAY AT ANY TIME
10 MODIFY OR VACATE THE ORDER]. Appointment of a guardian ad litem or
11 attorney for the child shall be made under the terms of AS 09.65.130.
12 In awarding custody the court is to be guided by the following consi-
13 derations:

14 (1) by what appears to be for the best interest of the child
15 and if the child is of a sufficient age and intelligence to form a
16 preference, the court may consider that preference in determining the
17 question; and

18 (2) as between parents adversely claiming the custody of a
19 child neither parent is entitled to it as of right.

20 * Sec. 3. AS 25.30.020(3) is repealed and re-enacted to read:

21 (3) the child is physically present in this state and is a
22 child in need of aid as defined in AS 47.10.290; or

23 * Sec. 4. AS 25.30.900(3) is amended to read:

24 (3) "custody proceeding" includes proceedings in which a
25 custody determination is one of several issues, such as an action for
26 divorce, dissolution of marriage, or legal separation, and includes
27 child-in-need-of-aid [DEPENDENCY] proceedings;

28 * Sec. 5. Sections 3 and 4 of this Act take effect upon the effective
29 date of a version of House Bill No. 204 which statutorily creates the con-

1 cept of "child in need of aid" in Alaska. Sections 1 and 2 of this Act take
2 effect July 1, 1977.

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29