

Introduced: 2/23/81
Referred: Health, Education &
Social Services and Judiciary

1 IN THE HOUSE

BY ROGERS AND GARDINER

2 HOUSE BILL NO. 210

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to child custody."

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

8 * Section 1. LEGISLATIVE INTENT. (a) The legislature finds that it is
9 generally desirable to assure a minor child frequent and continuing contact
10 with both parents after the parents have separated or dissolved their mar-
11 riage and that it is in the public interest to encourage parents to share
12 the rights and responsibilities of child rearing. While actual physical
13 custody may not be practical or appropriate in all cases, it is the intent
14 of the legislature that both parents have the opportunity to guide and
15 nurture their child and to meet the needs of the child on an equal footing
16 beyond the considerations of support or actual custody.

17 (b) The legislature also finds that it is in the best interests of a
18 child to encourage parents to implement their own child care agreements
19 outside of the court setting.

20 * Sec. 2. AS 09.55.205 is repealed and reenacted to read:

21 Sec. 09.55.205. JUDGMENTS FOR CUSTODY. (a) In an action for
22 divorce or for legal separation the court may, if it has jurisdiction
23 under AS 25.30.020 and is an appropriate forum under AS 25.30.050 and
24 25.30.060, during the pendency of the action, at the final hearing, and
25 at any time thereafter during the minority of a child of the marriage,
26 make an order for the custody of or visitation with the minor child
27 which may seem necessary or proper and may at any time modify or vacate
28 the order.

29 (b) An appointment of a guardian ad litem for a child shall be

1 made under AS 09.65.130.

2 (c) The court shall determine custody in accordance with the best
3 interests of the child under AS 25.20.060 - 25.20.180. In determining
4 the best interests of the child the court shall also consider

5 (1) the physical, emotional, mental, religious, and social
6 needs of the child;

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

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

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

13 (5) the length of time the child has lived in a stable, sat-
14 isfactory environment and the desirability of maintaining continuity;

15 (6) the desirability of offering the child a variety of life
16 experiences;

17 (7) the desire and ability of each parent to allow an open
18 and loving relationship between the child and his other parent.

19 (d) In making an award of custody under AS 25.20.060 - 25.20.180
20 and this section, the court may not consider the conduct, marital
21 status, income, social or cultural environment, or life style of either
22 parent unless it is shown that the factor has caused or may cause
23 emotional or physical injury to the child.

24 * Sec. 3. AS 25.20.060 is amended to read:

25 Sec. 25.20.060. CUSTODY OF THE CHILD. If there is a dispute over
26 child custody, either parent may petition the superior court for resolu-
27 tion of the matter under AS 25.20.060 - 25.20.180 [THIS SECTION UNLESS
28 AN ACTION BETWEEN THE PARENTS IS PENDING UNDER AS 09.55]. The court
29 shall award custody on the basis of the best interests of the child.

1 In determining the best interests of the child, the court shall consider
2 all relevant factors including those factors enumerated in AS 09.55.-
3 205(c) [AS 09.55.205]. Neither parent, regardless of the question of
4 the child's legitimacy, is entitled to preference in the awarding of
5 custody.

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

7 Sec. 25.20.070. SHARED CUSTODY. When a question involving the
8 custody of a child is before a court of the state, there is a rebut-
9 table presumption that shared custody is in the best interest of the
10 child.

11 Sec. 25.20.080. MEDIATION. The court considering a request for
12 custody of a child may request the parties to participate in pre-trial
13 mediation of the matters before the court.

14 Sec. 25.20.090. AWARD OF CUSTODY. (a) The court may award
15 shared custody

16 (1) on application of one or both parents;

17 (2) when the parents have agreed to an award of shared
18 custody; and

19 (3) on an agreement for shared custody in open court.

20 (b) If the court declines to enter an award of shared custody,
21 the court shall enter on the record its reason for denying the award.

22 (c) An award of the custody of a minor child may be modified to
23 an award of shared custody under AS 25.20.060 - 25.20.180.

24 (d) The court may require the parents to submit to the court a
25 proposal for award of shared custody.

26 Sec. 25.20.100. MODIFICATION OR TERMINATION OF CUSTODY. An award
27 of custody may be modified or terminated if the court determines that
28 the best interests of the child require the modification or termination
29 of the award. If a parent opposes the modification or termination of

1 the award of custody, the court shall enter on the record its reason
2 for modifying or terminating the award.

3 Sec. 25.20.110. PREFERENCE OF THE CHILD. If the child is of
4 sufficient age and capacity to form an intelligent preference as to
5 custody, the court shall give due weight to the preference of the
6 child.

7 Sec. 25.20.120. FACTORS FOR CONSIDERATION BY COURT. In an award
8 of shared custody under AS 25.20.060 - 25.20.180, the court shall
9 consider

10 (1) the needs of the child;

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

13 (3) the quality and the continuity of the education of the
14 child;

15 (4) the advantages of maintaining the child in the same
16 community as compared with the potential advantages of a new community;

17 (5) the advantages of providing a varied life experience for
18 the child;

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

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

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

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

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

27 (E) which parent is more likely to encourage frequent
28 and continuing contact with the other parent;

29 (7) the findings and recommendations of a neutral mediator

1 where mediation is recommended by the court;

2 (8) other factors the court considers pertinent.

3 Sec. 25.20.130. PREFERENCES ON AWARD. Custody should be awarded
4 in the following order of preference according to the best interests of
5 the child:

6 (1) to both parents in shared custody under AS 25.20.060 -
7 25.20.180;

8 (2) to the parent determined by the court to be more likely
9 to allow the child to have frequent and continuing contact with the
10 parent not granted custody;

11 (3) to neither parent but to a person or persons in whose
12 home the child has been living in a wholesome and stable environment;

13 (4) to a person determined by the court to be best able to
14 provide adequate and proper care and guidance for the child.

15 Sec. 25.20.140. TEMPORARY CUSTODY. Unless it is shown to be
16 detrimental to the welfare of the child, the child shall have, to the
17 greatest degree practical, equal access to both parents during the time
18 that the court considers an award of custody under AS 25.20.060 -
19 25.20.180.

20 Sec. 25.20.150. AWARD OF CUSTODY TO NONPARENT. The court may not
21 award custody to a person who is not a parent of the child unless the
22 court finds that an award of custody to a parent would be detrimental
23 to the best interests of the child.

24 Sec. 25.20.160. PLEADINGS. An allegation that the award of
25 custody to a parent would be detrimental to the best interests of the
26 child may not appear in pleadings beyond a general allegation to that
27 effect.

28 Sec. 25.20.170. ACCESS TO RECORDS OF THE CHILD. A parent who is
29 not the parent granted custody under AS 25.20.060 - 25.20.180 may have



1 access to the medical, dental, school, and other records of the child
2 notwithstanding any other provision of law.

3 Sec. 25.20.180. DEFINITION. In AS 25.20.060 - 25.20.180, "shared
4 custody" means an award of custody of the child to both parents and
5 includes an award of physical custody which assures the child of fre-
6 quent and continuing contact with each parent.

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