

CS FOR HOUSE BILL NO. 422(HES)**IN THE LEGISLATURE OF THE STATE OF ALASKA****EIGHTEENTH LEGISLATURE - SECOND SESSION****BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE****Offered: 3/21/94****Referred: Judiciary, Finance****Sponsor(s): REPRESENTATIVE BUNDE****A BILL****FOR AN ACT ENTITLED**

1 "An Act relating to custody and visitation rights."

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

3 * Section 1. AS 11.41 is amended by adding a new section to read:

4 Sec. 11.41.340. CUSTODIAL INTERFERENCE IN THE THIRD DEGREE.

5 (a) A person commits the crime of custodial interference in the third degree if

6 (1) being a relative of a child under 18 years of age or a relative of an
7 incompetent person and knowing that the person has no legal right to do so, the person
8 intentionally takes, entices, or keeps that child or incompetent person from a lawful
9 custodian; or

10 (2) being a lawful custodian of a child under 18 years of age and
11 knowing that the person has no legal right to do so, the person

12 (A) fails to comply with an order to allow visitation with the
13 child by another person after being found in contempt for failure to comply
14 with a visitation order; or

1 (B) has engaged in a pattern of intentional violation of court
2 orders to allow visitation by another person with the child.

3 (b) The defendant has an affirmative defense to conviction under (a) of this
4 section if the defendant shows by clear and convincing evidence that

5 (1) the defendant's purpose was to protect the child or the defendant
6 from imminent physical harm, the belief in the existence of the imminent physical
7 harm was reasonable, and the defendant sought the assistance of law enforcement
8 personnel, a public agency, or the court of any state before, or within a reasonable
9 time after, committing the acts giving rise to the charges;

10 (2) the complainant had, before the defendant committed the acts giving
11 rise to the charge, failed for a protracted period of time to exercise the complainant's
12 rights to physical custody or access to the child, failed to give reasonable notice to the
13 defendant of a desire to resume exercise of the complainant's rights to physical
14 custody or access, and neither failure was the result of the defendant's denial of access
15 to the complainant or denial to the complainant of knowledge of the whereabouts of
16 the defendant;

17 (3) the acts giving rise to the charges were consented to by the
18 complainant; or

19 (4) the defendant, after providing or making a good faith effort to
20 provide notice to the person entitled to access to the child, failed to provide access to
21 the child due to reasons that a reasonable person would believe were directly related
22 to the welfare of the child, and allowed access to the child in accordance with the
23 court order within a reasonable period of time.

24 (c) Custodial interference in the third degree is a class B misdemeanor ~~except~~
25 that a person convicted under this section after previously being convicted under this
26 section or under a law in another jurisdiction with substantially similar elements is
27 guilty of a class A misdemeanor.

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

29 Sec. 25.20.102. NOTICE OF RELOCATION. (a) The court shall include as
30 a condition of a custody or visitation order a requirement that a party intending to
31 relocate the temporary or permanent residence of a child shall give advance written

1 notice of the intention to the court and the other party at least 30 days before the
2 intended relocation. The notice must be in the form and contain the information that
3 the court considers necessary under the circumstances.

4 (b) Notwithstanding (a) of this section, a party is not required to give 30 days'
5 notice of an intent to relocate a child to temporary residence in a shelter or safe home
6 that is part of a domestic violence or sexual assault program, as defined in
7 AS 18.66.900. However, the relocating party shall notify the other party of the
8 relocation within 24 hours after entering the shelter or safe home unless

9 (1) the other party is the alleged perpetrator of the domestic violence
10 or sexual assault causing the relocation; or

11 (2) the acceptance policy of the shelter or safe home prohibits the
12 relocating party from divulging the location of the shelter or safe home.

13 (c) Notwithstanding (a) of this section, a party is not required to give 30 days'
14 advance notice of relocation, but is required to give notice as soon as possible, upon
15 relocating a child

16 (1) due to eviction by a landlord;

17 (2) for the purpose of obtaining medical care for the party or a member
18 of the party's immediate family for an emergency life-threatening condition as certified
19 by a physician; or

20 (3) for the purpose of visiting a relative who is in an emergency life-
21 threatening condition as certified by a physician.

22 Sec. 25.20.104. MINIMUM VISITATION SCHEDULE. (a) Except as
23 provided in (b) and (c) of this section, in a proceeding in which child custody is
24 awarded to one parent and visitation rights are awarded to the other parent, including
25 a dissolution proceeding under AS 25.24.200(a) but excluding a dissolution proceeding
26 under AS 25.24.200(b), the court shall award the visiting parent the following
27 visitation rights:

28 (1) 29.5 percent of the days and nights of the year, with specific days
29 and nights determined by the parents, except as provided in (2) - (4) of this subsection;

30 (2) the Thanksgiving period every other year;

31 (3) the school Christmas vacation period occurring before 9:00 o'clock

1 in the morning on December 25th in the years in which the visiting parent has
2 visitation during the Thanksgiving vacation period;

3 (4) the school Christmas vacation period occurring after 9:00 o'clock
4 in the morning on December 25th in the years in which the visiting parent does not
5 have visitation during the Thanksgiving vacation period.

6 (b) The court may vary from the requirements under (a) of this section if, after
7 consideration of the age, circumstances, and needs of the child, the court finds that
8 adherence to the requirements would cause harm or detriment to the child. The court
9 may vary from the requirements under (a)(3) - (4) of this section upon agreement of
10 the parents or upon a finding that the travel required between the residences of the
11 parents would make the schedule in (a)(3) - (4) of this section impracticable. If the
12 court makes a finding of impracticability, the court shall award the visiting parent the
13 entire school Christmas vacation period in the years when the visiting parent does not
14 have Thanksgiving visitation rights under (a)(2) of this section. A variation under this
15 subsection must be based solely on evidence in the record. The court shall find the
16 facts specially and include an explanation of its reasoning for ordering a variance
17 under this subsection.

18 (c) The court shall decrease the percentage specified in (a)(1) of this section
19 at the request of the parent with visitation rights.

20 (d) In this section,

21 (1) "school Christmas vacation period" means from 6:00 o'clock in the
22 evening on the last day of school before the beginning of the school Christmas
23 vacation period until 8:00 o'clock in the evening on the day before the resumption of
24 the school year; if a child is not in school, "school Christmas vacation period" means
25 the vacation period of the public school system where the custodial parent resides;

26 (2) "Thanksgiving period" means from 6:00 o'clock in the evening on
27 the Wednesday before Thanksgiving until 8:00 o'clock in the evening on the following
28 Sunday;

29 (3) "visiting parent" means the parent who does not have physical
30 custody of the child according to a court order.

31 * Sec. 3. AS 25.20.110 is amended by adding a new subsection to read:

1 (c) Intentional noncompliance with a court order to allow visitation with a
2 child, a finding of contempt for noncompliance with a court order to allow visitation
3 with a child, or a conviction of custodial interference in the third degree under
4 AS 11.41.340 constitutes a rebuttable presumption that there has been a change in
5 circumstances justifying a modification under (a) of this section if the modification is
6 in the child's best interests.

7 * Sec. 4. AS 25.20.115 is amended to read:

8 Sec. 25.20.115. ATTORNEY FEE AWARDS IN CUSTODY AND
9 VISITATION MATTERS. Except as provided in AS 25.20.140(e), in [IN] an action
10 to modify, vacate, or enforce that part of an order providing for custody of a child or
11 visitation with a child, the court may, upon request of a party, award attorney fees and
12 costs of the action. Except as provided in AS 25.20.140(e), in [IN] awarding
13 attorney fees and costs under this section, the court shall consider the relative financial
14 resources of the parties and whether the parties have acted in good faith.

15 * Sec. 5. AS 25.20.140 is amended by adding new subsections to read:

16 (d) In addition to monetary damages under (b) of this section, the court may

17 (1) order that the parent with visitation rights be given additional
18 visitation time with the child equal to or more than the amount of time missed because
19 of the other parent's noncompliance with visitation orders; if the custodial parent has
20 previously, within three years, been found in contempt for noncompliance with an
21 order allowing visitation, the additional amount of visitation time ordered under this
22 paragraph shall be equal to at least twice the amount of time missed because of the
23 noncompliance;

24 (2) award to the parent with visitation rights reasonable expenses
25 incurred by the parent to locate or return a child and an additional sum in liquidated
26 damages in the amount of \$100; however, if the custodial parent has previously, within
27 three years, been found in contempt for noncompliance with an order to allow
28 visitation, the liquidated damages under this paragraph shall be \$250.

29 (e) If the court finds that an action under this section was brought in bad faith,
30 the court shall order the moving party to pay to the nonmoving party all costs, full
31 reasonable attorney fees, and liquidated damages of \$100.

1 • **Sec. 6. AS 25.24.210(e)** is amended to read:

2 (e) If the petition is filed by both spouses under AS 25.24.200(a), the petition
3 must state in detail the terms of the agreement between the spouses concerning the
4 custody of children, child support, visitation, spousal maintenance and tax
5 consequences, if any, and fair and just division of property, including retirement
6 benefits. Agreements on visitation rights must meet the requirements of
7 AS 25.20.104. Agreements on spousal maintenance and property division must fairly
8 allocate the economic effect of dissolution and take into consideration the factors listed
9 in AS 25.24.160(a)(2) and (4). In addition, the petition must state

- 10 (1) the respective occupations of the petitioners;
11 (2) the income, assets, and liabilities of the respective petitioners at the
12 time of filing the petition;
13 (3) the date and place of the marriage;
14 (4) the name, date of birth, and current marital, educational, and
15 custodial status of each child born of the marriage or adopted by the petitioners who
16 is under the age of 19;
17 (5) whether the wife is pregnant;
18 (6) whether either petitioner requires medical care or treatment;
19 (7) whether a domestic violence complaint has been filed during the
20 marriage by a member of the household;
21 (8) whether either petitioner has received the advice of legal counsel
22 regarding a divorce or dissolution;
23 (9) other facts and circumstances that the petitioners believe should be
24 considered;
25 (10) that the petition constitutes the entire agreement between the
26 petitioners; and
27 (11) any other relief sought by the petitioners.

28 • **Sec. 7. AS 25.24.230(b)** is amended to read:

29 (b) If the petition is filed under AS 25.24.200(a) and is subject to
30 AS 25.24.220(h), the court may grant the spouses a final decree of dissolution and
31 shall order other relief as provided in this section if the court, upon consideration of

1 the information contained in the petition and the testimony of the spouse or spouses
2 at the hearing, finds that

3 (1) the spouses understand fully the nature and consequences of their
4 action;

5 (2) the written agreements between the spouses concerning child
6 custody, child support, and visitation comply with the requirements of AS 25.20.104
7 and are in the best interest of the children of the marriage, constitute the entire
8 agreement of the parties on child custody, child support, and visitation, and, as
9 between the spouses, are just;

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

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

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

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

20 * Sec. 8. MODIFICATION OF EXISTING ORDERS. The enactment of AS 25.20.104
21 under sec. 2 of this Act constitutes a change in circumstances requiring modification of an
22 order under AS 25.20.110(a) that was made before the effective date of this Act if

23 (1) a parent requests modification;

24 (2) application of AS 25.20.104 would result in an increase of visitation time;

25 and

26 (3) the modification is in the best interests of the child.