

SENATE BILL NO. 285

IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY SENATOR TAYLOR

Introduced: 2/9/94
Referred: STA, JUD, FIN

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) takes, entices, or keeps the child with the intent of denying
13 access to the child by another person during a time when the other person has
14 the legal right under court order to be with the child;

1 (B) fails to comply with an order to allow visitation with the
2 child by another person after being found in contempt for failure to comply
3 with a visitation order; or

4 (C) has engaged in a pattern of intentional violation of court
5 orders to allow visitation by another person with the child.

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

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

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

20 (3) the acts giving rise to the charges were consented to by the
21 complainant; or

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

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

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

1 Sec. 25.20.102. NOTICE OF RELOCATION. The court shall include as a
2 condition of a custody or visitation order a requirement that a party intending to
3 relocate the temporary or permanent residence of a child shall give advance written
4 notice of the intention to either the court or the other party, or both, at least 60 days
5 before the intended relocation. The court may require that the notice be in the form
6 and contain the information that the court considers necessary under the circumstances.

7 Sec. 25.20.104. MINIMUM VISITATION SCHEDULE; OLDER CHILDREN.

8 (a) Except as provided in (c) and (d) of this section, in a proceeding in which child
9 custody is awarded to one parent and visitation rights are awarded to the other parent
10 where all children involved are at least five years of age, the court shall award the
11 visiting parent at least the following visitation rights:

12 (1) the first, third, and fifth weekend of each month, subject to (4) - (8)
13 of this subsection;

14 (2) the weekend of Father's Day if the visiting parent is male or the
15 weekend of Mother's Day if the visiting parent is female;

16 (3) each Wednesday evening from the end of the school day until
17 school the following morning, subject to (4) - (8) of this subsection;

18 (4) 45 continuous days during the school summer vacation period or,
19 at the election of the visiting parent, two separate periods of consecutive days that total
20 45 days during the school summer vacation period;

21 (5) the school spring vacation period every other year;

22 (6) the school Thanksgiving vacation period every other year;

23 (7) the school Christmas vacation period occurring before 9:00 o'clock
24 in the morning on December 25th in the years in which the visiting parent has
25 visitation during the Thanksgiving vacation period;

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

29 (b) An election by a visiting parent under this section shall be made in a
30 manner and at a time that the court considers appropriate under the circumstances.

31 (c) If the parents reside more than 100 miles apart and distance and travel time

1 considerations are found by the court to make the schedule described in (a) of this
2 section unworkable, the court shall establish a visitation schedule as similar as possible
3 to that set out in (a) of this section in a manner that would least likely cause harm or
4 detriment to the child after consideration of the circumstances, finances of each parent,
5 and age and needs of the child. If it is not practicable to award Wednesday and
6 weekend visitation rights because of travel distances, the court shall consider whether
7 a period totaling more than 45 days during the school summer vacation period would
8 be in the best interests of the child.

9 (d) The court may vary from the schedule set out in (a) of this section if, after
10 consideration of the age, circumstances, and needs of the child, the court finds that
11 adherence to the schedule would cause harm or detriment to the child. A variation
12 under this subsection must be based solely on evidence in the record. The court shall
13 issue written findings of facts and an explanation of its reasoning for varying the
14 schedule under this subsection.

15 (e) In this section,

16 (1) "school Christmas vacation period" means from 6:00 o'clock in the
17 evening on the last day of school before the beginning of the school Christmas
18 vacation period until 8:00 o'clock in the evening on the day before the resumption of
19 the school year;

20 (2) "school spring vacation period" means the period of time from 6:00
21 o'clock in the evening on the last day of school before the school spring vacation until
22 8:00 o'clock in the evening on the day before school resumes;

23 (3) "school summer vacation period" means the period of time from
24 6:00 o'clock in the evening on the second day after the last day of the spring school
25 term until 8:00 o'clock in the evening on the seventh day before the day on which the
26 fall school term begins;

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

30 (5) "visiting parent" means the parent who does not have primary
31 physical custody of the child according to a court order;

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(6) "weekend" means

(A) in the case of parents who reside 50 miles or fewer apart, from 6:00 o'clock in the evening Friday until the beginning of the school day on Monday or, at the election of the visiting parent, from the end of the school day on Friday until the beginning of the school day on Monday;

(B) in the case of parents who reside more than 50 miles but less than 100 miles apart, from 6:00 o'clock in the evening Friday until 8:00 o'clock in the evening Sunday or, at the election of the visiting parent, from the end of the school day on Friday until 8:00 o'clock in the evening Sunday;

(C) in the case where a weekend period of visitation coincides with a school holiday during the regular school term or with a federal, state, or local holiday during the school summer vacation period, the weekend period extends until 6:00 o'clock in the evening Monday on a Monday holiday or begins at 6:00 o'clock in the evening Thursday for a Friday holiday, as applicable.

Sec. 25.20.106. MINIMUM VISITATION SCHEDULE; OTHER SITUATIONS. In a proceeding for custody and visitation of children where at least one child is younger than five years of age, the court shall establish a visitation schedule as similar as possible to that set out in AS 25.20.104 considering the age, circumstances, and needs of the child or children.

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

(c) Intentional noncompliance with a court order to allow visitation with a child, a finding of contempt for noncompliance with a court order to allow visitation with a child, or a conviction of custodial interference in the third degree under AS 11.41.340 may constitute a material change in circumstances under (a) of this section.

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

Sec. 25.20.115. ATTORNEY FEE AWARDS IN CUSTODY AND VISITATION MATTERS. Except as provided in AS 25.20.140(e), in [IN] an action to modify, vacate, or enforce that part of an order providing for custody of a child or visitation with a child, the court may, upon request of a party, award attorney fees and

1 costs of the action. Except as provided in AS 25.20.140(e), in [IN] awarding
2 attorney fees and costs under this section, the court shall consider the relative financial
3 resources of the parties and whether the parties have acted in good faith.

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

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

6 (1) order that the parent with visitation rights be given additional
7 visitation time with the child equal to the amount of time missed because of the other
8 parent's noncompliance with visitation orders; however, if the custodial parent has
9 previously, within three years, been found in contempt for noncompliance with an
10 order allowing visitation, the additional amount of visitation time ordered under this
11 paragraph may be equal to twice the amount of time missed because of the
12 noncompliance;

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

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

21 * Sec. 6. MODIFICATION OF EXISTING ORDERS. The enactment of AS 25.20.104
22 or 25.20.106 under sec. 2 of this Act constitutes a change in circumstances requiring
23 modification of an order under AS 25.20.110(a) that was made before the effective date of this
24 Act if application of AS 25.20.104 or 25.20.106 would result in an increase of visitation time
25 of at least 25 percent and the modification is in the best interests of the child.