



# LAWS OF ALASKA

1977

Source

Chapter No.

CSHB 208 am S

61

## AN ACT

Relating to child custody jurisdiction; and providing for an effective date.

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

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

#### CHAPTER 30. UNIFORM CHILD CUSTODY JURISDICTION ACT.

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

- (1) avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;
- (2) promote cooperation with the courts of other states to the end that a custody decree is rendered in the state which can best decide the case in the interest of the child;
- (3) assure that litigation concerning the custody of a child takes place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state;
- (4) discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the

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child;

(5) deter abductions and other unilateral removals of children undertaken to obtain custody awards;

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

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

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

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

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

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

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

(3) it (A) appears that no other state would have jurisdiction under prerequisites substantially in accordance with (1) or (2) of this subsection, or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child, and (B) is in the best interest of the child that this court assume jurisdiction.

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

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

Sec. 25.30.030. NOTICE AND OPPORTUNITY TO BE HEARD. Before making a decree under this chapter, reasonable notice and opportunity to be heard, taking into account education and language differences which are known or

reasonably ascertainable, shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons is outside this state, notice and opportunity to be heard shall be given to him under sec. 40 of this chapter.

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

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

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

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

Sec. 25.30.050. SIMULTANEOUS PROCEEDINGS IN OTHER STATES. (a) The superior court may not exercise its jurisdiction under this chapter if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this chapter, unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for other reasons.

(b) Before hearing the petition in a custody proceeding the court shall examine the pleadings and other information supplied by the parties under sec. 80 of this chapter and shall consult the child custody records maintained under sec. 150 of this chapter concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state, it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

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

Sec. 25.30.060. INCONVENIENT FORUM. (a) The superior court may decline to exercise its jurisdiction any time before issuing a decree if it finds that it is an

inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(b) A finding of inconvenient forum may be made upon the court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

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

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

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

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

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

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

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

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

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

(g) If it appears to the court that it is clearly an inappropriate forum, it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this state, necessary travel and other

expenses, including attorney fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

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

(i) Any communication received from another state informing this state of a finding of inconvenient forum because a court of this state is the more appropriate forum shall be filed in the custody records of the court in the appropriate judicial district. Upon assuming jurisdiction, the superior court of this state shall inform the original court of this fact.

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

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

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

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

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

(2) he has information of any custody proceeding

concerning the child pending in a court of this or any other state; and

(3) he knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

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

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

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

Sec. 25.30.100. APPEARANCE OF PARTIES AND THE CHILD.

(a) The court may order any party to the proceeding who is in this state to appear personally before the court. If that party has physical custody of the child, the court may order that he appear personally with the child.

(b) If a party to the proceeding whose presence is desired by the court is outside this state with or without the child, the court may order that the notice given under sec. 40 of this chapter include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

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

Sec. 25.30.110. BINDING FORCE AND RES JUDICATA EFFECT OF CUSTODY DECREE. A custody decree rendered by the superior court of this state having jurisdiction under sec. 20 of this chapter binds all parties who have been served in this state or notified in accordance with sec. 40

of this chapter or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made until that determination is modified in accordance with law, including the provisions of this chapter.

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

Sec. 25.30.130. MODIFICATION OF CUSTODY DECREE OF ANOTHER STATE. (a) If a court of another state has made a custody decree, a superior court of this state may not modify that decree unless (1) it appears to the court of this state that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this chapter or has declined to assume jurisdiction to modify the decree, and (2) the court of this state has jurisdiction.

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

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

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

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

- (1) certified copies of custody decrees of other states received for filing;
- (2) communications as to the pendency of custody proceedings in other states;
- (3) communications concerning a finding of inconvenient forum by a court of another state; and
- (4) other communications or documents concerning custody proceedings in another state which may affect the

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

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

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

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

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

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

(b) A person in this state may voluntarily give his testimony or statement in this state for use in a custody

proceeding outside this state.

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

Sec. 25.30.200. PRESERVATION OF DOCUMENTS FOR USE IN OTHER STATES. In any custody proceeding in this state, the court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies, and other pertinent documents or a microphotographic film print or copy of any of the above papers until the child has reached majority or is emancipated under applicable law. Upon appropriate request of and payment from the court of another state, the court shall forward to the other court certified copies of any or all of those documents.

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

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

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

Sec. 25.30.900. DEFINITIONS. As used in this chapter,

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

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

(3) "custody proceeding" means a proceeding in

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which a determination of custody of a child is an issue, including an action for divorce, dissolution of marriage, legal separation, and dependency proceedings;

(4) "decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding, and includes an initial decree and a modification decree;

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

(6) "initial decree" means the first custody decree concerning a particular child;

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

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

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

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

Sec. 25.30.910. SHORT TITLE. This chapter may be cited as the Uniform Child Custody Jurisdiction Act.

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

Sec. 09.55.205. JUDGMENTS FOR CUSTODY. In an action for divorce or for legal separation the court may, if it has jurisdiction under AS 25.30.020, and is an appropriate forum under AS 25.30.050 and 25.30.060, during the pendency of the action, or at the final hearing or at any time thereafter during the minority of any child of the marriage, make, modify or vacate an order for the custody of or visitation with the minor child which may seem necessary or proper. Appointment of a guardian ad litem or attorney for the child shall be made under the terms of AS 09.65.130. In awarding custody the court is to be guided by the following considerations:

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

(2) as between parents adversely claiming the

custody of a child neither parent is entitled to it as of right.

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

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

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

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

\* Sec. 5. Sections 3 and 4 of this Act take effect upon the effective date of a version of House Bill No. 204 which statutorily creates the concept of "child in need of aid" in Alaska. Sections 1 and 2 of this Act take effect July 1, 1977.