

**CS FOR HOUSE BILL NO. 334(HSS)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY THE HOUSE HEALTH AND SOCIAL SERVICES COMMITTEE

Offered: 4/7/16

Referred: Judiciary

Sponsor(s): REPRESENTATIVES MUÑOZ, Vazquez, LeDoux, Millett

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to visitation and child custody."**

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

3 **\* Section 1.** AS 25.20.060(a) is amended to read:

4 (a) If there is a dispute over child custody, either parent may petition the  
5 superior court for resolution of the matter under AS 25.20.060 - 25.20.130. The court  
6 shall award custody on the basis of the best interests of the child. In determining the  
7 best interests of the child, the court shall consider all relevant factors, including those  
8 factors enumerated in AS 25.24.150(c) [, AND THE PRESUMPTION  
9 ESTABLISHED IN AS 25.24.150(g)]. In a custody determination under this section,  
10 the court shall provide for visitation by a grandparent or other person if that is in the  
11 best interests of the child.

12 **\* Sec. 2.** AS 25.20.061 is amended to read:

13 **Sec. 25.20.061. Visitation in proceedings involving domestic violence.** If  
14 visitation is awarded to a parent who **the court finds by clear and convincing**  
15 **evidence** has **a history of perpetrating** [COMMITTED A CRIME INVOLVING]

1 domestic violence or been convicted of a crime involving domestic violence, against  
 2 the other parent, [OR] a child, or a domestic living partner [OF THE TWO  
 3 PARENTS], within the five years preceding the award of visitation, the court may set  
 4 conditions for the visitation, including

5 (1) the transfer of the child for visitation must occur in a protected  
 6 setting;

7 (2) visitation shall be supervised by another person or agency and  
 8 under specified conditions as ordered by the court;

9 (3) the perpetrator shall attend and complete, to the satisfaction of the  
 10 court, a program for the rehabilitation of perpetrators of domestic violence that meets  
 11 the standards set by the Department of Corrections under AS 44.28.020(b), or other  
 12 counseling; the perpetrator shall be required to pay the costs of the program or other  
 13 counseling;

14 (4) the perpetrator shall abstain from possession or consumption of  
 15 alcohol or controlled substances during the visitation and for 24 hours before  
 16 visitation;

17 (5) the perpetrator shall pay costs of supervised visitation as set by the  
 18 court;

19 (6) the prohibition of overnight visitation;

20 (7) the perpetrator shall post a bond to the court for the return and  
 21 safety of the child; and

22 (8) any other condition necessary for the safety of the child, the other  
 23 parent, or other household member.

24 \* **Sec. 3.** AS 25.20.070 is amended to read:

25 **Sec. 25.20.070. Temporary custody of the child.** Unless it is shown to be  
 26 detrimental to the welfare of the child considering the factors under AS 25.24.150(c) [,  
 27 OR UNLESS THE PRESUMPTION UNDER AS 25.24.150(g) IS PRESENT], the  
 28 child shall have, to the greatest degree practical, equal access to both parents during  
 29 the time that the court considers an award of custody under AS 25.20.060 - 25.20.130.

30 \* **Sec. 4.** AS 25.20.095(g) is amended to read:

31 (g) In making a determination of the best interests of the child, the court shall

1 consider the factors under AS 25.24.150(c) [AND APPLY THE REBUTTABLE  
2 PRESUMPTION UNDER AS 25.24.150(g) TO VISITATION, DELEGATION, AND  
3 CUSTODY ORDERS ISSUED UNDER THIS SECTION]. In addition, there is a  
4 rebuttable presumption that a deployed parent's visitation rights may not be delegated  
5 to a family member who **the court finds by clear and convincing evidence** has a  
6 history of perpetrating domestic violence against a spouse, a child, or a domestic  
7 living partner, or to a family member with an individual in the family member's  
8 household who **the court finds by clear and convincing evidence** has a history of  
9 perpetrating domestic violence against a spouse, a child, or a domestic living partner.

10 \* **Sec. 5.** AS 25.20.110(e) is amended to read:

11 (e) A court may provide for a temporary modification of a custody or  
12 visitation order during the period of a parent's deployment to military service to make  
13 reasonable accommodation for the deployment. The temporary order must specify that  
14 deployment is the basis of the order and include provisions for

15 (1) custody or reasonable visitation during a period of leave granted to  
16 the deployed parent if the custody or visitation is in the child's best interest;

17 (2) termination of the temporary order and resumption of the  
18 permanent order within 10 days after notification of the deployed parent's ability to  
19 resume custody or visitation unless the court finds that resumption of the custody or  
20 visitation order in effect before deployment is no longer in the child's best interest; the  
21 nondeployed parent shall bear the burden of proving that resumption of the order is no  
22 longer in the child's best interest;

23 (3) a hearing if a child of a deployed parent has been moved out of  
24 state and the nondeployed parent has filed a motion that alleges that resumption of the  
25 permanent custody order will result in immediate danger of irreparable harm to the  
26 child [OR THAT THE PRESUMPTION UNDER AS 25.24.150(g) EXISTS];

27 (4) delegation, on request of the deployed parent, of the deployed  
28 parent's visitation rights under an existing order, if any, to another family member who  
29 has an existing close relationship to the child if the delegation is in the child's best  
30 interest; and

31 (5) immediate notification by each parent of a change of address or

1 contact information to the other parent and to the court; if a valid court order issued  
 2 under AS 12.61.120 or AS 25.20.060 or an equivalent provision in another jurisdiction  
 3 is in effect that requires that the address or contact information of the parent be kept  
 4 confidential, the notification shall be made to the court only, and a copy of the order  
 5 shall be included in the notification.

6 \* **Sec. 6.** AS 25.20.110(g) is amended to read:

7 (g) In making a determination of the best interests of the child, the court shall  
 8 consider the factors under AS 25.24.150(c) [AND APPLY THE REBUTTABLE  
 9 PRESUMPTION UNDER AS 25.24.150(g) TO VISITATION, DELEGATION, AND  
 10 CUSTODY ORDERS ISSUED UNDER THIS SECTION]. In addition, there is a  
 11 rebuttable presumption that a deployed parent's visitation rights may not be delegated  
 12 to a family member who **the court finds by clear and convincing evidence** has a  
 13 history of perpetrating domestic violence against a spouse, a child, or a domestic  
 14 living partner, or to a family member with an individual in the family member's  
 15 household who **the court finds by clear and convincing evidence** has a history of  
 16 perpetrating domestic violence against a spouse, a child, or a domestic living partner.

17 \* **Sec. 7.** AS 25.24.150(c) is amended to read:

18 (c) The court shall determine custody in accordance with the best interests of  
 19 the child under AS 25.20.060 - 25.20.130. In determining the best interests of the child  
 20 the court shall consider

- 21 (1) the physical, emotional, mental, religious, and social needs of the  
 22 child;
- 23 (2) the capability and desire of each parent to meet these needs;
- 24 (3) the child's preference if the child is of sufficient age and capacity to  
 25 form a preference;
- 26 (4) the love and affection existing between the child and each parent;
- 27 (5) the length of time the child has lived in a stable, satisfactory  
 28 environment and the desirability of maintaining continuity;
- 29 (6) the willingness and ability of each parent to facilitate and  
 30 encourage a close and continuing relationship between the other parent and the child [,  
 31 EXCEPT THAT THE COURT MAY NOT CONSIDER THIS WILLINGNESS AND

1 ABILITY IF ONE PARENT SHOWS THAT THE OTHER PARENT HAS  
 2 SEXUALLY ASSAULTED OR ENGAGED IN DOMESTIC VIOLENCE AGAINST  
 3 THE PARENT OR A CHILD, AND THAT A CONTINUING RELATIONSHIP  
 4 WITH THE OTHER PARENT WILL ENDANGER THE HEALTH OR SAFETY OF  
 5 EITHER THE PARENT OR THE CHILD];

6 (7) **clear and convincing** [ANY] evidence of domestic violence, child  
 7 abuse, or child neglect in the proposed custodial household or a history of violence  
 8 between the parents;

9 (8) evidence that substance abuse by either parent or other members of  
 10 the household directly affects the emotional or physical well-being of the child;

11 (9) other factors that the court considers pertinent.

12 \* **Sec. 8.** AS 25.24.150 is amended by adding new subsections to read:

13 (m) If the court finds by clear and convincing evidence that a parent has a  
 14 history of perpetrating domestic violence or has been convicted of a crime of domestic  
 15 violence against the other parent, a child, or a domestic living partner, within the five  
 16 years preceding the award of visitation, the court may set conditions for the visitation  
 17 under AS 25.20.061.

18 (n) If the court finds that both parents have committed a crime involving  
 19 domestic violence against the other parent, a child, or a domestic living partner, within  
 20 the five years preceding the award of custody, the court shall determine custody to  
 21 minimize the risk that either parent will perpetrate further domestic violence. In  
 22 determining custody, the court may

23 (1) award legal and physical custody to the parent who is less likely to  
 24 continue to perpetrate the violence and require that the custodial parent complete a  
 25 program under AS 25.20.061(3); or

26 (2) if necessary to protect the welfare of the child, award sole legal or  
 27 physical custody, or both, to a suitable third person if the person would not allow  
 28 access to a violent parent except as ordered by the court.

29 \* **Sec. 9.** AS 25.24.150(g), 25.24.150(h), 25.24.150(i), and 25.24.150(j) are repealed.

30 \* **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to  
 31 read:

1           APPLICABILITY. This Act applies to visitation and custody orders issued on or after  
2 the effective date of this Act.