
ASSEMBLY BILL NO. 456—ASSEMBLYMAN PERKINS

MARCH 10, 1999

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning custody of children and termination of parental rights. (BDR 11-1301)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

~

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~{omitted material}~~ is material to be omitted.

AN ACT relating to domestic relations; prohibiting a court from awarding custody to or rights to visitation to a parent who is convicted of murder of the first degree for the murder of the other parent of a child; establishing a presumption that custody of a child by a person who has engaged in certain acts of domestic violence is not in the best interest of the child; establishing a presumption that a parent who is convicted of murder of the first degree of the other parent of a child is an unfit parent for the purpose of terminating parental rights; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Chapter 125A of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 and 3 of this act.
3 **Sec. 2.** *If a parent of a child is convicted of murder of the first*
4 *degree for the murder of the other parent of the child:*
5 1. *A court shall not enter an order awarding custody to or rights to*
6 *visitation with the child to the parent so convicted, unless the child who is*
7 *the subject of the order is of suitable age to signify his assent and assents*
8 *to the order.*
9 2. *Until the court makes a determination pursuant to subsection 1,*
10 *no person may bring the child into the presence of the parent so*
11 *convicted without the consent of the legal guardian or custodian of the*
12 *child.*

1 **Sec. 3. 1.** *Except as otherwise provided in NRS 125A.360 and*
2 *section 2 of this act, a determination by the court after an evidentiary*
3 *hearing and finding by clear and convincing evidence that either parent*
4 *or any other person seeking custody of a child has engaged in one or*
5 *more acts of domestic violence against the child, a parent of the child or*
6 *any other person residing with the child creates a rebuttable presumption*
7 *that sole or joint custody of the child by the perpetrator of the domestic*
8 *violence is not in the best interest of the child. Upon making such a*
9 *determination, the court shall set forth:*

10 *(a) Findings of fact that support the determination that one or more*
11 *acts of domestic violence occurred; and*

12 *(b) Findings that the custody or visitation arrangement ordered by the*
13 *court adequately protects the child and the parent or other victim of*
14 *domestic violence who resided with the child.*

15 **2.** *If after an evidentiary hearing held pursuant to subsection 1 the*
16 *court determines that more than one party has engaged in acts of*
17 *domestic violence, it shall, if possible, determine which person was the*
18 *primary physical aggressor. In determining which party was the primary*
19 *physical aggressor for the purposes of this section, the court shall*
20 *consider:*

21 *(a) All prior acts of domestic violence involving any of the parties;*

22 *(b) The relative severity of the injuries, if any, inflicted upon the*
23 *persons involved in those prior acts of domestic violence;*

24 *(c) The likelihood of future injury;*

25 *(d) Whether, during the prior acts, one of the parties acted in self-*
26 *defense; and*

27 *(e) Any other factors that the court deems relevant to the*
28 *determination.*

29 *In such a case, if it is not possible for the court to determine which party*
30 *is the primary physical aggressor, the presumption created pursuant to*
31 *subsection 1 applies to each of the parties. If it is possible for the court to*
32 *determine which party is the primary physical aggressor, the presumption*
33 *created pursuant to subsection 1 applies only to the party determined by*
34 *the court to be the primary physical aggressor.*

35 **3.** *As used in this section, "domestic violence" means the commission*
36 *of any act described in NRS 33.018.*

37 **Sec. 4.** NRS 128.097 is hereby amended to read as follows:

38 128.097 **1.** *If a parent of a child engages in conduct that violates any*
39 *provision of NRS 200.465, the parent is presumed to have abandoned the*
40 *child.*

1 ***2. If a parent of a child is convicted of murder of the first degree of***
2 ***the other parent of the child, the parent is presumed to be an unfit***
3 ***parent.***

4 **Sec. 5.** Chapter 432B of NRS is hereby amended by adding thereto
5 the provisions set forth as sections 6 and 7 of this act.

6 **Sec. 6.** ***If a parent of a child is convicted of murder of the first***
7 ***degree for the murder of the other parent of the child:***

8 ***1. A court shall not enter an order awarding custody to or rights to***
9 ***visitation with the child to the parent so convicted, unless the child who is***
10 ***the subject of the order is of suitable age to signify his assent and assents***
11 ***to the order. A court, agency, institution or other person who places a***
12 ***child in protective custody shall not release a child to the custody of a***
13 ***parent convicted of murder of the first degree for the murder of the other***
14 ***parent of the child.***

15 ***2. Until the court makes a determination pursuant to subsection 1,***
16 ***no person may bring the child into the presence of the parent so***
17 ***convicted without the consent of the legal guardian or custodian of the***
18 ***child.***

19 **Sec. 7. 1.** ***Except as otherwise provided in NRS 125A.360 and***
20 ***section 6 of this act, a determination by the court after an evidentiary***
21 ***hearing and finding by clear and convincing evidence that either parent***
22 ***or any other person seeking custody of a child has engaged in one or***
23 ***more acts of domestic violence against the child, a parent of the child or***
24 ***any other person residing with the child creates a rebuttable presumption***
25 ***that it is not in the best interest of the child for the perpetrator of the***
26 ***domestic violence to have custody of the child. Upon making such a***
27 ***determination, the court shall set forth:***

28 ***(a) Findings of fact that support the determination that one or more***
29 ***acts of domestic violence occurred; and***

30 ***(b) Findings that the custody or visitation arrangement ordered by the***
31 ***court adequately protects the child and the parent or other victim of***
32 ***domestic violence who resided with the child.***

33 ***2. If after an evidentiary hearing held pursuant to subsection 1 the***
34 ***court determines that more than one party has engaged in acts of***
35 ***domestic violence, it shall, if possible, determine which person was the***
36 ***primary physical aggressor. In determining which party was the primary***
37 ***physical aggressor for the purposes of this section, the court shall***
38 ***consider:***

39 ***(a) All prior acts of domestic violence involving any of the parties;***

40 ***(b) The relative severity of the injuries, if any, inflicted upon the***
41 ***persons involved in those prior acts of domestic violence;***

- 1 (c) The likelihood of future injury;
2 (d) Whether, during the prior acts, one of the parties acted in self-
3 defense; and
4 (e) Any other factors that the court deems relevant to the
5 determination.
6 In such a case, if it is not possible for the court to determine which party
7 is the primary physical aggressor, the presumption created pursuant to
8 subsection 1 applies to each of the parties. If it is possible for the court to
9 determine which party is the primary physical aggressor, the presumption
10 created pursuant to subsection 1 applies only to the party determined by
11 the court to be the primary physical aggressor.
12 3. A court, agency, institution or other person who places a child in
13 protective custody shall not release a child to the custody of a person who
14 a court has determined pursuant to subsection 1 has engaged in one or
15 more acts of domestic violence against the child, a parent of the child or
16 any other person residing with the child unless:
17 (a) A court determines that it is in the best interest of the child for the
18 perpetrator of the domestic violence to have custody of the child; or
19 (b) Pursuant to the provisions of subsection 2, the presumption
20 created pursuant to subsection 1 does not apply to the person to whom
21 the court releases the child.
22 4. As used in this section, "domestic violence" means the commission
23 of any act described in NRS 33.018.

~