

ASSEMBLY BILL NO. 456—ASSEMBLYMAN PERKINS

MARCH 10, 1999

Referred to Committee on Judiciary

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

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

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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 under certain circumstances; 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; 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 thereto  
2     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 court*  
7         *determines that it is in the best interest of the child to do so or the child*  
8         *who is the subject of the order is of suitable age to signify his assent and*  
9         *assents to the order.*
- 10        **2.** *Until the court makes a determination pursuant to subsection 1,*  
11        *no person may bring the child into the presence of the parent so*  
12        *convicted without the consent of the legal guardian or custodian of the*  
13        *child.*
- 14     **Sec. 3.** **1.** *Except as otherwise provided in NRS 125A.360 and*  
15     *section 2 of this act, a determination by the court after an evidentiary*  
16     *hearing and finding by clear and convincing evidence that either parent*  
17     *or any other person seeking custody of a child has engaged in one or*

1 *more acts of domestic violence against the child, a parent of the child or*  
2 *any other person residing with the child creates a rebuttable presumption*  
3 *that sole or joint custody of the child by the perpetrator of the domestic*  
4 *violence is not in the best interest of the child. Upon making such a*  
5 *determination, the court shall set forth:*

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

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

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

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

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

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

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

23 *(e) Any other factors that the court deems relevant to the*  
24 *determination.*

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

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

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

35 **Sec. 5.** *If a parent of a child is convicted of murder of the first*  
36 *degree for the murder of the other parent of the child:*

37 *1. A court shall not enter an order awarding custody to or rights to*  
38 *visitation with the child to the parent so convicted, unless the court*  
39 *determines that it is in the best interest of the child to do so or the child*  
40 *who is the subject of the order is of suitable age to signify his assent and*  
41 *assents to the order. A court, agency, institution or other person who*

1 *places a child in protective custody shall not release a child to the custody*  
2 *of a parent convicted of murder of the first degree for the murder of the*  
3 *other parent of the child.*

4 *2. Until the court makes a determination pursuant to subsection 1,*  
5 *no person may bring the child into the presence of the parent so*  
6 *convicted without the consent of the legal guardian or custodian of the*  
7 *child.*

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

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

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

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

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

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

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

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

34 *(e) Any other factors that the court deems relevant to the*  
35 *determination.*

36 *In such a case, if it is not possible for the court to determine which party*  
37 *is the primary physical aggressor, the presumption created pursuant to*  
38 *subsection 1 applies to each of the parties. If it is possible for the court to*  
39 *determine which party is the primary physical aggressor, the presumption*  
40 *created pursuant to subsection 1 applies only to the party determined by*  
41 *the court to be the primary physical aggressor.*

42 *3. A court, agency, institution or other person who places a child in*  
43 *protective custody shall not release a child to the custody of a person who*

1 *a court has determined pursuant to subsection 1 has engaged in one or*  
2 *more acts of domestic violence against the child, a parent of the child or*  
3 *any other person residing with the child unless:*  
4 *(a) A court determines that it is in the best interest of the child for the*  
5 *perpetrator of the domestic violence to have custody of the child; or*  
6 *(b) Pursuant to the provisions of subsection 2, the presumption*  
7 *created pursuant to subsection 1 does not apply to the person to whom*  
8 *the court releases the child.*  
9 *4. As used in this section, “domestic violence” means the commission*  
10 *of any act described in NRS 33.018.*

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