

SENATE BILL NO. 66—SENATOR JACOBSEN

PREFILED JANUARY 29, 1999

Referred to Committee on Judiciary

SUMMARY—Adds adultery to list of causes for divorce and to factors for determining best interest of child in custody proceeding. (BDR 11-1043)

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; adding adultery to the list of causes for divorce; adding adultery to the list of factors that a court must consider when determining the best interest of a child in a custody proceeding; 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.** NRS 125.010 is hereby amended to read as follows:
2 125.010 **1.** Divorce from the bonds of matrimony may be obtained
3 for any of the following causes:
4 ~~{1.}~~ **(a)** Insanity existing for 2 years prior to the commencement of the
5 action. Upon this cause of action the court, before granting a divorce, shall
6 require corroborative evidence of the insanity of the defendant at that time,
7 and a decree granted on this ground shall not relieve the successful party
8 from contributing to the support and maintenance of the defendant, and the
9 court may require the plaintiff in such action to give bond therefor in an
10 amount to be fixed by the court.
11 ~~{2.}~~ **(b)** When the husband and wife have lived separate and apart for 1
12 year without cohabitation the court may, in its discretion, grant an absolute
13 decree of divorce at the suit of either party.
14 ~~{3.}~~ **(c)** Incompatibility.
15 **(d) Adultery.**
16 **2.** As used in this section “adultery” means a voluntary sexual act,
17 including, without limitation:
18 **(a) Ordinary sexual intercourse;**

1 **(b) Fellatio;**

2 **(c) Cunnilingus; or**

3 **(d) Anal intercourse,**

4 ***between a married person and another person who is not the spouse of***
5 ***the married person, irrespective of the gender or marital status of that***
6 ***person.***

7 **Sec. 2.** NRS 125.181 is hereby amended to read as follows:

8 125.181 A marriage may be dissolved by the summary procedure for
9 divorce set forth in NRS 125.181 to 125.184, inclusive, when all of the
10 following conditions exist at the time the proceeding is commenced:

11 1. Either party has met the jurisdictional requirements of NRS 125.020.

12 2. The ~~{husband and wife}~~ **parties** have lived separate and apart for 1
13 year without cohabitation ~~{or they}~~, **the parties** are incompatible ~~{-}~~ **or**
14 ***either party has committed adultery. As used in this subsection,***
15 ***“adultery” has the meaning ascribed to it in subsection 2 of NRS***
16 ***125.010.***

17 3. There are no minor children of the relationship of the parties born
18 before or during the marriage or adopted by the parties during the marriage
19 and the wife, to her knowledge, is not pregnant, or the parties have
20 executed an agreement as to the custody of any children and setting forth
21 the amount and manner of their support.

22 4. There is no community or joint property or the parties have executed
23 an agreement setting forth the division of community property and the
24 assumption of liabilities of the community, if any, and have executed any
25 deeds, certificates of title, bills of sale or other evidence of transfer
26 necessary to effectuate the agreement.

27 5. The parties waive any rights to spousal support or the parties have
28 executed an agreement setting forth the amount and manner of spousal
29 support.

30 6. The parties waive their respective rights to written notice of entry of
31 the decree of divorce, to appeal, to request findings of fact and conclusions
32 of law and to move for a new trial.

33 7. The parties desire that the court enter a decree of divorce.

34 **Sec. 3.** NRS 125.480 is hereby amended to read as follows:

35 125.480 1. In determining custody of a minor child in an action
36 brought under this chapter, the sole consideration of the court is the best
37 interest of the child. If it appears to the court that joint custody would be in
38 the best interest of the child, the court may grant custody to the parties
39 jointly.

40 2. Preference must not be given to either parent for the sole reason that
41 the parent is the mother or the father of the child.

42 3. The court shall award custody in the following order of preference
43 unless in a particular case the best interest of the child requires otherwise:

1 (a) To both parents jointly pursuant to NRS 125.490 or to either parent.
2 If the court does not enter an order awarding joint custody of a child after
3 either parent has applied for joint custody, the court shall state in its
4 decision the reason for its denial of the parent's application. When
5 awarding custody to either parent, the court shall consider, among other
6 factors, which parent is more likely to allow the child to have frequent
7 associations and a continuing relationship with the noncustodial parent.

8 (b) To a person or persons in whose home the child has been living and
9 where the child has had a wholesome and stable environment.

10 (c) To any person related within the third degree of consanguinity to the
11 child whom the court finds suitable and able to provide proper care and
12 guidance for the child, regardless of whether the relative resides within this
13 state.

14 (d) To any other person or persons whom the court finds suitable and
15 able to provide proper care and guidance for the child.

16 4. In determining the best interest of the child, the court shall consider,
17 among other things:

18 (a) The wishes of the child if the child is of sufficient age and capacity
19 to form an intelligent preference as to his custody;

20 (b) Any nomination by a parent of a guardian for the child; ~~and~~

21 (c) Whether either parent or any other person seeking custody has
22 engaged in an act of domestic violence against the child, a parent of the
23 child or any other person residing with the child ~~[-]~~ ; **and**

24 **(d) Whether either parent has committed adultery.**

25 5. Except as otherwise provided in subsection 6 or NRS 125A.360, a
26 determination by the court after an evidentiary hearing and finding by clear
27 and convincing evidence that either parent or any other person seeking
28 custody has engaged in one or more acts of domestic violence against the
29 child, a parent of the child or any other person residing with the child
30 creates a rebuttable presumption that sole or joint custody of the child by
31 the perpetrator of the domestic violence is not in the best interest of the
32 child. Upon making such a determination, the court shall set forth:

33 (a) Findings of fact that support the determination that one or more acts
34 of domestic violence occurred; and

35 (b) Findings that the custody or visitation arrangement ordered by the
36 court adequately protects the child and the parent or other victim of
37 domestic violence who resided with the child.

38 6. If after an evidentiary hearing held pursuant to subsection 5 the court
39 determines that each party has engaged in acts of domestic violence, it
40 shall, if possible, then determine which person was the primary physical
41 aggressor. In determining which party was the primary physical aggressor
42 for the purposes of this section, the court shall consider:

43 (a) All prior acts of domestic violence involving either party;

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

3 (c) The likelihood of future injury;

4 (d) Whether, during the prior acts, one of the parties acted in self-
5 defense; and

6 (e) Any other factors which the court deems relevant to the
7 determination.

8 In such a case, if it is not possible for the court to determine which party is
9 the primary physical aggressor, the presumption created pursuant to
10 subsection 5 applies to both parties. If it is possible for the court to
11 determine which party is the primary physical aggressor, the presumption
12 created pursuant to subsection 5 applies only to the party determined by the
13 court to be the primary physical aggressor.

14 7. As used in this section ~~{, “domestic violence”}~~ :

15 (a) ***“Adultery” has the meaning ascribed to it in subsection 2 of NRS***
16 ***125.010; and***

17 (b) ***“Domestic violence”*** means the commission of any act described in
18 NRS 33.018.

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