

SENATE BILL NO. 18--SENATOR WASHINGTON

PREFILED JANUARY 11, 2001

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to orders for protection against domestic violence, visitation and custody. (BDR 3-11)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: 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 family law; requiring the court to impose sanctions in certain circumstances against a person who files an application for an order for protection against domestic violence containing a false or intentionally misleading statement concerning the adverse party; requiring the court under certain circumstances to order additional visitation with a child; requiring the court to consider certain factors before awarding custody of a child to a parent or other person; and providing other matters properly relating thereto.

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

Section 1. Chapter 33 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in this section, at any hearing that is held concerning a temporary order or an application to convert a temporary order into an extended order, the court shall permit the adverse party to present any relevant evidence which tends to show that the applicant filed an application which the applicant knew or reasonably should have known contained a statement of material fact concerning the adverse party that was false or intentionally misleading.

2. After considering any evidence that is presented pursuant to subsection 1, the court shall impose sanctions against the applicant, as set forth in subsection 3, if the court finds by a preponderance of the evidence:

(a) That no act of domestic violence has occurred or that no threat of domestic violence exists; and

1 ***(b) That the applicant filed an application which the applicant knew***
2 ***or reasonably should have known contained a statement of material fact***
3 ***concerning the adverse party that was false or intentionally misleading.***

4 ***3. If the court makes the findings set forth in subsection 2, the court***
5 ***shall:***

6 ***(a) Assess against the applicant all costs and official fees related to the***
7 ***temporary order and any application to convert the temporary order into***
8 ***an extended order, including, without limitation, all costs and official***
9 ***fees incurred by the adverse party in defending against the temporary***
10 ***order and any application to convert the temporary order into an***
11 ***extended order;***

12 ***(b) Order the applicant to reimburse the adverse party, in an amount***
13 ***determined by the court, for all attorney's fees incurred by the adverse***
14 ***party in defending against the temporary order and any application to***
15 ***convert the temporary order into an extended order;***

16 ***(c) If any rights of the adverse party to visit a child who is in the***
17 ***custody of the applicant were deprived because of the temporary order:***

18 ***(1) Order the applicant to permit additional visits with the child to***
19 ***compensate the adverse party for any deprived visits with the child in***
20 ***accordance with the provisions of NRS 125C.020, 125C.030 and***
21 ***125C.040, if the court has jurisdiction concerning visitation with the***
22 ***child; or***

23 ***(2) Transmit the findings that were made pursuant to subsection 2***
24 ***to the appropriate court that has jurisdiction concerning visitation with***
25 ***the child; and***

26 ***(d) If any rights to custody of a child of the applicant or the adverse***
27 ***party are at issue:***

28 ***(1) Consider the findings that were made pursuant to subsection 2***
29 ***as a factor in determining custody pursuant to NRS 125.480, if the court***
30 ***has jurisdiction concerning custody of the child; or***

31 ***(2) Transmit the findings that were made pursuant to subsection 2***
32 ***to the appropriate court that has jurisdiction concerning custody of the***
33 ***child.***

34 ***4. In addition to the other requirements set forth in subsection 3, if***
35 ***the court makes the findings set forth in subsection 2:***

36 ***(a) The court shall transmit, by the end of the next business day after***
37 ***the findings are made, a copy of the findings to each law enforcement***
38 ***agency to which the temporary order was transmitted pursuant to NRS***
39 ***33.060; and***

40 ***(b) The clerk of the court shall issue, without fee, a copy of the***
41 ***findings to the adverse party and shall transmit a copy of the findings to***
42 ***the central repository for Nevada records of criminal history in the same***
43 ***manner that other information is transmitted to the central repository***
44 ***pursuant to NRS 33.095.***

45 ***5. The court may prohibit the adverse party from presenting any***
46 ***evidence that is described in subsection 1 if, at any earlier hearing***
47 ***concerning the temporary order or any application to convert the***
48 ***temporary order into an extended order, the adverse party presented the***

1 *same or similar evidence to the court or had the opportunity to present*
2 *such evidence to the court but failed to do so.*

3 6. *The sanctions provided for in this section are in addition to and*
4 *not in lieu of any other criminal or civil sanction, penalty or remedy that*
5 *is provided by law, and the provisions of this section must not be*
6 *construed so as to prohibit the adverse party or this state or its political*
7 *subdivisions from seeking or obtaining any other criminal or civil*
8 *sanction, penalty or remedy that is provided by law.*

9 7. *The provisions of this section do not apply to an order for*
10 *protection against domestic violence which is issued to a person by a*
11 *court of another state, territory or Indian tribe within the United States*
12 *and which is registered in this state pursuant to NRS 33.090.*

13 **Sec. 2.** NRS 33.017 is hereby amended to read as follows:

14 33.017 As used in NRS 33.017 to 33.100, inclusive, *and section 1 of*
15 *this act*, unless the context otherwise requires:

16 1. "Extended order" means an extended order for protection against
17 domestic violence.

18 2. "Temporary order" means a temporary order for protection against
19 domestic violence.

20 **Sec. 3.** NRS 33.050 is hereby amended to read as follows:

21 33.050 1. *Except as otherwise provided in section 1 of this act:*

22 (a) The payment of all costs and official fees must be deferred for any
23 applicant for a temporary or extended order ~~and~~; *and*

24 (b) After any hearing and no later than final disposition of the
25 application or order, the court shall assess the costs and fees against the
26 adverse party, except that the court may reduce them or waive them, as
27 justice may require.

28 2. The clerk of the court shall provide each party, free of cost, with
29 information about the:

30 (a) Availability of temporary and extended orders;

31 (b) Procedure for filing an application for an order; ~~and~~

32 (c) Right to proceed without legal counsel ~~and~~; *and*

33 (d) *Sanctions for filing an application for an order which contains a*
34 *statement of material fact concerning the adverse party that is false or*
35 *intentionally misleading.*

36 3. The clerk of the court or other person designated by the court shall
37 assist any party in completing and filing the application, affidavit and any
38 other paper or pleading necessary to initiate or respond to an application
39 for a temporary or extended order. This assistance does not constitute the
40 practice of law, but the clerk shall not render any advice or service that
41 requires the professional judgment of an attorney.

42 **Sec. 4.** Chapter 125 of NRS is hereby amended by adding thereto the
43 provisions set forth as sections 5 to 13, inclusive, of this act.

44 **Sec. 5.** *As used in NRS 125.560 and sections 5 to 13, inclusive, of*
45 *this act, unless the context otherwise requires, the words and terms*
46 *defined in sections 6 to 11, inclusive, of this act have the meanings*
47 *ascribed to them in those sections.*

48 **Sec. 6.** *"Adverse party" means a person against whom a temporary*
49 *or extended order is sought.*

1 **Sec. 7.** *“Applicant” means a person who files an application.*

2 **Sec. 8.** *“Application” means an application, motion or other similar*
3 *document which is filed with the court and which requests that the court*
4 *issue a temporary or extended order against the adverse party named in*
5 *the application, motion or other similar document.*

6 **Sec. 9.** *“Extended order” means an order or injunction which is in*
7 *the nature of an order for protection against domestic violence and*
8 *which is in effect for a period that exceeds 30 days.*

9 **Sec. 10.** *“Order or injunction which is in the nature of an order for*
10 *protection against domestic violence” means a restraining order or*
11 *injunction that:*

12 1. *Is issued in an action or proceeding brought pursuant to this Title;*
13 *and*

14 2. *Grants relief which might be given in an order for protection*
15 *against domestic violence that is issued pursuant to NRS 33.017 to*
16 *33.100, inclusive.*

17 **Sec. 11.** *“Temporary order” means an order or injunction which is*
18 *in the nature of an order for protection against domestic violence and*
19 *which is in effect for a period not exceeding 30 days.*

20 **Sec. 12.** 1. *Except as otherwise provided in this section, at any*
21 *hearing that is held concerning a temporary order or an application to*
22 *convert a temporary order into an extended order, the court shall permit*
23 *the adverse party to present any relevant evidence which tends to show*
24 *that the applicant filed an application which the applicant knew or*
25 *reasonably should have known contained a statement of material fact*
26 *concerning the adverse party that was false or intentionally misleading.*

27 2. *After considering any evidence that is presented pursuant to*
28 *subsection 1, the court shall impose sanctions against the applicant, as*
29 *set forth in subsection 3, if the court finds by a preponderance of the*
30 *evidence:*

31 (a) *That no act of domestic violence has occurred or that no threat of*
32 *domestic violence exists; and*

33 (b) *That the applicant filed an application which the applicant knew*
34 *or reasonably should have known contained a statement of material fact*
35 *concerning the adverse party that was false or intentionally misleading.*

36 3. *If the court makes the findings set forth in subsection 2, the court*
37 *shall:*

38 (a) *Assess against the applicant all costs and official fees related to the*
39 *temporary order and any application to convert the temporary order into*
40 *an extended order, including, without limitation, all costs and official*
41 *fees incurred by the adverse party in defending against the temporary*
42 *order and any application to convert the temporary order into an*
43 *extended order;*

44 (b) *Order the applicant to reimburse the adverse party, in an amount*
45 *determined by the court, for all attorney’s fees incurred by the adverse*
46 *party in defending against the temporary order and any application to*
47 *convert the temporary order into an extended order;*

1 (c) If any rights of the adverse party to visit a child who is in the
2 custody of the applicant were deprived because of the temporary order,
3 order the applicant to permit additional visits with the child to
4 compensate the adverse party for any deprived visits with the child in
5 accordance with the provisions of NRS 125C.020, 125C.030 and
6 125C.040; and

7 (d) If any rights to custody of a child of the applicant or the adverse
8 party are at issue, consider the findings that were made pursuant to
9 subsection 2 as a factor in determining custody pursuant to NRS
10 125.480.

11 4. In addition to the other requirements set forth in subsection 3, if
12 the court makes the findings set forth in subsection 2:

13 (a) The court shall transmit, by the end of the next business day after
14 the findings are made, a copy of the findings to each law enforcement
15 agency to which the temporary order was transmitted pursuant to NRS
16 33.060; and

17 (b) The clerk of the court shall issue, without fee, a copy of the
18 findings to the adverse party and shall transmit a copy of the findings to
19 the central repository for Nevada records of criminal history in the same
20 manner that other information is transmitted to the central repository
21 pursuant to NRS 33.095.

22 5. The court may prohibit the adverse party from presenting any
23 evidence that is described in subsection 1 if, at any earlier hearing
24 concerning the temporary order or an application to convert the
25 temporary order into an extended order, the adverse party presented the
26 same or similar evidence to the court or had the opportunity to present
27 such evidence to the court but failed to do so.

28 6. The sanctions provided for in this section are in addition to and
29 not in lieu of any other criminal or civil sanction, penalty or remedy that
30 is provided by law, and the provisions of this section must not be
31 construed so as to prohibit the adverse party or this state or its political
32 subdivisions from seeking or obtaining any other criminal or civil
33 sanction, penalty or remedy that is provided by law.

34 7. The provisions of this section do not apply to a temporary or
35 extended order which is issued to a person by a court of another state,
36 territory or Indian tribe within the United States and which is registered
37 in this state pursuant to NRS 33.090.

38 **Sec. 13.** If a court transmits findings that were made pursuant to
39 subsection 2 of section 1 of this act to a court that has jurisdiction
40 concerning visitation or custody of a child pursuant to this Title, the
41 court that has jurisdiction pursuant to this Title shall, with regard to the
42 applicant and adverse party named in the findings:

43 1. If any rights of the adverse party to visit a child who is in the
44 custody of the applicant were deprived because of the temporary order,
45 order the applicant to permit additional visits with the child to
46 compensate the adverse party for any deprived visits with the child in
47 accordance with the provisions of NRS 125C.020, 125C.030 and
48 125C.040; and

1 ***2. If any rights to custody of a child of the applicant or the adverse***
2 ***party are at issue, consider the findings that were made pursuant to***
3 ***subsection 2 of section 1 of this act as a factor in determining custody***
4 ***pursuant to NRS 125.480.***

5 **Sec. 14.** NRS 125.480 is hereby amended to read as follows:

6 125.480 1. In determining custody of a minor child in an action
7 brought under this chapter, the sole consideration of the court is the best
8 interest of the child. If it appears to the court that joint custody would be in
9 the best interest of the child, the court may grant custody to the parties
10 jointly.

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

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

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

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

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

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

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

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

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

35 (c) Whether either parent or any other person seeking custody has
36 engaged in an act of domestic violence against the child, a parent of the
37 child or any other person residing with the child ~~and~~; **and**

38 ***(d) Whether either parent or any other person seeking custody has***
39 ***been sanctioned by a court pursuant to section 1 or 12 of this act for***
40 ***filing a false or intentionally misleading application for an order for***
41 ***protection against domestic violence that named either parent or any***
42 ***other person involved in the custody proceeding as the adverse party.***

43 5. Except as otherwise provided in subsection 6 or NRS 125C.210, a
44 determination by the court after an evidentiary hearing and finding by clear
45 and convincing evidence that either parent or any other person seeking
46 custody has engaged in one or more acts of domestic violence against the
47 child, a parent of the child or any other person residing with the child
48 creates a rebuttable presumption that sole or joint custody of the child by

1 the perpetrator of the domestic violence is not in the best interest of the
2 child. Upon making such a determination, the court shall set forth:

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

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

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

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

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

16 (c) The likelihood of future injury;

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

19 (e) Any other factors which the court deems relevant to the
20 determination.

21 In such a case, if it is not possible for the court to determine which party is
22 the primary physical aggressor, the presumption created pursuant to
23 subsection 5 applies to both parties. If it is possible for the court to
24 determine which party is the primary physical aggressor, the presumption
25 created pursuant to subsection 5 applies only to the party determined by the
26 court to be the primary physical aggressor.

27 7. As used in this section, "domestic violence" means the commission
28 of any act described in NRS 33.018.

29 **Sec. 15.** NRS 125.560 is hereby amended to read as follows:

30 125.560 1. A person who violates a ~~restraining order or injunction:~~
31 ~~—(a) That is in the nature of a]~~ temporary or extended order ~~[for~~
32 ~~protection against domestic violence; and~~

33 ~~—(b) That]~~ *that* is issued in an action or proceeding brought pursuant to
34 this Title ~~[;~~

35 is guilty of a misdemeanor, unless a more severe penalty is prescribed by
36 law for the act that constitutes the violation of the order. ~~[for injunction.~~
37 ~~For the purposes of this subsection, an order or injunction is in the nature~~
38 ~~of a temporary or extended order for protection against domestic violence~~
39 ~~if it grants relief that might be given in a temporary or extended order~~
40 ~~issued pursuant to NRS 33.017 to 33.100, inclusive.]~~

41 2. If the violation is accompanied by a violent physical act against a
42 person protected by the order, ~~[for injunction,]~~ the court shall:

43 (a) Impose upon the person committing the act a fine of \$1,000 or
44 require him to perform a minimum of 200 hours of work for the
45 community;

46 (b) Sentence him to imprisonment for not fewer than 5 days nor more
47 than 6 months;

(c) Order him to reimburse the person obtaining the order , or ~~[injunction,]~~ in an amount determined by the court, for all costs and attorney's fees incurred by that person in seeking to enforce the order , ~~for injunction,~~ and for all medical expenses of the person and any minor child incurred as a result of the violent physical act; and

(d) Order him to participate in and complete a program of professional counseling, at his own expense, if such counseling is available.

3. The person committing the violation shall comply with the order for reimbursement of the person obtaining the order ~~for injunction~~ before paying any fine imposed pursuant to this section.

Sec. 16. NRS 179A.350 is hereby amended to read as follows:

179A.350 1. The repository for information concerning orders for protection against domestic violence is hereby created within the central repository.

2. Except as otherwise provided in ~~[subsection 4.]~~ *this section*, the repository for information concerning orders for protection against domestic violence must contain a complete and systematic record of all temporary and extended orders for protection against domestic violence issued or registered in the State of Nevada, in accordance with regulations adopted by the director of the department, including, without limitation, any information received pursuant to NRS 33.095. Information received by the central repository pursuant to NRS 33.095 must be entered in the repository for information concerning orders for protection against domestic violence not later than 8 hours after it is received by the central repository.

3. The information in the repository for information concerning orders for protection against domestic violence must be accessible by computer at all times to each agency of criminal justice.

4. The repository for information concerning orders for protection against domestic violence must not contain any information concerning an event that occurred before October 1, 1998.

5. If the central repository receives from a clerk of a court a copy of findings that were made by a court pursuant to section 1 or 12 of this act concerning the invalidity of an order for protection against domestic violence, the central repository shall remove all information concerning that order for protection against domestic violence from the repository for information concerning orders for protection against domestic violence.

Sec. 17. NRS 202.3657 is hereby amended to read as follows:

202.3657 1. Any person may apply to the sheriff of the county in which he resides for a permit on a form prescribed by regulation of the department. Application forms for permits must be furnished by the sheriff of each county upon request.

2. Except as otherwise provided in this section, the sheriff shall issue a permit for no more than two specific firearms to any person who is qualified to possess a firearm under state and federal law, who submits an application in accordance with the provisions of this section and who:

- 1 (a) Is a resident of this state;
- 2 (b) Is 21 years of age or older;
- 3 (c) Is not prohibited from possessing a firearm pursuant to NRS
- 4 202.360; and
- 5 (d) Demonstrates competence with a firearm by presenting a certificate
- 6 or other documentation to the sheriff which shows that he:
- 7 (1) Successfully completed a course in firearm safety approved by a
- 8 sheriff in this state; or
- 9 (2) Successfully completed a course in firearm safety offered by a
- 10 federal, state or local law enforcement agency, community college,
- 11 university or national organization that certifies instructors in firearm
- 12 safety.
- 13 Such a course must include instruction in the use of each firearm to which
- 14 the application pertains and in the laws of this state relating to the proper
- 15 use of a firearm. A sheriff may not approve a course in firearm safety
- 16 pursuant to subparagraph (1) unless he determines that the course meets
- 17 any standards that are established by the Nevada Sheriffs and Chiefs
- 18 Association, or if the Nevada Sheriffs and Chiefs Association ceases to
- 19 exist, its legal successor.
- 20 3. The sheriff shall deny an application or revoke a permit if he
- 21 determines that the applicant or permittee:
- 22 (a) Has an outstanding warrant for his arrest.
- 23 (b) Has been judicially declared incompetent or insane.
- 24 (c) Has been voluntarily or involuntarily admitted to a mental health
- 25 facility during the immediately preceding 5 years.
- 26 (d) Has habitually used intoxicating liquor or a controlled substance to
- 27 the extent that his normal faculties are impaired. For the purposes of this
- 28 paragraph, it is presumed that a person has so used intoxicating liquor or a
- 29 controlled substance if, during the immediately preceding 5 years, he has
- 30 been:
- 31 (1) Convicted of violating the provisions of NRS 484.379; or
- 32 (2) Committed for treatment pursuant to NRS 458.290 to 458.350,
- 33 inclusive.
- 34 (e) Has been convicted of a crime involving the use or threatened use of
- 35 force or violence punishable as a misdemeanor under the laws of this or
- 36 any other state, or a territory or possession of the United States at any time
- 37 during the immediately preceding 3 years.
- 38 (f) Has been convicted of a felony in this state or under the laws of any
- 39 state, territory or possession of the United States.
- 40 (g) ~~Has~~ *Except as otherwise provided in subsection 5, has* been
- 41 convicted of a crime involving domestic violence or stalking, or is
- 42 currently subject to a restraining order, injunction or other order for
- 43 protection against domestic violence.
- 44 (h) Is currently on parole or probation from a conviction obtained in this
- 45 state or in any other state or territory or possession of the United States.
- 46 (i) Has, within the immediately preceding 5 years, been subject to any
- 47 requirements imposed by a court of this state or of any other state or
- 48 territory or possession of the United States, as a condition to the court's:

(1) Withholding of the entry of judgment for his conviction of a felony; or

(2) Suspension of his sentence for the conviction of a felony.

(j) Has made a false statement on any application for a permit or for the renewal of a permit.

4. ~~[(The)]~~ *Except as otherwise provided in subsection 5, the* sheriff may deny an application or revoke a permit if he receives a sworn affidavit stating articulable facts based upon personal knowledge from any natural person who is 18 years of age or older that the applicant or permittee has or may have committed an offense or engaged in any other activity specified in subsection 3 which would preclude the issuance of a permit to the applicant or require the revocation of a permit pursuant to this section.

5. *If the sheriff denies an application or revokes a permit because an applicant or permittee is currently subject to a restraining order, injunction or other order for protection against domestic violence, the sheriff shall restore the application or permit, without imposing a fee, if the applicant or permittee presents to the sheriff, within 30 days of entry by the court, a certified copy of findings that were made by the court pursuant to section 1 or 12 of this act concerning the invalidity of the order or injunction that was the basis for the sheriff denying the application or revoking the permit, unless the sheriff has other lawful reasons to deny the application or revoke the permit.*

6. If the sheriff receives notification submitted by a court or law enforcement agency of this or any other state, the United States or a territory or possession of the United States that a permittee or an applicant for a permit has been charged with a crime involving the use or threatened use of force or violence, the conviction for which would require the revocation of a permit or preclude the issuance of a permit to the applicant pursuant to this section, the sheriff shall suspend the person's permit or the processing of his application until the final disposition of the charges against him. If a permittee is acquitted of the charges against him, or if the charges are dropped, the sheriff shall restore his permit without imposing a fee.

~~[(6)]~~ 7. An application submitted pursuant to this section must be completed and signed under oath by the applicant. The applicant's signature must be witnessed by an employee of the sheriff or notarized by a notary public. The application must include:

(a) The name, address, place and date of birth, social security number, occupation and employer of the applicant and any other names used by the applicant;

(b) A complete set of the applicant's fingerprints taken by the sheriff or his agent;

(c) A front-view colored photograph of the applicant taken by the sheriff or his agent;

(d) The applicant's driver's license number or identification card number issued by the department;

(e) The make, model and caliber of each firearm to which the application pertains;

- 1 (f) A nonrefundable fee in the amount necessary to obtain the report
- 2 required pursuant to subsection 1 of NRS 202.366; and
- 3 (g) A nonrefundable fee set by the sheriff not to exceed \$60.

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