

Amendment No. 801

Senate Amendment to Assembly Bill No. 51 First Reprint

(BDR 11-457)

Proposed by: Senator Washington**Amendment Box:****Resolves Conflicts with:** N/A**Amends:** Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION	Initial and Date	SENATE ACTION	Initial and Date
Adopted <input type="checkbox"/> Lost <input type="checkbox"/>	_____	Adopted <input type="checkbox"/> Lost <input type="checkbox"/>	_____
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Amend the bill as a whole by renumbering sections 1 through 11 as sections 2 through 12 and adding a new section designated section 1, following the enacting clause, to read as follows:

“**Section 1.** NRS 125.480 is hereby amended to read as follows:

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

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

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

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Date: 5/19/2005

A.B. No. 51—Provides certain procedures relating to agreements for postadoptive contact.

(a) To both parents jointly ~~[pursuant to NRS 125.490 or to either parent.]~~, *if the parents have agreed to an award of joint custody or so agree in open court at a hearing for the purpose of determining the custody of the child.*

(b) To both parents jointly, or to either parent, according to the best interest of the child, based upon the best judgment of the court considering the facts of the case and subject to such conditions and limitations as the court deems equitable. If the court does not enter an order awarding joint custody of a child after either parent has applied for joint custody, the court shall state in its decision the reason for its denial of the parent's application. ~~[When awarding custody to either parent, the court shall consider, among other factors, which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent.~~

~~—(b)]~~ (c) To a person or persons in whose home the child has been living and where the child has had a wholesome and stable environment.

~~[(e)]~~ (d) To any person related within the third degree of consanguinity to the child whom the court finds suitable and able to provide proper care and guidance for the child, regardless of whether the relative resides within this State.

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

4. In determining the best interest of the child, the court shall consider ~~[;]~~ *and set forth its specific findings concerning*, among other things:

(a) The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his custody . ~~[;]~~

(b) Any nomination by a parent or a guardian for the child . ~~[; and]~~

(c) Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent.

(d) The level of conflict between the parents.

(e) The ability of the parents to cooperate to meet the needs of the child.

(f) The mental and physical health of the parents.

(g) The physical, developmental and emotional needs of the child.

(h) The nature of the relationship of the child with each parent.

(i) The ability of the child to maintain a relationship with any sibling.

(j) Any history of parental abuse or neglect of the child or a sibling of the child.

(k) The ability of each parent to prioritize the needs of the child.

(l) Whether either parent or any other person seeking custody has engaged in an act of domestic violence against the child, a parent of the child or any other person residing with the child.

5. Except as otherwise provided in subsection 6 or NRS 125C.210, a determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking custody has engaged in one or more acts of domestic violence against the child, a parent of the child or any other person residing with the child creates a rebuttable presumption that sole or joint custody of the child by the perpetrator of the domestic violence is not in the best interest of the child. Upon making such a determination, the court shall set forth:

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

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

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

- (a) All prior acts of domestic violence involving either party;
- (b) The relative severity of the injuries, if any, inflicted upon the persons involved in those prior acts of domestic violence;
- (c) The likelihood of future injury;
- (d) Whether, during the prior acts, one of the parties acted in self-defense; and
- (e) Any other factors which the court deems relevant to the determination.

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

7. As used in this section, “domestic violence” means the commission of any act described in NRS 33.018.”.

Amend section 1, page 2, line 2, by deleting:

“2 to 7,” and inserting:

“3 to 8,”.

Amend sec. 3, page 3, lines 13 and 32, by deleting “2” and inserting “3”.

Amend sec. 4, page 4, line 6, by deleting “2” and inserting “3”.

Amend sec. 5, page 4, line 16, by deleting “2” and inserting “3”.

Amend sec. 5, page 4, line 22, by deleting “6” and inserting “7”.

Amend sec. 5, page 4, line 26, by deleting “*section 2*” and inserting “*section 3*”.

Amend sec. 5, page 4, line 28, by deleting “2” and inserting “3”.

Amend sec. 5, page 4, line 30, by deleting “6” and inserting “7”.

Amend sec. 5, page 4, line 34, by deleting “*section 2*” and inserting “*section 3*”.

Amend sec. 5, page 4, line 38, by deleting “7” and inserting “8”.

Amend sec. 6, page 4, line 41, by deleting “2” and inserting “3”.

Amend sec. 6, page 5, line 1, by deleting “11” and inserting “12”.

Amend sec. 7, page 5, line 8, by deleting “2” and inserting “3”.

Amend sec. 8, page 5, line 36, by deleting:

“2 to 7,” and inserting:

“3 to 8,”.

Amend sec. 9, page 6, line 12, by deleting:

“5 or 7” and inserting:

“6 or 8”.

Amend sec. 9, page 6, line 17, by deleting “5” and inserting “6”.

Amend sec. 9, page 6, line 19, by deleting “11” and inserting “12”.

Amend sec. 10, page 6, lines 30 and 31, by deleting:

“2 to 7,” and inserting:

“3 to 8,”.

Amend sec. 11, page 6, line 41, by deleting “2” and inserting “3”.

Amend sec. 11, page 6, line 43, by deleting “4” and inserting “5”.

Amend sec. 11, page 7, line 3, by deleting “4” and inserting “5”.

Amend the bill as a whole by adding a new section designated sec. 13 and the text of the repealed section, following sec. 11, to read as follows:

“**Sec. 13.** NRS 125.490 is hereby repealed.

TEXT OF REPEALED SECTION

125.490 Joint Custody.

1. There is a presumption, affecting the burden of proof, that joint custody would be in the best interest of a minor child if the parents have agreed to an award of joint custody or so agree in open court at a hearing for the purpose of determining the custody of the minor child or children of the marriage.

2. The court may award joint legal custody without awarding joint physical custody in a case where the parents have agreed to joint legal custody.

3. For assistance in making a determination whether an award of joint custody is appropriate, the court may direct that an investigation be conducted.”.

Amend the title of the bill, first line, by deleting “adoption;” and inserting:
“domestic relations; revising the provisions relating to the determination of custody of a minor after the parents’ separation or dissolution of marriage;”.

Amend the summary of the bill to read as follows:

“SUMMARY—Makes various changes to provisions relating to domestic relations. (BDR 11-457)”.

**If this amendment is adopted, the Legislative
Counsel's Digest will be changed to read as follows:**

Legislative Counsel's Digest:

Under existing law, until a court orders otherwise, married parents have joint legal custody of their children. (NRS 125.465) In addition, existing law provides that the best interest of the child must be the sole consideration of the court in determining the custody of a child. Existing law requires the court to award custody in a particular order of preference unless the best interest of the child requires otherwise. In determining the best interest of the child, the court must consider a list of factors. (NRS 125.480) Existing law also establishes a presumption that joint custody would be in the best interest of the child if both parents have agreed to joint custody. (NRS 125.490)

This bill requires the court, as a first preference, to award custody to both parents jointly if the parents have agreed to joint custody. This bill then repeals the presumption that joint custody would be in the best interest of the child if the parents have agreed to joint custody. This bill makes it a second preference for the court to award custody to both parents jointly or to either parent, according to the best interest of the child, based upon the best judgment of the court considering the facts of the case and subject to such conditions and limitations as the court deems equitable. This bill also adds several factors to the list of factors that the court must consider in determining the best interest of the child. The court must also set forth its specific findings concerning the factors considered in determining the best interest of the child.

Under existing law, the parental rights of a parent must be terminated before a child is placed for adoption. (NRS 128.150) After an adoption, the natural parents cannot exercise any rights over the

child or his property. (NRS 127.160) Administrative regulations, however, implicitly authorize agreements that provide for postadoptive contacts or communications between the parties to an adoption. (NAC 127.210) The Nevada Supreme Court has held that because there is no statutory provision providing for the enforcement of an agreement for postadoptive contacts or communications, such agreements are unenforceable unless incorporated into the adoption decree. (*Birth Mother v. Adoptive Parents*, 118 Nev. 972 (2002))

This bill adopts the holding of the Nevada Supreme Court by providing that any agreement for postadoptive contacts is enforceable only if the agreement is written, signed by the parties, and incorporated in the order or decree of adoption.

This bill requires certain parties and other persons who are involved in an adoption proceeding to notify the court of the existence of an agreement for postadoptive contact. This bill further requires the court to question those parties and persons as to their knowledge of the existence of such an agreement. If the court determines that an agreement for postadoptive contact exists, the court is required to incorporate the agreement into the order or decree of adoption.

In addition, this bill authorizes a natural parent who has entered into an agreement for postadoptive contact to petition the court to prove the existence of the agreement and to enforce the terms of the agreement. This bill further authorizes an adoptive parent who has entered into such an agreement to petition the court to enforce the terms of the agreement and to modify or terminate the agreement. This bill provides that failure to comply with an agreement for postadoptive contact may not be used as a basis for setting aside an adoption or consent to an adoption.

Further, this bill authorizes a natural parent or adoptive parent, under certain circumstances, to inspect only the portions of the court's files and records which concern an agreement for

postadoptive contact without obtaining a court order. However, those portions of the file or records that are made available for inspection by a natural parent or adoptive parent must not include any confidential information such as information that would identify the natural parent or lead to the identification of the natural parent if the identity of the natural parent is not included in the agreement.

This bill authorizes a natural parent who has entered into such an agreement to bring a civil action against certain persons who knowingly provide false information to the court concerning the existence of the agreement and thereby cause the court not to incorporate the agreement into the order or decree of adoption.