

SENATE BILL NO. 109—SENATOR WASHINGTON

FEBRUARY 22, 2005

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to determination of custody of minor after parents' separation or dissolution of marriage. (BDR 11-620)

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 domestic relations; revising the provisions relating to the determination of custody of a minor after the parents' separation or dissolution of marriage; and providing other matters properly relating thereto.

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

(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.

~~(c)~~ (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, 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.

Sec. 2. 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.

