

Amendment No. 59

Assembly Amendment to Assembly Bill No. 59

(BDR 11-265)

Proposed by: Assembly Committee on Judiciary**Amends:** Summary: No Title: No 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"/> | _____ |
| Concurred In | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ | | Concurred In | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ |
| Receded | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ | | Receded | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ |

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold dashed underlining* is newly added transitory language.

NMB/RRY



Date: 4/3/2009

A.B. No. 59—Creates a rebuttable presumption against an award of custody or unsupervised visitation for any person who has abducted a child in the past. (BDR 11-265)



ASSEMBLY BILL NO. 59—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 9, 2008

Referred to Committee on Judiciary

SUMMARY—Creates a rebuttable presumption against an award of custody or unsupervised visitation for any person who has abducted a child in the past. (BDR 11-265)

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 child custody; creating a rebuttable presumption against an award of custody or unsupervised visitation for a person who has committed an act of abduction against a child; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that an award of child custody or visitation may only be made by considering the best interest of the child. (NRS 125.480, 125C.010) Further, existing law creates a rebuttable presumption that sole or joint custody of a child by a perpetrator of domestic violence is not in the best interest of the child. (NRS 125.480, 125C.230, 432B.157) **Section 1** of this bill, for cases involving divorce or other dissolution of marriage: (1) creates a similar rebuttable presumption against awarding sole or joint custody or unsupervised visitation to a perpetrator of an act of abduction against his child or any other child; (2) defines the term "abduction"; (3) provides certain acts that constitute conclusive evidence of an act of abduction; and (4) requires a court to follow certain procedures concerning how to determine custody when **after a final order of custody has been entered, a magistrate determines probable cause exists that a** party to the custody proceeding ~~is charged with committing~~ **has committed** an act of abduction ~~during the proceeding or~~ **against the child or any other child.** ~~after a final order of custody has been entered.~~ **Sections 2 and 3** of this bill incorporate the same presumption and provisions into chapter 125C of NRS concerning custody and visitation and chapter 432B of NRS concerning protection of children from abuse and neglect.

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

1 child. If it appears to the court that joint custody would be in the best interest of the
2 child, the court may grant custody to the parties jointly.

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

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

7 (a) To both parents jointly pursuant to NRS 125.490 or to either parent. If the
8 court does not enter an order awarding joint custody of a child after either parent
9 has applied for joint custody, the court shall state in its decision the reason for its
10 denial of the parent's application.

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

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

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

18 4. In determining the best interest of the child, the court shall consider and set
19 forth its specific findings concerning, among other things:

20 (a) The wishes of the child if the child is of sufficient age and capacity to form
21 an intelligent preference as to his custody.

22 (b) Any nomination by a parent or a guardian for the child.

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

25 (d) The level of conflict between the parents.

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

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

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

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

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

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

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

36 *(l) Whether either parent or any other person seeking custody has committed*
37 *any act of abduction against the child or any other child.*

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

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

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

51 6. If after an evidentiary hearing held pursuant to subsection 5 the court
52 determines that each party has engaged in acts of domestic violence, it shall, if
53 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. *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 committed any act of abduction against the child or any other child creates a rebuttable presumption that sole or joint custody or unsupervised visitation of the child by the perpetrator of the abduction is not in the best interest of the child. If the parent or other person seeking custody does not rebut the presumption, the court shall not enter an order for sole or joint custody or unsupervised visitation of the child by the perpetrator and the court shall set forth:*

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

(b) Findings that the custody or visitation arrangement ordered by the court adequately protects the child and the parent or other person from whom the child was abducted.

8. *For purposes of subsection 7, any of the following acts constitute conclusive evidence that an act of abduction occurred:*

(a) A conviction of the defendant of any violation of NRS 200.310 to 200.340, inclusive, or 200.359 or a law of any other jurisdiction that prohibits the same or similar conduct;

(b) A plea of guilty or nolo contendere by the defendant to any violation of NRS 200.310 to 200.340, inclusive, or 200.359 or a law of any other jurisdiction that prohibits the same or similar conduct; or

(c) An admission by the defendant to the court of the facts contained in the charging document alleging a violation of NRS 200.310 to 200.340, inclusive, or 200.359 or a law of any other jurisdiction that prohibits the same or similar conduct.

~~9. If, during the pendency of a child custody proceeding, criminal charges are filed against a party to the child custody proceeding alleging any act of abduction against the child or any other child, there is a rebuttable presumption that sole or joint custody or unsupervised visitation of the child by the alleged perpetrator of the abduction is not in the best interest of the child. If the party does not rebut the presumption, the court:~~

~~—(a) Shall not enter the final order concerning custody of the child;~~

~~—(b) Shall provisionally find that sole or joint custody or unsupervised visitation of the child by the alleged perpetrator of the abduction is not in the best interest of the child; and~~

~~—(c) Shall, in accordance with subsections 7 and 8, reconsider the issue and enter the final order concerning custody of the child after the disposition of the criminal matter.~~

~~10. If, after a court enters a final order concerning custody of the child, criminal charges are filed against a person who has been awarded sole or joint custody or unsupervised visitation of the child alleging any~~ a magistrate determines there is probable cause to believe that an act of abduction has been committed against the child or any other child ~~and that a person who has been awarded sole or joint custody or unsupervised visitation of the child has committed the act, the court shall, upon a motion to modify the order concerning custody, reconsider the previous order concerning custody pursuant to subsections 7 and 8.~~ ~~and 9.~~

~~11. 10.~~ As used in this section ~~["domestic"]~~:

(a) "Abduction" means the commission of an act described in NRS 200.310 to 200.340, inclusive, or 200.359 or a law of any other jurisdiction that prohibits the same or similar conduct.

(b) "Domestic violence" means the commission of any act described in NRS 33.018.

Sec. 2. Chapter 125C of NRS is hereby amended by adding thereto a new section to read as follows:

1. 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 of a child has committed any act of abduction against the child or any other child creates a rebuttable presumption that sole or joint custody or unsupervised visitation of the child by the perpetrator of the abduction is not in the best interest of the child. If the parent or other person seeking custody does not rebut the presumption, the court shall not enter an order for sole or joint custody or unsupervised visitation of the child by the perpetrator and the court shall set forth:

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

(b) Findings that the custody or visitation arrangement ordered by the court adequately protects the child and the parent or other person from whom the child was abducted.

2. For purposes of subsection 1, any of the following acts constitute conclusive evidence that an act of abduction occurred:

(a) A conviction of the defendant of any violation of NRS 200.310 to 200.340, inclusive, or 200.359 or a law of any other jurisdiction that prohibits the same or similar conduct;

(b) A plea of guilty or nolo contendere by the defendant to any violation of NRS 200.310 to 200.340, inclusive, or 200.359 or a law of any other jurisdiction that prohibits the same or similar conduct; or

(c) An admission by the defendant to the court of the facts contained in the charging document alleging a violation of NRS 200.310 to 200.340, inclusive, or 200.359 or a law of any other jurisdiction that prohibits the same or similar conduct.

3. ~~If, during the pendency of a child custody proceeding, criminal charges are filed against a party to the child custody proceeding alleging any act of abduction against the child or any other child, there is a rebuttable presumption that sole or joint custody or unsupervised visitation of the child by the alleged perpetrator of the abduction is not in the best interest of the child. If the party does not rebut the presumption, the court:~~

~~(a) Shall not enter the final order concerning custody of the child;~~

~~(b) Shall provisionally find that sole or joint custody or unsupervised visitation of the child by the alleged perpetrator of the abduction is not in the best interest of the child; and~~

~~(c) Shall, in accordance with subsections 1 and 2, reconsider the issue and enter the final order concerning custody of the child after the disposition of the criminal matter.~~

~~4. If, after a court enters a final order concerning custody of the child, [criminal charges are filed against a person who has been awarded sole or joint custody or unsupervised visitation of the child alleging any] a magistrate determines there is probable cause to believe that an act of abduction has been committed against the child or any other child, and that a person who has been awarded sole or joint custody or unsupervised visitation of the child has committed the act, the court shall, upon a motion to modify the order concerning custody, reconsider the previous order concerning custody pursuant to subsections 1, 2, and 3.~~

~~5. 4. As used in this section, "abduction" means the commission of an act described in NRS 200.310 to 200.340, inclusive, or 200.359 or a law of any other jurisdiction that prohibits the same or similar conduct.~~

Sec. 3. Chapter 432B of NRS is hereby amended by adding thereto a new section to read as follows:

1. 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 of a child has committed any act of abduction against the child or any other child creates a rebuttable presumption that sole or joint custody or unsupervised visitation of the child by the perpetrator of the abduction is not in the best interest of the child. If the parent or other person seeking custody does not rebut the presumption, the court shall not enter an order for sole or joint custody or unsupervised visitation of the child by the perpetrator and the court shall set forth:

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

(b) Findings that the custody or visitation arrangement ordered by the court adequately protects the child and the parent or other person from whom the child was abducted.

2. For purposes of subsection 1, any of the following acts constitute conclusive evidence that an act of abduction occurred:

(a) A conviction of the defendant of any violation of NRS 200.310 to 200.340, inclusive, or 200.359 or a law of any other jurisdiction that prohibits the same or similar conduct;

(b) A plea of guilty or nolo contendere by the defendant to any violation of NRS 200.310 to 200.340, inclusive, or 200.359 or a law of any other jurisdiction that prohibits the same or similar conduct; or

(c) An admission by the defendant to the court of the facts contained in the charging document alleging a violation of NRS 200.310 to 200.340, inclusive, or 200.359 or a law of any other jurisdiction that prohibits the same or similar conduct.

3. ~~If, during the pendency of a child custody proceeding, criminal charges are filed against a party to the child custody proceeding alleging any act of abduction against the child or any other child, there is a rebuttable presumption that sole or joint custody or unsupervised visitation of the child by the alleged perpetrator of the abduction is not in the best interest of the child. If the party does not rebut the presumption, the court:~~

~~(a) Shall not enter the final order concerning custody of the child;~~

~~(b) Shall provisionally find that sole or joint custody or unsupervised visitation of the child by the alleged perpetrator of the abduction is not in the best interest of the child; and~~

~~(c) Shall, in accordance with subsections 1 and 2, reconsider the issue and enter the final order concerning custody of the child after the disposition of the criminal matter.~~

~~4.] If, after a court enters a final order concerning custody of the child, [criminal charges are filed against a person who has been awarded sole or joint custody or unsupervised visitation of the child alleging any]~~ a magistrate determines there is probable cause to believe that an act of abduction has been committed against the child or any other child ~~1.]~~ and that a person who has been awarded sole or joint custody or unsupervised visitation of the child has committed the act, the court shall, upon a motion to modify the order concerning custody, reconsider the previous order concerning custody pursuant to subsections 1 ~~1.]~~ and 2. ~~and 3.~~

~~5.]~~ 4. A court, agency, institution or other person who places a child in protective custody shall not release a child to the custody of a person who a court has determined pursuant to this section has engaged in one or more acts of abduction against the child or any other child, unless a court determines that it is in the best interest of the child for the perpetrator of the abduction to have custody of the child.

~~6.]~~ 5. As used in this section, "abduction" means the commission of an act described in NRS 200.310 to 200.340, inclusive, or 200.359 or a law of any other jurisdiction that prohibits the same or similar conduct.

Sec. 4. This act becomes effective upon passage and approval.