

Amendment No. 8

Senate Amendment to Senate Bill No. 57

(BDR 11-289)

Proposed by: Senate Committee on Judiciary**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: No

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 underlining* is newly added transitory language.

AMI/RRY



Date: 4/10/2011

S.B. No. 57—Expands the circumstances pursuant to which a court is authorized to issue certain warrants. (BDR 11-289)



SENATE BILL NO. 57—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 15, 2010

Referred to Committee on Judiciary

SUMMARY—Expands the circumstances pursuant to which a court is authorized to issue certain warrants. (BDR 11-289)

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 children; expanding the circumstances pursuant to which a court is authorized to issue a warrant to take physical custody of a child; ~~requiring an agency which provides child welfare services to place such a child in certain shelters;~~ and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law as set forth in the Uniform Child Custody Jurisdiction and Enforcement Act (chapter 125A of NRS) authorizes a court in a proceeding to enforce a child custody determination to issue a warrant to take physical custody of a child in an emergency situation if the court finds that the child is immediately likely to suffer serious physical harm or to be removed from this State. Before issuing the warrant, the court is required to hold a hearing at which the party alleging the need for the warrant is present but not the party who has physical custody of the child. (NRS 125A.525) The Uniform Child Custody Jurisdiction and Enforcement Act also authorizes a court in this State, to enforce a child custody determination issued by a court in another state, to issue an order to take physical custody of a child in a nonemergency situation after holding a hearing at which both parties, the petitioner and the respondent, are given an opportunity to be heard. (NRS 125A.495)

Existing law as set forth in the Uniform Child Abduction Prevention Act (chapter 125D of NRS) authorizes a court, pursuant to a petition filed either before or after a child custody determination has been made, to issue a warrant to take physical custody of a child in an emergency situation if the court finds that there is a credible risk that the child is imminently likely to be wrongfully removed. The court may issue the warrant without providing prior notice and an opportunity to be heard to the party who has physical custody of the child. (NRS 125D.200)

Existing law also authorizes the court in divorce or other dissolution of marriage proceedings to enter an order allowing a party, under certain circumstances and with the assistance of a law enforcement agency, to obtain physical custody of a child from the party having physical custody of the child if the court finds that it would be in the best interest of the child to do so. (NRS 125.470) **Section 1** of this bill deletes this provision regarding divorce and other dissolution of marriage proceedings, and **section 2** of this bill sets forth a new procedure.

Section 2 expands the circumstances in which a court is authorized to issue a warrant to take physical custody of a child. Specifically, **section 2** authorizes a court, upon a petition submitted during a proceeding to establish custody of a child or to enforce or modify a child custody determination, to issue a warrant to take physical custody of the child where there is probable cause to believe that the child has been abducted. If the court determines that the child has been abducted and that an emergency situation exists, including, without limitation, a situation in which the child is in imminent danger of being removed from this State or in imminent danger of serious physical harm, the court is authorized to issue a warrant. Before issuing the warrant in an emergency situation, the court must hold a hearing at which the party alleging the need for the warrant is present but not the party alleged to have committed the act of abduction. If the court determines that the situation is not an emergency situation, before issuing the warrant, the court must hold a hearing at which both parties, the party alleging the need for the warrant and the party alleged to have committed the act of abduction, are given an opportunity to be heard. **Section 2** defines the term "abduction" to include kidnapping, aiding and abetting kidnapping and the willful detaining, concealing or removing of a child from a person having lawful custody or a right of visitation of the child by a person who has a limited right of custody to the child by operation of law or pursuant to a court order, judgment or decree or who has no right of custody to the child.

Section 2 differs from the similar provisions of the Uniform Child Custody Jurisdiction and Enforcement Act and the Uniform Child Abduction Prevention Act in various ways, including, without limitation, with regard to the types of cases to which it applies. For example, **section 2** applies to: (1) a broader category of emergency situations; (2) emergency situations which occur before a child custody determination has been made and in which the child is in imminent danger of serious physical harm; (3) nonemergency situations for child custody determinations that are issued by courts in this State; and (4) children who are willfully detained or concealed from persons having lawful custody or a right of visitation of the child, in addition to children who are removed from such persons.

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

Section 1. NRS 125.470 is hereby amended to read as follows:

125.470 1. If, during any proceeding brought under this chapter, either before or after the entry of a final order concerning the custody of a minor child, it appears to the court that any minor child of either party has been, or is likely to be, taken or removed out of this State or concealed within this State, the court shall forthwith order such child to be produced before it and make such disposition of the child's custody as appears most advantageous to and in the best interest of the child and most likely to secure to him or her the benefit of the final order or the modification or termination of the final order to be made in his or her behalf.

2. ~~If, during any proceeding brought under this chapter, either before or after the entry of a final order concerning the custody of a minor child, the court finds that it would be in the best interest of the minor child, the court may enter an order providing that a party may, with the assistance of the appropriate law enforcement agency, obtain physical custody of the child from the party having physical custody of the child. The order must provide that if the party obtains physical custody of the child, the child must be produced before the court as soon as practicable to allow the court to make such disposition of the child's custody as appears most advantageous to and in the best interest of the child and most likely to secure to him or her the benefit of the final order or the modification or termination of the final order to be made in his or her behalf.~~

3. ~~If the court enters an order pursuant to subsection 2 providing that a party may obtain physical custody of a child, the court shall order that party to give the party having physical custody of the child notice at least 24 hours before the time at~~

~~which he or she intends to obtain physical custody of the child, unless the court deems that requiring the notice would likely defeat the purpose of the order.~~

~~—4.]~~ All orders for a party to appear with a child issued pursuant to this section may be enforced by issuing a warrant of arrest against that party to secure his or her appearance with the child.

~~[5.]~~ 3. A proceeding under this section must be given priority on the court calendar.

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

1. If, during any proceeding to establish custody of a child or enforce or modify a child custody determination, brought pursuant to this chapter or chapter 125 or 125A of NRS, it appears to the court upon a petition submitted by an aggrieved party or any other person having knowledge of the relevant facts that there is probable cause to believe that an act of abduction has been committed against the child and that the act of abduction was committed without just cause, the court may issue a warrant to take physical custody of the child. A copy of a petition submitted pursuant to this subsection must be served upon the Children's Advocate appointed pursuant to NRS 432.157 before any hearing is held by the court pursuant to this section.

2. The petition must include, without limitation:

(a) An affidavit or other sworn declaration, signed by the petitioner under penalty of perjury, attesting to the truth and accuracy of the petition;

(b) A copy of the most recent child custody determination, if any, of the child;

(c) The name of the person or persons having legal custody of the child;

(d) A statement of the facts and circumstances pertaining to the abduction of the child;

(e) A statement indicating whether the child, the person alleged to have committed the act of abduction or the petitioner has been:

(1) The subject of an investigation of alleged abuse or neglect of a child or domestic violence;

(2) A party to a proceeding concerning the alleged abuse or neglect of a child, an act of abduction of a child or domestic violence; or

(3) A party against whom an order for protection against domestic violence was issued; and

(f) A statement indicating whether any other court has exercised jurisdiction over the custody or welfare of the child.

3. The court may, in its discretion, supplement the allegations in the petition with the sworn testimony of the petitioner at a hearing before the court. Any such testimony must be recorded and preserved in the records of the court.

4. If the court determines that exigent circumstances exist in relation to the issuance of the warrant, including, without limitation, that the child is in imminent danger of being removed from this State or in imminent danger of serious physical harm, the court may issue the warrant described in subsection 6 after an ex parte hearing. If the court issues the warrant after an ex parte hearing, the court:

(a) Shall afford the party alleged to have committed the act of abduction an opportunity to be heard at the earliest possible time after the warrant is executed, but not later than the next judicial day unless a hearing on that date is impossible. If a hearing on the next judicial day is impossible, the court shall hold the hearing on the first judicial day possible.

(b) Shall provide, or cause the petitioner to provide, notice of the hearing to be held pursuant to paragraph (a) to the party alleged to have committed the act of abduction and all other interested parties.

5. If the court determines that no exigent circumstances exist in relation to the issuance of the warrant, the court:

(a) Shall hold a hearing before it issues the warrant described in subsection 6;

(b) Shall provide, or cause the petitioner to provide, notice of the hearing to all interested parties;

(c) If the party alleged to have committed the act of abduction is present at the hearing, may order the party to return the child ~~to the petitioner or other person or agency specified by the court~~ in accordance with the placement of the child pursuant to subsection 7 and may issue the warrant described in subsection 6; and

(d) If the party alleged to have committed the act of abduction received notice but is not present at the hearing, may issue the warrant described in subsection 6.

6. A warrant issued by the court pursuant to this section:

(a) Must set forth findings of fact that establish probable cause for believing that an act of abduction occurred and that the act of abduction was without just cause;

(b) Must direct law enforcement officers to take physical custody of the child and deliver the child ~~to the person or agency determined by the court~~ in accordance with the placement of the child pursuant to subsection 7;

(c) Must specify the property that may be searched and the child that may be seized pursuant to the warrant;

(d) May authorize law enforcement officers to enter private property as described in paragraph (c) to take physical custody of the child; and

(e) Is enforceable throughout this State.

7. Based on the statements in the petition and the testimony provided at any hearing held by the court, the court shall ~~determine and set forth in the warrant whether it is in the best interests of the child to~~

~~(a) Return the child to or place the child in the custody and care of the petitioner;~~

~~(b) Place the child in the custody and care of another person, as permitted by specific statute; or~~

~~(c) Deliver the child to an agency which provides child welfare services.~~

~~8. The child must remain in the custody of the person or agency determined by the court pursuant to subsection 7 until further order of the court.~~ provide for the placement of the child pending final relief.

~~9.~~ 8. As soon as reasonably practicable but not later than 24 hours after executing a warrant issued pursuant to this section, the law enforcement officer who or the law enforcement agency which executed the warrant shall inform the court of the execution of the warrant.

~~10.~~ 9. After the hearing required by subsection 4 or 5 to afford all interested parties an opportunity to be heard, the court shall enter an order for temporary or permanent custody of the child.

~~11.~~ 10. If the court finds, after a hearing, that a petitioner sought a warrant pursuant to this section for the purpose of harassment or in bad faith, the court may:

(a) Award the other party reasonable attorney's fees, costs and expenses; and

(b) Impose a civil penalty of not more than \$1,000 on the petitioner.

~~12.~~ 11. The remedies available pursuant to this section are in addition to the remedies available pursuant to any other applicable provision of law, including, without limitation, NRS 125.470.

~~12.~~ 12. As used in this section:

(a) "Abduction" means the commission of an act described in NRS 200.310 to 200.340, inclusive, or 200.359.

(b) "Abuse or neglect of a child" has the meaning ascribed to it in NRS 432B.020.

~~(c) "Agency which provides child welfare services" has the meaning ascribed to it in NRS 432B.030.~~

~~(d)~~ (d) "Child custody determination" means a judgment, decree or other order of a court providing for the legal custody, physical custody or visitation with respect to a child. The term includes a permanent, temporary, initial and modification order.

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

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

~~— A child delivered pursuant to section 2 of this act to an agency which provides child welfare services must be placed in a shelter, which may include, without limitation, a foster home or other home or facility which provides care for those children, except as otherwise provided in NRS 432B.3905. Such a child must not be placed in a jail or other place for detention, incarceration or residential care of persons convicted of a crime or children charged with delinquent acts.]~~
(Deleted by amendment.)

Sec. 4. This act becomes effective on July 1, 2011.