

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; 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



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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;



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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 (c) If the party alleged to have committed the act of abduction
45 is present at the hearing, may order the party to return the child in



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1 accordance with the placement of the child pursuant to subsection
2 7 and may issue the warrant described in subsection 6; and

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

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

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

10 (b) Must direct law enforcement officers to take physical
11 custody of the child and deliver the child in accordance with the
12 placement of the child pursuant to subsection 7;

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

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

18 (e) Is enforceable throughout this State.

19 7. Based on the statements in the petition and the testimony
20 provided at any hearing held by the court, the court shall provide
21 for the placement of the child pending final relief.

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

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

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

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

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

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

40 12. As used in this section:

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

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



1 (c) *“Child custody determination” means a judgment, decree*
2 *or other order of a court providing for the legal custody, physical*
3 *custody or visitation with respect to a child. The term includes a*
4 *permanent, temporary, initial and modification order.*

5 (d) *“Domestic violence” means the commission of any act*
6 *described in NRS 33.018.*

7 **Sec. 3.** (Deleted by amendment.)

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

