

SENATE BILL NO. 57—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 15, 2010

Referred to Committee on Judiciary

SUMMARY—Establishes procedures for the Children’s Advocate or his or her designee to obtain certain warrants. (BDR 38-289)

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; establishing procedures for the Children’s Advocate or his or her designee to obtain, under certain circumstances, a warrant to take physical custody of a missing child who was allegedly abducted; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

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

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



Finally, existing law establishes the Office of Advocate for Missing or Exploited Children within the Office of the Attorney General and requires the Children's Advocate to carry out various duties relating to missing or exploited children in this State. (NRS 432.157) **Section 2** of this bill authorizes the Children's Advocate or his or her designee, under certain circumstances, to apply to a court for a warrant to take physical custody of a missing child where there is probable cause to believe that the child has been abducted. Further, **section 2** establishes the procedures for issuing such a warrant. **Section 2** also 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.

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

Section 1. (Deleted by amendment.)

Sec. 2. Chapter 432 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The Children's Advocate or his or her designee may apply to the court for a warrant to take physical custody of a missing child if, during an investigation of the missing child, it appears that there is probable cause to believe that:

(a) An act of abduction has been committed against the child; and

(b) The act of abduction was not committed to protect:

(1) The child from continued abuse or neglect or from a bona fide and imminent threat of abuse or neglect; or

(2) The person who allegedly abducted the child from continued domestic violence or a bona fide and imminent threat of domestic violence.

2. In filing the application for a warrant, the Children's Advocate and his or her designee acts on behalf of the court and not on behalf of any party.

3. The application must include, without limitation:

(a) The name of the person having legal custody of the child;

(b) The name of the person alleged to have committed the act of abduction of the child;

(c) The name of the person alleged to have possession of the child, if different from the person described in paragraph (b);

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

(e) A statement indicating whether, to the knowledge of the applicant after reasonable investigation under the circumstances, the child, the person having legal custody of the child, the person



1 *alleged to have committed the act of abduction or the person*
2 *alleged to have possession of the child has been:*

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

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

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

10 *(f) A statement indicating which court, if any, has exercised*
11 *jurisdiction over the custody or welfare of the child;*

12 *(g) A copy of the most recent child custody determination, if*
13 *any, concerning the child, or if there is no such determination, a*
14 *statement as to the legal basis for the custody of the child; and*

15 *(h) A declaration made under oath and penalty of perjury that*
16 *every factual representation made in the application is true and*
17 *correct to the best of the knowledge of the applicant.*

18 *4. The court may, in its discretion, supplement the allegations*
19 *made in the application with the sworn testimony of the applicant*
20 *at a hearing before the court. Any such testimony must be*
21 *recorded and preserved in the records of the court.*

22 *5. If an application is filed pursuant to this section:*

23 *(a) The Children's Advocate or his or her designee may not be*
24 *assessed a filing fee for the application; and*

25 *(b) Any proceedings regarding the application must be*
26 *expedited by the court.*

27 *6. If the court determines that no exigent circumstances exist*
28 *in relation to the issuance of the warrant, the court:*

29 *(a) Shall hold a hearing before it issues the warrant;*

30 *(b) Shall provide, or ensure that the Children's Advocate or*
31 *his or her designee provides, notice of the hearing to the custodial*
32 *parent, the person alleged to have committed the act of abduction*
33 *and, if different, the person alleged to have possession of the*
34 *child;*

35 *(c) If the person alleged to have committed the act of*
36 *abduction or, if different, the person alleged to have possession of*
37 *the child is present at the hearing or otherwise appears at the*
38 *hearing, may:*

39 *(1) Order such person to return the child in accordance*
40 *with the determination of the court regarding the placement of the*
41 *child; and*

42 *(2) Issue the warrant in accordance with subsection 9; and*

43 *(d) If the person alleged to have committed the act of*
44 *abduction and, if different, the person alleged to have possession*
45 *of the child received notice but are not present at the hearing, do*



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1 *not otherwise appear at the hearing and do not submit statements*
2 *to the court, may issue the warrant in accordance with*
3 *subsection 9.*

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

10 *(a) The court shall afford the custodial parent, the person*
11 *alleged to have committed the act of abduction and, if different,*
12 *the person alleged to have possession of the child an opportunity*
13 *to be heard at the earliest possible time after the warrant is*
14 *executed, but not later than 48 hours after the warrant is executed*
15 *unless a hearing within that period is impossible. If a hearing*
16 *within that period is impossible, the court shall hold the hearing*
17 *on the first judicial day possible.*

18 *(b) The Children's Advocate or his or her designee shall*
19 *provide notice of the hearing to be held pursuant to paragraph (a)*
20 *to the custodial parent, the person alleged to have committed the*
21 *act of abduction and, if different, the person alleged to have*
22 *possession of the child.*

23 *8. The custodial parent of the child, the person alleged to*
24 *have committed the act of abduction and, if different, the person*
25 *alleged to have possession of the child may:*

26 *(a) Appear at a hearing held pursuant to subsection 6 or 7 in*
27 *person, by telephone or by video; and*

28 *(b) Submit written statements to the court electronically or by*
29 *other means.*

30 *9. If, after a hearing held pursuant to subsection 6 or 7, as*
31 *applicable, the court:*

32 *(a) Determines that there is probable cause to believe that an*
33 *act of abduction has been committed against the child and that the*
34 *act of abduction was not committed for the protection of the child*
35 *or the person who allegedly abducted the child as described in*
36 *subsection 1, the court may issue a warrant to take physical*
37 *custody of the child; or*

38 *(b) Finds by a preponderance of the evidence that the act of*
39 *abduction of the child was committed for the protection of the*
40 *child or the person who allegedly abducted the child as described*
41 *in subsection 1, the court shall:*

42 *(1) Assume temporary emergency jurisdiction of the matter*
43 *and shall enter a temporary emergency order for the custody of*
44 *the child which is in the best interest of the child and which is*



1 *sufficient to protect the safety and welfare of all interested*
2 *persons; and*

3 *(2) Provide in the order a period of time which the court*
4 *considers adequate and within which the person seeking the*
5 *emergency order may obtain an initial or modified child custody*
6 *determination regarding the child from a court that has*
7 *jurisdiction to enter such an order.*

8 *10. A warrant issued by the court pursuant to this section:*

9 *(a) Must set forth findings of fact that establish probable cause*
10 *for believing that an act of abduction occurred and that the act of*
11 *abduction was not committed for the protection of the child or the*
12 *person who allegedly abducted the child as described in*
13 *subsection 1;*

14 *(b) Must direct law enforcement officers to take physical*
15 *custody of the child and deliver the child in accordance with the*
16 *determination of the court regarding the placement of the child;*

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

19 *(d) Must authorize law enforcement officers to enter private*
20 *property as described in paragraph (c) to take physical custody of*
21 *the child;*

22 *(e) Must order that the child be returned to his or her legal*
23 *custodian unless such placement is not in the best interest of the*
24 *child; and*

25 *(f) Is enforceable throughout this State.*

26 *11. As soon as reasonably practicable but not later than 24*
27 *hours after a law enforcement officer executes a warrant issued*
28 *pursuant to this section, the Children's Advocate or his or her*
29 *designee shall inform the court of the execution of the warrant.*

30 *12. As used in this section:*

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

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

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

39 *(d) "Court" means a court of this state authorized to establish,*
40 *enforce or modify a child custody determination.*

41 *(e) "Domestic violence" means the commission of any act*
42 *described in NRS 33.018.*

43 **Sec. 2.5.** NRS 432.150 is hereby amended to read as follows:

44 432.150 As used in NRS 432.150 to 432.220, inclusive, *and*
45 *section 2 of this act*, unless the context otherwise requires:



1 1. “Clearinghouse” means the program established by the
2 Attorney General pursuant to NRS 432.170.

3 2. “Director” means the Director of the Clearinghouse.

4 3. “Exploited child” means a person under the age of 18 years
5 who has been:

6 (a) Used in the production of pornography in violation of the
7 provisions of NRS 200.710;

8 (b) Subjected to sexual exploitation as defined in NRS
9 432B.110; or

10 (c) Employed or exhibited in any injurious, immoral or
11 dangerous business or occupation in violation of the provisions of
12 NRS 609.210.

13 4. “Missing child” means a person under the age of 18 years
14 who has run away or is otherwise missing from the lawful care,
15 custody and control of a parent or guardian.

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

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

