

SENATE BILL NO. 284—SENATOR GUSTAVSON

MARCH 21, 2011

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning the custody of children. (BDR 11-785)

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; establishing a presumption concerning child custody and visitation orders for members of the military under certain circumstances; authorizing a court to delegate the visitation rights of a member of the military to a family member of the member of the military under certain circumstances; requiring a court, under certain circumstances, to provide an expedited hearing concerning custody or visitation matters or allow participation in such a hearing by electronic means; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law provides that an award of child custody or visitation may only be
2 made by considering the best interest of the child. (NRS 125.480, 125C.010)
3 Existing law further provides that the court is authorized, with certain exceptions,
4 to modify its order at any time. (NRS 125.510) **Section 10** of this bill: (1) prohibits
5 a court, under certain circumstances, from entering a final order modifying the
6 terms of an existing custody or visitation order of a parent or legal guardian who is
7 a member of the military and who has received mandatory written orders for
8 deployment until after the deployment ends; (2) authorizes a court to modify a
9 custody or visitation order to reasonably accommodate the deployment of a parent
10 or legal guardian and deems any such modification to be a temporary order; and (3)
11 creates a rebuttable presumption that upon the return of that parent or legal
12 guardian from deployment, the custody and visitation order reverts to the order that
13 was in place before the order was modified by the temporary order.

14 **Section 11** of this bill provides that deployment or the potential for future
15 deployment of a parent or legal guardian must not, by itself, constitute a substantial
16 change sufficient to justify a permanent modification of a custody or visitation
17 order. **Section 13** of this bill authorizes a court to delegate the visitation rights of



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18 the parent or legal guardian who is deployed to a family member of the parent or
19 legal guardian under certain circumstances.

20 **Section 12** of this bill requires a court, upon a motion of a parent or legal
21 guardian who is deployed or has received mandatory written orders for deployment
22 and whose ability, or anticipated ability, to appear in person at a regularly
23 scheduled hearing concerning custody or visitation matters is materially affected by
24 his or her military duties, to: (1) hold an expedited hearing; or (2) allow the parent
25 or legal guardian to present testimony and evidence by electronic means.

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

1 **Section 1.** NRS 125.510 is hereby amended to read as follows:
2 125.510 1. In determining the custody of a minor child in an
3 action brought pursuant to this chapter, the court may, except as
4 otherwise provided in this section and chapter 130 of NRS **§ and**
5 **sections 3 to 13, inclusive, of this act:**

6 (a) During the pendency of the action, at the final hearing or at
7 any time thereafter during the minority of any of the children of the
8 marriage, make such an order for the custody, care, education,
9 maintenance and support of the minor children as appears in their
10 best interest; and

11 (b) At any time modify or vacate its order, even if the divorce
12 was obtained by default without an appearance in the action by one
13 of the parties.

14 ➔ The party seeking such an order shall submit to the jurisdiction of
15 the court for the purposes of this subsection. The court may make
16 such an order upon the application of one of the parties or the legal
17 guardian of the minor.

18 2. Any order for joint custody may be modified or terminated
19 by the court upon the petition of one or both parents or on the
20 court's own motion if it is shown that the best interest of the child
21 requires the modification or termination. The court shall state in its
22 decision the reasons for the order of modification or termination if
23 either parent opposes it.

24 3. Any order for custody of a minor child or children of a
25 marriage entered by a court of another state may, subject to *the*
26 *provisions of sections 3 to 13, inclusive, of this act and to* the
27 jurisdictional requirements in chapter 125A of NRS, be modified at
28 any time to an order of joint custody.

29 4. A party may proceed pursuant to this section without
30 counsel.

31 5. Any order awarding a party a limited right of custody to a
32 child must define that right with sufficient particularity to ensure
33 that the rights of the parties can be properly enforced and that the
34 best interest of the child is achieved. The order must include all



1 specific times and other terms of the limited right of custody. As
2 used in this subsection, “sufficient particularity” means a statement
3 of the rights in absolute terms and not by the use of the term
4 “reasonable” or other similar term which is susceptible to different
5 interpretations by the parties.

6 6. All orders authorized by this section must be made in
7 accordance with the provisions of chapter 125A of NRS *and*
8 *sections 3 to 13, inclusive, of this act* and must contain the
9 following language:

10
11 PENALTY FOR VIOLATION OF ORDER: THE
12 ABDUCTION, CONCEALMENT OR DETENTION OF A CHILD
13 IN VIOLATION OF THIS ORDER IS PUNISHABLE AS A
14 CATEGORY D FELONY AS PROVIDED IN NRS 193.130. NRS
15 200.359 provides that every person having a limited right of custody
16 to a child or any parent having no right of custody to the child who
17 willfully detains, conceals or removes the child from a parent,
18 guardian or other person having lawful custody or a right of
19 visitation of the child in violation of an order of this court, or
20 removes the child from the jurisdiction of the court without the
21 consent of either the court or all persons who have the right to
22 custody or visitation is subject to being punished for a category D
23 felony as provided in NRS 193.130.
24

25 7. In addition to the language required pursuant to subsection
26 6, all orders authorized by this section must specify that the terms of
27 the Hague Convention of October 25, 1980, adopted by the 14th
28 Session of the Hague Conference on Private International Law,
29 apply if a parent abducts or wrongfully retains a child in a foreign
30 country.

31 8. If a parent of the child lives in a foreign country or has
32 significant commitments in a foreign country:

33 (a) The parties may agree, and the court shall include in the
34 order for custody of the child, that the United States is the country
35 of habitual residence of the child for the purposes of applying the
36 terms of the Hague Convention as set forth in subsection 7.

37 (b) Upon motion of one of the parties, the court may order the
38 parent to post a bond if the court determines that the parent poses an
39 imminent risk of wrongfully removing or concealing the child
40 outside the country of habitual residence. The bond must be in an
41 amount determined by the court and may be used only to pay for the
42 cost of locating the child and returning the child to his or her
43 habitual residence if the child is wrongfully removed from or
44 concealed outside the country of habitual residence. The fact that a
45 parent has significant commitments in a foreign country does not



1 create a presumption that the parent poses an imminent risk of
2 wrongfully removing or concealing the child.

3 9. Except where a contract providing otherwise has been
4 executed pursuant to NRS 123.080, the obligation for care,
5 education, maintenance and support of any minor child created by
6 any order entered pursuant to this section ceases:

7 (a) Upon the death of the person to whom the order was
8 directed; or

9 (b) When the child reaches 18 years of age if the child is no
10 longer enrolled in high school, otherwise, when the child reaches 19
11 years of age.

12 10. As used in this section, a parent has "significant
13 commitments in a foreign country" if the parent:

14 (a) Is a citizen of a foreign country;

15 (b) Possesses a passport in his or her name from a foreign
16 country;

17 (c) Became a citizen of the United States after marrying the
18 other parent of the child; or

19 (d) Frequently travels to a foreign country.

20 **Sec. 2.** Chapter 125C of NRS is hereby amended by adding
21 thereto the provisions set forth as sections 3 to 13, inclusive, of this
22 act.

23 **Sec. 3.** *As used in sections 3 to 13, inclusive, of this act,*
24 *unless the context otherwise requires, the words and terms defined*
25 *in sections 4 to 9, inclusive, of this act have the meanings ascribed*
26 *to them in those sections.*

27 **Sec. 4.** *"Custody or visitation order" means:*

28 1. *A judgment, decree or order issued by a court of competent*
29 *jurisdiction in this State which provides for custody or visitation*
30 *with respect to a child; and*

31 2. *A judgment, decree or order issued by a court of another*
32 *state which provides for custody or visitation with respect to a*
33 *child if the judgment, decree or order has been registered in this*
34 *State pursuant to NRS 125A.465.*

35 **Sec. 5.** *"Deployment" means the transfer of a member of the*
36 *military, unaccompanied by any family member, on active duty*
37 *status in support of combat or another military operation,*
38 *including, without limitation, temporary duty. The term does not*
39 *include annual training of a reserve component of the Armed*
40 *Forces of the United States or of the National Guard.*

41 **Sec. 6.** *"Member of the military" means a person who is*
42 *presently serving in the Armed Forces of the United States, a*
43 *reserve component thereof or the National Guard.*

44 **Sec. 7.** *"Parent" means a parent or legal guardian of a child*
45 *under the age of 18 years.*



1 **Sec. 8.** *“Parent who received orders for deployment” means*
2 *a parent who has received mandatory written orders for*
3 *deployment and who is awaiting deployment or has been deployed*
4 *pursuant to those orders.*

5 **Sec. 9.** *“Temporary duty” means the transfer of a member of*
6 *the military, unaccompanied by any family member, from a*
7 *military base to a different location, including, without limitation,*
8 *another military base, for a limited time to accomplish training or*
9 *to assist in the performance of a combat mission.*

10 **Sec. 10.** 1. *If a parent who is a member of the military and*
11 *who has been awarded sole or joint custody or visitation of a child*
12 *receives mandatory written orders for deployment that require the*
13 *parent to move a substantial distance away from his or her*
14 *residence or otherwise have a material affect on the ability of the*
15 *parent to exercise his or her rights to custody or visitation*
16 *pursuant to the custody or visitation order, the court shall not*
17 *enter a final order modifying the terms of the existing custody or*
18 *visitation order until after the termination of the parent’s*
19 *deployment.*

20 2. *The court may temporarily modify a custody or visitation*
21 *order to reasonably accommodate the deployment of a parent. Any*
22 *such modification by the court of a custody or visitation order*
23 *shall be deemed a temporary order that is subject to review and*
24 *reconsideration by the court upon the return of the parent from*
25 *deployment. If the temporary order is reviewed by the court upon*
26 *the return of the parent from deployment, the fact that the parent*
27 *received orders for deployment creates a rebuttable presumption*
28 *that the temporary order must revert to the custody or visitation*
29 *order that was in place before the modification, unless the court*
30 *determines that it is not in the best interest of the child.*

31 3. *In making a temporary order described in subsection 2, the*
32 *court shall consider making any such appropriate temporary order*
33 *as will ensure the ability of the parent who received orders for*
34 *deployment to maintain frequent and continuing contact with the*
35 *child by means that are reasonably available.*

36 **Sec. 11.** *Deployment or the potential for future deployment*
37 *must not, by itself, constitute a substantial change in*
38 *circumstances sufficient to warrant a permanent modification of a*
39 *custody or visitation order.*

40 **Sec. 12.** 1. *If the military duties of a parent who received*
41 *orders for deployment have a material affect on the ability, or*
42 *anticipated ability, of the parent to appear in person at a regularly*
43 *scheduled hearing concerning any custody or visitation matters,*
44 *the court shall, upon a motion of that parent and for good cause*
45 *shown:*



- 1 (a) *Hold an expedited hearing; or*
- 2 (b) *Allow the parent who received orders for deployment to*
- 3 *present testimony and evidence by electronic means.*

4 2. *As used in this section, "electronic means" includes,*

5 *without limitation, telephone, videoconference or the Internet.*

6 **Sec. 13. 1.** *Upon a motion by the parent who received*

7 *orders for deployment, the court may delegate his or her visitation*

8 *rights, or a portion of those rights, to a family member of that*

9 *parent if the court:*

10 (a) *Finds that the family member has a substantial*

11 *relationship with the child that has engendered a bond such that*

12 *delegated visitation is in the best interest of the child;*

13 (b) *Finds that the visitation will facilitate the child's contact*

14 *with the parent who received orders for deployment; and*

15 (c) *Balances the interest of the child in having visitation with*

16 *the family member of the parent who received orders for*

17 *deployment against the right of the parents to exercise parental*

18 *authority.*

19 2. *Nothing in this section increases the authority of a family*

20 *member who is delegated visitation rights pursuant to subsection 1*

21 *to seek separate visitation rights of the child pursuant to*

22 *NRS 125C.050.*

