

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 567

Short Title: Domestic Violence Changes.

(Public)

Sponsors: Senators Winner, Perdue, Lucas, Odom, Plexico, Cochrane, and Gulley.

Referred to: Judiciary I/Constitution

April 3, 1995

A BILL TO BE ENTITLED

AN ACT TO MAKE DOMESTIC VIOLENCE A PRESUMPTIVE FACTOR IN CUSTODY DETERMINATION MATTERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50-13.2 reads as rewritten:

"§ 50-13.2. Who entitled to custody; terms of custody; visitation rights of grandparents; taking child out of State.

(a) An order for custody of a minor child entered pursuant to this section shall award the custody of such child to such person, agency, organization or institution as will best promote the interest and welfare of the child. In making such a determination, the court shall consider all relevant factors including the history of domestic violence between the parents, the safety of the child, and the safety of either parent from physical abuse by the other parent and shall make findings accordingly. An order for custody must include findings of fact which support the determination of what is in the best interest of the child. Between the mother and father, whether natural or adoptive, no presumption shall apply as to who will better promote the interest and welfare of the ~~child~~-child; provided, however, where the court finds by clear and convincing evidence that one parent has committed acts of domestic violence as defined under G.S. 50B-1 against the other parent or a minor child, there shall be a rebuttable presumption that it is not in the best interests of the child for the parent who has committed the acts to be awarded sole or

1 joint legal or physical custody. Joint custody to the parents shall be considered upon the
2 request of either parent.

3 (b) An order for custody of a minor child may grant joint custody to the parents,
4 exclusive custody to one person, agency, organization, or institution, or grant custody to
5 two or more persons, agencies, organizations, or institutions. Any order for custody
6 shall include such terms, including visitation, as will best promote the interest and
7 welfare of the child. If the court finds credible evidence that domestic violence has
8 occurred, the court shall grant rights of visitation in such a manner that best protects the
9 children and parent who was the victim of domestic violence from further harm. Orders
10 for visitation may include a designation of time and place for the exchange of children
11 away from the abused parent, the participation of a third party, or supervised visitation. If
12 a parent is absent or relocates with or without the children because of an act of domestic
13 violence, the absence or relocation shall not be a factor that weighs against the parent in
14 determining custody or visitation. Absent an order of the court to the contrary, each
15 parent shall have equal access to the records of the minor child involving the health,
16 education, and welfare of the child.

17 (b1) An order for custody of a minor child may provide visitation rights for any
18 grandparent of the child as the court, in its discretion, deems appropriate. As used in this
19 subsection, "grandparent" includes a biological grandparent of a child adopted by a
20 stepparent or a relative of the child where a substantial relationship exists between the
21 grandparent and the child. Under no circumstances shall a biological grandparent of a
22 child adopted by adoptive parents, neither of whom is related to the child and where
23 parental rights of both biological parents have been terminated, be entitled to visitation
24 rights.

25 (c) An order for custody of a minor child may provide for such child to be taken
26 outside of the State, but if the order contemplates the return of the child to this State, the
27 judge may require the person, agency, organization or institution having custody out of
28 this State to give bond or other security conditioned upon the return of the child to this
29 State in accordance with the order of the court.

30 (d) If, within a reasonable time, one parent fails to consent to adoption pursuant to
31 Chapter 48 of the General Statutes or parental rights have not been terminated, the
32 consent of the other consenting parent shall not be effective in an action for custody of
33 the child."

34 Sec. 2. This act becomes effective October 1, 1995.