

ASSEMBLY BILL NO. 45—COMMITTEE ON JUDICIARY

PREFILED FEBRUARY 4, 2005

Referred to Committee on Judiciary

SUMMARY—Makes various changes to provisions governing granting of right to visit child to certain persons other than parent of child. (BDR 11-295)

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 domestic relations; expanding the circumstances in which a court may grant to a great-grandparent or grandparent a reasonable right to visit his great-grandchild or grandchild; revising the proof required to overcome the presumption that granting visitation rights to certain persons is not in the best interests of the child; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes a district court to grant visitation rights to certain relatives of an unmarried minor child, including a grandparent and great-grandparent of the child under certain conditions. Visitation rights may be granted if the parent of the child is deceased, divorced or separated from the other parent, has relinquished his parental rights or had his parental rights terminated. In addition, a court may grant visitation rights to any person with whom a child has resided and with whom the child has established a meaningful relationship. In most cases, however, the court may only grant visitation rights if the parent of the child has denied or unreasonably restricted visits with the child and the person seeking visitation overcomes the presumption that granting visitation rights is not in the best interests of the child. To overcome the presumption, the person seeking visitation rights must prove by clear and convincing evidence that such visitation rights are in the best interests of the child. (NRS 125C.050) Clear and convincing evidence is established by presenting evidence which shows each factual element to be highly probable or evidence which is so clear as to leave no substantial doubt. (*In re Drakulich*, 111 Nev. 1556 (1995))

This bill expands the circumstances in which a court may grant visitation rights to the grandparent or great-grandparent of an unmarried minor child to include



visitation with any unmarried minor, including a child whose parents are married to each other and not separated. In addition, this bill changes the proof required to overcome the presumption that granting visitation rights is not in the best interest of the child. To overcome the presumption, the party seeking visitation must prove by clear and convincing evidence that the child will suffer physical or emotional harm if a right to visitation is not granted in addition to proving that granting a right to visitation is in the best interests of the child.

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

Section 1. NRS 125C.050 is hereby amended to read as follows:

125C.050 1. *Except as otherwise provided in this section, the district court in the county in which any unmarried minor child resides, including, without limitation, a child whose parents are married to each other and not separated, may grant to the great-grandparents and grandparents of the child a reasonable right to visit the child during his minority.*

2. Except as otherwise provided in this section, *the district court in the county in which an unmarried minor child resides may grant to other children of either parent of the child a reasonable right to visit the child during his minority* if a parent of ~~an~~ the unmarried minor child:

(a) Is deceased;

(b) Is divorced or separated from the parent who has custody of the child;

(c) Has never been legally married to the other parent of the child, but cohabitated with the other parent and is deceased or is separated from the other parent; or

(d) Has relinquished his parental rights or his parental rights have been terminated. ~~1.~~

~~the district court in the county in which the child resides may grant to the great-grandparents and grandparents of the child and to other children of either parent of the child a reasonable right to visit the child during his minority.~~

~~2. If~~

3. *Except as otherwise provided in this section, if* the child has resided with a person with whom he has established a meaningful relationship, the district court in the county in which the child resides also may grant to that person a reasonable right to visit the child during his minority, regardless of whether the person is related to the child.

~~3.~~ 4. A party may seek a reasonable right to visit the child during his minority pursuant to subsection 1, ~~for~~ 2 or 3 only if a



parent of the child has denied or unreasonably restricted visits with the child.

~~[4:]~~ 5. If a parent of the child has denied or unreasonably restricted visits with the child, there is a rebuttable presumption that the granting of a right to visitation to a party seeking visitation is not in the best interests of the child. To rebut this presumption, the party seeking visitation must prove by clear and convincing evidence *that the child will suffer physical or emotional harm if a right to visitation is not granted to the party seeking visitation and* that it is in the best interests of the child to grant visitation.

~~[5:]~~ 6. The court may grant a party seeking visitation pursuant to subsection 1 , ~~[or]~~ 2 or 3 a reasonable right to visit the child during his minority only if the court finds that the party seeking visitation has rebutted the presumption established in subsection ~~[4:]~~ 5.

~~[6:]~~ 7. In determining whether the party seeking visitation has rebutted the presumption established in subsection ~~[4:]~~ 5, the court shall consider:

(a) The love, affection and other emotional ties existing between the party seeking visitation and the child.

(b) The capacity and disposition of the party seeking visitation to:

(1) Give the child love, affection and guidance and serve as a role model to the child;

(2) Cooperate in providing the child with food, clothing and other material needs during visitation; and

(3) Cooperate in providing the child with health care or alternative care recognized and permitted under the laws of this State in lieu of health care.

(c) The prior relationship between the child and the party seeking visitation, including, without limitation, whether the child resided with the party seeking visitation and whether the child was included in holidays and family gatherings with the party seeking visitation.

(d) The moral fitness of the party seeking visitation.

(e) The mental and physical health of the party seeking visitation.

(f) The reasonable preference of the child, if the child has a preference, and if the child is determined to be of sufficient maturity to express a preference.

(g) The willingness and ability of the party seeking visitation to facilitate and encourage a close and continuing relationship between the child and the parent or parents of the child as well as with other relatives of the child.



(h) The medical and other needs of the child related to health as affected by the visitation.

(i) The support provided by the party seeking visitation, including, without limitation, whether the party has contributed to the financial support of the child.

(j) Any other factor arising solely from the facts and circumstances of the particular dispute that specifically pertains to the need for granting a right to visitation pursuant to subsection 1, ~~for~~ 2 or 3 against the wishes of a parent of the child.

~~7.1~~ 8. If the parental rights of either or both natural parents of a child are relinquished or terminated, and the child is placed in the custody of a public agency or a private agency licensed to place children in homes, the district court in the county in which the child resides may grant to the great-grandparents and grandparents of the child and to other children of either parent of the child a reasonable right to visit the child during his minority if a petition therefor is filed with the court before the date on which the parental rights are relinquished or terminated. In determining whether to grant this right to a party seeking visitation, the court must find, by a preponderance of the evidence, that the visits would be in the best interests of the child in light of the considerations set forth in paragraphs (a) to (i), inclusive, of subsection ~~6.1~~ 7.

~~8.1~~ 9. Rights to visit a child may be granted:

(a) In a divorce decree;

(b) In an order of separate maintenance; or

(c) Upon a petition filed by an eligible person:

(1) *If the petition is based on the provisions of subsection 1, after a parent of the child has denied or unreasonably restricted visits with the child;*

(2) *If the petition is based on the provisions of subsection 2, after a parent of the child has denied or unreasonably restricted visits with the child and:*

(I) After a divorce or separation or after the death of a parent, or upon the relinquishment or termination of a parental right; or

~~(2.1)~~ (II) If the parents of the child were not legally married and were cohabitating, after the death of a parent or after the separation of the parents of the child; or

(3) If the petition is based on the provisions of subsection ~~2.1~~ 3, after *a parent of the child has denied or unreasonably restricted visits with the child and* the eligible person ceases to reside with the child.

~~9.1~~ 10. If a court terminates the parental rights of a parent who is divorced or separated, any rights previously granted pursuant to subsection 1 or 2 also must be terminated, unless the court finds, by



1 a preponderance of the evidence, that visits by those persons would
2 be in the best interests of the child.

3 ~~10.~~ **11.** For the purposes of this section, "separation" means:

4 (a) A legal separation or any other separation of a married
5 couple if the couple has lived separate and apart for 30 days or more
6 and has no present intention of resuming a marital relationship; or

7 (b) If a couple was not legally married but cohabitating, a
8 separation of the couple if the couple has lived separate and apart
9 for 30 days or more and has no present intention of resuming
10 cohabitation or entering into a marital relationship.

11 **Sec. 2.** The amendatory provisions of this act apply to a
12 petition for visitation that is filed on or after October 1, 2005.



