

ASSEMBLY BILL NO. 52—ASSEMBLYMAN CARPENTER

PREFILED FEBRUARY 1, 2007

JOINT SPONSOR: SENATOR WASHINGTON

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to domestic relations. (BDR 11-421)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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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; codifying certain common law factors that a court must consider when determining alimony; revising the provisions governing the order of preference for custody of a child; revising the provisions governing the reporting of information concerning investigations of domestic violence; requiring the Director of the Department of Public Safety to submit an annual report concerning temporary and extended orders for protection against domestic violence to the Legislature; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Under existing case law in Nevada, a court determining whether alimony
2 should be awarded and the appropriate amount of alimony is required to consider
3 several relevant factors including: (1) the financial condition of the parties; (2) the
4 nature and value of their respective property; (3) the contribution of each party to
5 any property held by both parties as tenants by the entirety; (4) the duration of the
6 marriage; and (5) the income, earning capacity, age and health of each party.
7 (*Buchanan v. Buchanan*, 90 Nev. 209, 215 (1974)) **Section 1** of this bill codifies
8 those factors as well as factors from subsequent case law so that a court must
9 consider those factors when determining alimony. (*Buchanan*, 90 Nev. at 215;
10 *Sprenger v. Sprenger*, 110 Nev. 855, 859 (1994); *Rodriguez v. Rodriguez*, 116 Nev.
11 993, 999 (2000))

12 Existing law sets forth the order of preference for an award of custody of a
13 child unless in a particular case the best interest of the child requires otherwise. The
14 order of preference for an award of custody is: (1) to both parents jointly or to
15 either parent; (2) to a person or persons in whose home the child has been living
16 and where the child has had a wholesome and stable environment; (3) to any person



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related within the third degree of consanguinity to the child whom the court finds suitable and able to provide proper care and guidance for the child; and (4) to any other person or persons whom the court finds suitable and able to provide proper care and guidance for the child. (NRS 125.480)

Section 1.5 of this bill revises the order of preference by adding the maternal or paternal grandparents of the child as third in the order of preference, following in preference the parents of the child and persons with whom the child has resided and preceding in preference other relatives and any other persons.

Existing law sets forth provisions governing the reporting of information concerning investigations of domestic violence. (NRS 171.1227) **Section 4.5** of this bill revises the manner in which information concerning an investigation of domestic violence must be forwarded to the Central Repository for Nevada Records of Criminal History. **Section 4.5** also requires the Director of the Department of Public Safety to prescribe the form in which such information must be supplied and lists additional information that must be contained in the form.

Section 5 of this bill requires the Director of the Department of Public Safety to submit a written report concerning the temporary and extended orders for protection against domestic violence issued in this State to the Director of the Legislative Counsel Bureau which includes the total number of temporary and extended orders granted, the number of grants of temporary custody that are included in such temporary and extended orders, the number of such orders that are issued to women and the number of such orders that are issued to men.

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

Section 1. NRS 125.150 is hereby amended to read as follows:

125.150 Except as otherwise provided in NRS 125.155 and unless the action is contrary to a premarital agreement between the parties which is enforceable pursuant to chapter 123A of NRS:

1. In granting a divorce, the court:

(a) May award such alimony to the wife or to the husband, in a specified principal sum or as specified periodic payments, as appears just and equitable; and

(b) Shall, to the extent practicable, make an equal disposition of the community property of the parties, except that the court may make an unequal disposition of the community property in such proportions as it deems just if the court finds a compelling reason to do so and sets forth in writing the reasons for making the unequal disposition.

2. Except as otherwise provided in this subsection, in granting a divorce, the court shall dispose of any property held in joint tenancy in the manner set forth in subsection 1 for the disposition of community property. If a party has made a contribution of separate property to the acquisition or improvement of property held in joint tenancy, the court may provide for the reimbursement of that party for his contribution. The amount of reimbursement must not exceed the amount of the contribution of separate property that can be



1 traced to the acquisition or improvement of property held in joint
2 tenancy, without interest or any adjustment because of an increase in
3 the value of the property held in joint tenancy. The amount of
4 reimbursement must not exceed the value, at the time of the
5 disposition, of the property held in joint tenancy for which the
6 contribution of separate property was made. In determining whether
7 to provide for the reimbursement, in whole or in part, of a party who
8 has contributed separate property, the court shall consider:

9 (a) The intention of the parties in placing the property in joint
10 tenancy;

11 (b) The length of the marriage; and

12 (c) Any other factor which the court deems relevant in making a
13 just and equitable disposition of that property.

14 ➔ As used in this subsection, "contribution" includes , *without*
15 *limitation*, a down payment, a payment for the acquisition or
16 improvement of property, and a payment reducing the principal of a
17 loan used to finance the purchase or improvement of property. The
18 term does not include a payment of interest on a loan used to finance
19 the purchase or improvement of property, or a payment made for
20 maintenance, insurance or taxes on property.

21 3. Except as otherwise provided in NRS 125.141, whether or
22 not application for suit money has been made under the provisions
23 of NRS 125.040, the court may award a reasonable attorney's fee to
24 either party to an action for divorce if those fees are in issue under
25 the pleadings.

26 4. In granting a divorce, the court may also set apart such
27 portion of the husband's separate property for the wife's support, the
28 wife's separate property for the husband's support or the separate
29 property of either spouse for the support of their children as is
30 deemed just and equitable.

31 5. In the event of the death of either party or the subsequent
32 remarriage of the spouse to whom specified periodic payments were
33 to be made, all the payments required by the decree must cease,
34 unless it was otherwise ordered by the court.

35 6. If the court adjudicates the property rights of the parties, or
36 an agreement by the parties settling their property rights has been
37 approved by the court, whether or not the court has retained
38 jurisdiction to modify them, the adjudication of property rights, and
39 the agreements settling property rights, may nevertheless at any time
40 thereafter be modified by the court upon written stipulation signed
41 and acknowledged by the parties to the action, and in accordance
42 with the terms thereof.

43 7. If a decree of divorce, or an agreement between the parties
44 which was ratified, adopted or approved in a decree of divorce,
45 provides for specified periodic payments of alimony, the decree or



1 agreement is not subject to modification by the court as to accrued
2 payments. Payments pursuant to a decree entered on or after July 1,
3 1975, which have not accrued at the time a motion for modification
4 is filed may be modified upon a showing of changed circumstances,
5 whether or not the court has expressly retained jurisdiction for the
6 modification. In addition to any other factors the court considers
7 relevant in determining whether to modify the order, the court shall
8 consider whether the income of the spouse who is ordered to pay
9 alimony, as indicated on the spouse's federal income tax return for
10 the preceding calendar year, has been reduced to such a level that
11 the spouse is financially unable to pay the amount of alimony he has
12 been ordered to pay.

13 8. *In addition to any other factors the court considers*
14 *relevant in determining whether to award alimony and the amount*
15 *of such an award, the court shall consider:*

16 (a) *The financial condition of each spouse;*

17 (b) *The nature and value of the respective property of each*
18 *spouse;*

19 (c) *The contribution of each spouse to any property held by the*
20 *spouses pursuant to NRS 123.030;*

21 (d) *The duration of the marriage;*

22 (e) *The income, earning capacity, age and health of each*
23 *spouse;*

24 (f) *The standard of living during the marriage;*

25 (g) *The career before the marriage of the spouse who would*
26 *receive the alimony;*

27 (h) *The existence of specialized education or training or the*
28 *level of marketable skills attained by each spouse during the*
29 *marriage;*

30 (i) *The contribution of either spouse as homemaker;*

31 (j) *The award of property granted by the court in the divorce,*
32 *other than child support and alimony, to the spouse who would*
33 *receive the alimony; and*

34 (k) *The physical and mental condition of each party as it*
35 *relates to the financial condition, health and ability to work of that*
36 *spouse.*

37 9. In granting a divorce , the court shall consider the need to
38 grant alimony to a spouse for the purpose of obtaining training or
39 education relating to a job, career or profession. In addition to any
40 other factors the court considers relevant in determining whether
41 such alimony should be granted, the court shall consider:

42 (a) Whether the spouse who would pay such alimony has
43 obtained greater job skills or education during the marriage; and



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(b) Whether the spouse who would receive such alimony provided financial support while the other spouse obtained job skills or education.

~~9-1~~ 10. If the court determines that alimony should be awarded pursuant to the provisions of subsection ~~8-1~~ 9:

(a) The court, in its order, shall provide for the time within which the spouse who is the recipient of the alimony must commence the training or education relating to a job, career or profession.

(b) The spouse who is ordered to pay the alimony may, upon changed circumstances, file a motion to modify the order.

(c) The spouse who is the recipient of the alimony may be granted, in addition to any other alimony granted by the court, money to provide for:

(1) Testing of the recipient's skills relating to a job, career or profession;

(2) Evaluation of the recipient's abilities and goals relating to a job, career or profession;

(3) Guidance for the recipient in establishing a specific plan for training or education relating to a job, career or profession;

(4) Subsidization of an employer's costs incurred in training the recipient;

(5) Assisting the recipient to search for a job; or

(6) Payment of the costs of tuition, books and fees for:

(I) The equivalent of a high school diploma;

(II) College courses which are directly applicable to the recipient's goals for his career; or

(III) Courses of training in skills desirable for employment.

~~H0-1~~ 11. For the purposes of this section, a change of 20 percent or more in the gross monthly income of a spouse who is ordered to pay alimony shall be deemed to constitute changed circumstances requiring a review for modification of the payments of alimony. As used in this subsection, "gross monthly income" has the meaning ascribed to it in NRS 125B.070.

Sec. 1.5. NRS 125.480 is hereby amended to read as follows:

125.480 1. In determining custody of a minor child in an action brought under this chapter, the sole consideration of the court is the best interest of the child. If it appears to the court that joint custody would be in the best interest of the child, the court may grant custody to the parties jointly.

2. Preference must not be given to either parent for the sole reason that the parent is the mother or the father of the child.



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3. The court shall award custody in the following order of preference unless in a particular case the best interest of the child requires otherwise:

(a) To both parents jointly pursuant to NRS 125.490 or to either parent. If the court does not enter an order awarding joint custody of a child after either parent has applied for joint custody, the court shall state in its decision the reason for its denial of the parent's application.

(b) To a person or persons in whose home the child has been living and where the child has had a wholesome and stable environment.

(c) *To the maternal or paternal grandparents of the child or a maternal or paternal grandparent of the child whom the court finds suitable and able to provide proper care and guidance for the child.*

(d) To any person related within the third degree of consanguinity to the child whom the court finds suitable and able to provide proper care and guidance for the child, regardless of whether the relative resides within this State.

~~[(d)]~~ (e) To any other person or persons whom the court finds suitable and able to provide proper care and guidance for the child.

4. In determining the best interest of the child, the court shall consider and set forth its specific findings concerning, among other things:

(a) The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his custody.

(b) Any nomination by a parent or a guardian for the child.

(c) Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent.

(d) The level of conflict between the parents.

(e) The ability of the parents to cooperate to meet the needs of the child.

(f) The mental and physical health of the parents.

(g) The physical, developmental and emotional needs of the child.

(h) The nature of the relationship of the child with each parent.

(i) The ability of the child to maintain a relationship with any sibling.

(j) Any history of parental abuse or neglect of the child or a sibling of the child.

(k) Whether either parent or any other person seeking custody has engaged in an act of domestic violence against the child, a parent of the child or any other person residing with the child.



1 5. Except as otherwise provided in subsection 6 or NRS
2 125C.210, a determination by the court after an evidentiary hearing
3 and finding by clear and convincing evidence that either parent or
4 any other person seeking custody has engaged in one or more acts of
5 domestic violence against the child, a parent of the child or any
6 other person residing with the child creates a rebuttable presumption
7 that sole or joint custody of the child by the perpetrator of the
8 domestic violence is not in the best interest of the child. Upon
9 making such a determination, the court shall set forth:

10 (a) Findings of fact that support the determination that one or
11 more acts of domestic violence occurred; and

12 (b) Findings that the custody or visitation arrangement ordered
13 by the court adequately protects the child and the parent or other
14 victim of domestic violence who resided with the child.

15 6. If after an evidentiary hearing held pursuant to subsection 5
16 the court determines that each party has engaged in acts of domestic
17 violence, it shall, if possible, then determine which person was the
18 primary physical aggressor. In determining which party was the
19 primary physical aggressor for the purposes of this section, the court
20 shall consider:

21 (a) All prior acts of domestic violence involving either party;

22 (b) The relative severity of the injuries, if any, inflicted upon the
23 persons involved in those prior acts of domestic violence;

24 (c) The likelihood of future injury;

25 (d) Whether, during the prior acts, one of the parties acted in
26 self-defense; and

27 (e) Any other factors which the court deems relevant to the
28 determination.

29 ➔ In such a case, if it is not possible for the court to determine
30 which party is the primary physical aggressor, the presumption
31 created pursuant to subsection 5 applies to both parties. If it is
32 possible for the court to determine which party is the primary
33 physical aggressor, the presumption created pursuant to subsection 5
34 applies only to the party determined by the court to be the primary
35 physical aggressor.

36 7. As used in this section, "domestic violence" means the
37 commission of any act described in NRS 33.018.

38 **Sec. 2.** (Deleted by amendment.)

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

40 **Sec. 4.** (Deleted by amendment.)

41 **Sec. 4.5.** NRS 171.1227 is hereby amended to read as follows:

42 171.1227 1. If a peace officer investigates an act that
43 constitutes domestic violence pursuant to NRS 33.018, he shall
44 prepare and submit a written report of his investigation to his



1 supervisor or to another person designated by his supervisor,
2 regardless of whether the peace officer makes an arrest.

3 2. If the peace officer investigates a mutual battery that
4 constitutes domestic violence pursuant to NRS 33.018 and finds that
5 one of the persons involved was the primary physical aggressor, he
6 shall include in his report:

7 (a) The name of the person who was the primary physical
8 aggressor; and

9 (b) A description of the evidence which supports his finding.

10 3. If the peace officer does not make an arrest, he shall include
11 in his report the reason he did not do so.

12 4. ~~[A copy of the]~~ *The information contained in a report made*
13 *pursuant to subsections 1 and 2 must be ~~[forwarded immediately]~~ :*

14 *(a) Aggregated each month; and*

15 *(b) Forwarded by each jurisdiction to the Central Repository*
16 *for Nevada Records of Criminal History ~~[.]~~ not later than the 15th*
17 *day of the following month.*

18 5. *The Director of the Department of Public Safety shall*
19 *prescribe the form on which the information described in*
20 *subsection 4 must be reported to the Central Repository. In*
21 *addition to the information required pursuant to subsections 1 and*
22 *2, the form must also require the inclusion of the following*
23 *information from each report:*

24 *(a) The gender, age and race of the persons involved;*

25 *(b) The relationship of the persons involved;*

26 *(c) The date and time of day of the offense;*

27 *(d) The number of children present, if any, at the time of the*
28 *offense;*

29 *(e) Whether or not an order for protection against domestic*
30 *violence was in effect at the time of the offense;*

31 *(f) Whether or not any weapons were used during the*
32 *commission of the offense;*

33 *(g) Whether or not any person required medical attention;*

34 *(h) Whether or not any person was given a domestic violence*
35 *card that contains information about appropriate counseling or*
36 *other supportive services available in the community in which that*
37 *person resides;*

38 *(i) Whether or not the primary physical aggressor, if identified,*
39 *was arrested and, if not, any mitigating circumstances explaining*
40 *why an arrest was not made; and*

41 *(j) Whether or not any other person was arrested.*

42 **Sec. 5.** NRS 179A.350 is hereby amended to read as follows:

43 179A.350 1. The Repository for Information Concerning
44 Orders for Protection Against Domestic Violence is hereby created
45 within the Central Repository.



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2. Except as otherwise provided in subsection ~~[4.]~~ 6, the Repository for Information Concerning Orders for Protection Against Domestic Violence must contain a complete and systematic record of all temporary and extended orders for protection against domestic violence issued or registered in the State of Nevada, in accordance with regulations adopted by the Director of the Department, including, without limitation, any information received pursuant to NRS 33.095. Information received by the Central Repository pursuant to NRS 33.095 must be entered in the Repository for Information Concerning Orders for Protection Against Domestic Violence not later than 8 hours after it is received by the Central Repository.

3. The information in the Repository for Information Concerning Orders for Protection Against Domestic Violence must be accessible by computer at all times to each agency of criminal justice.

4. *On or before February 15 of each year, the Director of the Department shall submit to the Director of the Legislative Counsel Bureau a written report concerning all temporary and extended orders for protection against domestic violence issued pursuant to NRS 33.020 during the previous calendar year that were transmitted to the Repository for Information Concerning Orders for Protection Against Domestic Violence. The report must include, without limitation, information for each court that issues temporary or extended orders for protection against domestic violence concerning:*

(a) The total number of temporary and extended orders that were granted by the court pursuant to NRS 33.020 during the calendar year to which the report pertains;

(b) The number of temporary and extended orders that were granted to women;

(c) The number of temporary and extended orders that were granted to men;

(d) The number of temporary and extended orders that were vacated or expired;

(e) The number of temporary orders that included a grant of temporary custody of a minor child; and

(f) The number of temporary and extended orders that were served on the adverse party.

5. *The information provided pursuant to subsection 4 must include only aggregate information for statistical purposes and must exclude any identifying information relating to a particular person.*

6. The Repository for Information Concerning Orders for Protection Against Domestic Violence must not contain any



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1 information concerning an event that occurred before October 1,
2 1998.

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