

Amendment No. 192

Assembly Amendment to Assembly Bill No. 353

(BDR 11-851)

Proposed by: Assembly Committee on Judiciary**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	☐	Lost	☐	_____	Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____	Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____	Receded	☐	Not	☐	_____

EXPLANATION: Matter in (1) ***blue bold italics*** is new language in the original bill; (2) ***green bold italic underlining*** is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) ***green bold*** is newly added transitory language.

RBL



Date: 4/9/2007

A.B. No. 353—Makes various changes concerning the restoration of parental rights. (BDR 11-851)



ASSEMBLY BILL NO. 353—ASSEMBLYMEN GERHARDT, BUCKLEY, LESLIE, CONKLIN, ARBERRY, ATKINSON, BEERS, BOBZIEN, CLABORN, DENIS, GOEDHART, GOICOECHEA, HOGAN, KIHUEN, KOIVISTO, MANENDO, MCCLAIN, MORTENSON, MUNFORD, OCEGUERA, OHRENSCHALL, PARKS, PIERCE, SEGERBLOM, SMITH, STEWART AND WOMACK

MARCH 15, 2007

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning the restoration of parental rights. (BDR 11-851)

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 parental rights; providing for the restoration of parental rights in certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for the termination of parental rights in certain circumstances. (NRS 128.010-128.160) Existing law further provides that a court cannot change, modify or set aside an order terminating parental rights. (NRS 128.120) ~~[Section 1 of this bill authorizes a court, upon its own motion or upon the petition of a child who has not been adopted or the natural parent or parents of the child, to order that the parental rights of the natural parent or parents be restored in certain circumstances if the court determines by a preponderance of the evidence that the child is not likely to be adopted and that restoration of parental rights is in the best interest of the child.] Existing law also provides for the voluntary relinquishment of parental rights. (NRS 127.040)~~

Section 2 of this bill authorizes a child who has not been adopted and whose natural parent has had his parental rights terminated or has relinquished his parental rights to petition a court for the restoration of parental rights. In addition, the legal custodian or legal guardian of such a child may petition for the restoration of parental rights. The natural parent must consent to the petition. Section 3 of this bill provides for the notice that must be given before a hearing is held on the petition and requires that certain persons be afforded an opportunity to present evidence and testify during the hearing. Section 4 of this bill provides for the court to hold a hearing when a valid petition is filed and specifies certain findings that must be made for the court to grant the petition, including that the child is not likely to be adopted and that the restoration of parental rights 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. Chapter 128 of NRS is hereby amended by adding thereto ~~a new~~
~~section to read as follows:~~

~~1. A court may order the restoration of the parental rights of the natural parent or parents of a child pursuant to the provisions of this section if:~~

~~(a) A court has terminated the parental rights of the natural parent or parents of the child;~~

~~(b) The child:~~

~~(1) Is 17 years of age or older and has not been adopted; or~~

~~(2) Is less than 17 years of age and has not been adopted within 3 years after the date on which the court terminated the parental rights of his natural parent or parents; and~~

~~(c) The court determines that adoption is no longer the plan for the child.~~

~~2. The court may order a hearing to determine whether the parental rights of the natural parent or parents of the child should be restored:~~

~~(a) Upon its own motion; or~~

~~(b) Upon petition by the child or the natural parent or parents of the child.~~

~~3. A child who is less than 17 years of age may file a petition to restore the parental rights of the natural parent or parents before the expiration of the 3-year period described in subsection 1 if the custodial agency that is responsible for custody and supervision of the child and the child stipulate that the child is not likely to be adopted;~~

~~4. A child over 12 years of age shall sign the petition in the absence of a showing of good cause as to why the child could not do so;~~

~~5. If it appears that the best interests of the child may be promoted by the restoration of the parental rights of the natural parent or parents, the court shall order:~~

~~(a) That a hearing be held;~~

~~(b) That notice of the hearing be given to the legal custodian or guardian of the child and the child's attorney of record or, if there is no attorney of record for the child, to the child; and~~

~~(c) That the child or legal custodian or guardian of the child provide notice of the hearing to the natural parent or parents whose parental rights were terminated.~~

~~6. The court shall order the restoration of parental rights pursuant to this section if after the hearing the court finds by a preponderance of the evidence that:~~

~~(a) The child is not likely to be adopted; and~~

~~(b) Restoration of the parental rights of the natural parent or parents is in the best interest of the child;~~

~~7. If the court restores the parental rights of the natural parent or parents of a child who is less than 12 years of age and for whom the new plan will not be reunification with a parent or legal guardian, the court shall specify the factual basis for its findings that it is in the best interest of the child to restore the parental rights of the natural parent or parents.] the provisions set forth as sections 2, 3 and 4 of this act.~~

Sec. 2. 1. A child who has not been adopted and whose natural parent or parents have had their parental rights terminated or have relinquished their parental rights, or the legal custodian or guardian of such a child, may petition a

court for the restoration of the parental rights of the natural parent or parents of the child.

2. The natural parent or parents for whom restoration of parental rights is sought to be restored must consent in writing to the petition.

Sec. 3. 1. Before a hearing is held on a petition that is filed pursuant to section 2 of this act, the court shall direct the clerk to issue a notice, reciting briefly the substance of the petition and stating the date set for the hearing thereof, and requiring the person served therewith to appear before the court at the time and place if that person desires to provide testimony or evidence concerning the petition.

2. The following persons must be personally served with the notice:

(a) The natural parent or parents for whom parental rights are sought to be restored;

(b) The legal custodian and the legal guardian of the child who is the subject of the petition;

(c) If the parental rights of the natural parent or parents for whom parental rights are sought to be restored were terminated, the person or governmental entity that petitioned for the termination if different from the persons notified pursuant to paragraph (b); and

(d) The attorney of record of the child who is the subject of the petition or, if none, the child.

3. The persons who are served with notice pursuant to subsection 2 must be provided an opportunity to present testimony and evidence during the hearing.

Sec. 4. 1. If a valid petition is filed pursuant to section 2 of this act, the court shall hold a hearing to determine whether to restore the parental rights of the natural parent or parents.

2. Before granting a petition for the restoration of parental rights, the court must find that:

(a) If any child who is the subject of the petition is 14 years of age or older, the child consents to the restoration of parental rights.

(b) The natural parent or parents for whom restoration of parental rights is sought have been informed of the legal obligations, rights and consequences of the restoration of parental rights and that the natural parent or parents are willing and able to accept such obligations, rights and consequences.

3. If the court finds the necessary facts pursuant to subsection 2, the court shall order the restoration of parental rights if the court further finds by a preponderance of the evidence that:

(a) The child is not likely to be adopted; and

(b) Restoration of parental rights of the natural parent or parents is in the best interests of the child.

4. If the court restores the parental rights of the natural parent or parents of a child who is less than 14 years of age, the court shall specify in its order the factual basis for its findings that it is in the best interests of the child to restore the parental rights of the natural parent or parents.

5. Upon the entry of an order for the restoration of parental rights issued pursuant to this section, any child who is the subject of the petition becomes the legal child of the natural parent or parents whose rights have been restored, and they shall become his legal parents on that date with all the rights and duties of parents.

~~[Sec. 2.]~~ Sec. 5. NRS 128.100 is hereby amended to read as follows:

128.100 1. In any proceeding for terminating parental rights, or any rehearing or appeal thereon, or any proceeding for restoring parental rights, the court may appoint an attorney to represent the child as his counsel and, if the child

1 does not have a guardian ad litem appointed pursuant to NRS 432B.500, as his
2 guardian ad litem. The child may be represented by an attorney at all stages of any
3 proceedings for terminating parental rights. If the child is represented by an
4 attorney, the attorney has the same authority and rights as an attorney representing a
5 party to the proceedings.

6 2. If the parent or parents of the child desire to be represented by counsel, but
7 are indigent, the court may appoint an attorney for them.

8 3. Each attorney appointed under the provisions of this section is entitled to
9 the same compensation and expenses from the county as provided in NRS 7.125
10 and 7.135 for attorneys appointed to represent persons charged with crimes.

11 ~~Sec. 3.~~ **Sec. 6.** NRS 128.120 is hereby amended to read as follows:

12 128.120 Any order made and entered by the court under the provisions of
13 NRS 128.110 is conclusive and binding upon the person declared to be free from
14 the custody and control of his parent or parents, and upon all other persons who
15 have been served with notice by publication or otherwise, as provided by this
16 chapter. After the making of the order, *except as otherwise provided in section ~~11~~*
17 *4 of this act*, the court has no power to set aside, change or modify it, but nothing in
18 this chapter impairs the right of appeal.