

Amendment No. 962

Senate Amendment to Assembly Bill No. 52 Second Reprint	(BDR 11-421)
Proposed by: Senator Washington	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION		Initial and Date	SENATE ACTION		Initial and Date
Adopted	<input type="checkbox"/>	Lost <input type="checkbox"/>	Adopted	<input type="checkbox"/>	Lost <input type="checkbox"/>
Concurred In	<input type="checkbox"/>	Not <input type="checkbox"/>	Concurred In	<input type="checkbox"/>	Not <input type="checkbox"/>
Receded	<input type="checkbox"/>	Not <input type="checkbox"/>	Receded	<input type="checkbox"/>	Not <input type="checkbox"/>

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.

BAW



Date: 5/23/2007

A.B. No. 52—Makes various changes relating to domestic relations. (BDR 11-421)



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:

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

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

21 **preference the parents of the child and persons with whom the child has resided and**
22 **preceding in preference other relatives and any other persons.**

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

30 **Section 5** of this bill requires the Director of the Department of Public Safety to submit a
31 written report concerning the temporary and extended orders for protection against domestic
32 violence issued in this State to the Director of the Legislative Counsel Bureau which includes
33 the total number of temporary and extended orders granted, the number of grants of temporary
34 custody that are included in such temporary and extended orders, the number of such orders
35 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:

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

2 125.150 Except as otherwise provided in NRS 125.155 and unless the action
3 is contrary to a premarital agreement between the parties which is enforceable
4 pursuant to chapter 123A of NRS:

5 1. In granting a divorce, the court:

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

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

13 2. Except as otherwise provided in this subsection, in granting a divorce, the
14 court shall dispose of any property held in joint tenancy in the manner set forth in
15 subsection 1 for the disposition of community property. If a party has made a
16 contribution of separate property to the acquisition or improvement of property held
17 in joint tenancy, the court may provide for the reimbursement of that party for his
18 contribution. The amount of reimbursement must not exceed the amount of the
19 contribution of separate property that can be traced to the acquisition or
20 improvement of property held in joint tenancy, without interest or any adjustment
21 because of an increase in the value of the property held in joint tenancy. The
22 amount of reimbursement must not exceed the value, at the time of the disposition,
23 of the property held in joint tenancy for which the contribution of separate property
24 was made. In determining whether to provide for the reimbursement, in whole or in
25 part, of a party who has contributed separate property, the court shall consider:

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

27 (b) The length of the marriage; and

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

30 ➤ As used in this subsection, "contribution" includes, *without limitation*, a down
31 payment, a payment for the acquisition or improvement of property, and a payment
32 reducing the principal of a loan used to finance the purchase or improvement of
33 property. The term does not include a payment of interest on a loan used to finance

1 the purchase or improvement of property, or a payment made for maintenance,
2 insurance or taxes on property.

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

7 4. In granting a divorce, the court may also set apart such portion of the
8 husband's separate property for the wife's support, the wife's separate property for
9 the husband's support or the separate property of either spouse for the support of
10 their children as is deemed just and equitable.

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

14 6. If the court adjudicates the property rights of the parties, or an agreement
15 by the parties settling their property rights has been approved by the court, whether
16 or not the court has retained jurisdiction to modify them, the adjudication of
17 property rights, and the agreements settling property rights, may nevertheless at any
18 time thereafter be modified by the court upon written stipulation signed and
19 acknowledged by the parties to the action, and in accordance with the terms thereof.

20 7. If a decree of divorce, or an agreement between the parties which was
21 ratified, adopted or approved in a decree of divorce, provides for specified periodic
22 payments of alimony, the decree or agreement is not subject to modification by the
23 court as to accrued payments. Payments pursuant to a decree entered on or after
24 July 1, 1975, which have not accrued at the time a motion for modification is filed
25 may be modified upon a showing of changed circumstances, whether or not the
26 court has expressly retained jurisdiction for the modification. In addition to any
27 other factors the court considers relevant in determining whether to modify the
28 order, the court shall consider whether the income of the spouse who is ordered to
29 pay alimony, as indicated on the spouse's federal income tax return for the
30 preceding calendar year, has been reduced to such a level that the spouse is
31 financially unable to pay the amount of alimony he has been ordered to pay.

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

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

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

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

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

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

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

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

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

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

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

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

51 9. In granting a divorce, the court shall consider the need to grant alimony to
52 a spouse for the purpose of obtaining training or education relating to a job, career

or profession. In addition to any other factors the court considers relevant in determining whether such alimony should be granted, the court shall consider:

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

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

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

~~10-11~~ 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.

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.

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

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

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

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

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

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

(c) The likelihood of future injury;

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

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

➤ In such a case, if it is not possible for the court to determine which party is the primary physical aggressor, the presumption created pursuant to subsection 5 applies to both parties. If it is possible for the court to determine which party is the primary physical aggressor, the presumption created pursuant to subsection 5 applies only to the party determined by the court to be the primary physical aggressor.

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

Sec. 2. (Deleted by amendment.)

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

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

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

4 171.1227 1. If a peace officer investigates an act that constitutes domestic
5 violence pursuant to NRS 33.018, he shall prepare and submit a written report of
6 his investigation to his supervisor or to another person designated by his supervisor,
7 regardless of whether the peace officer makes an arrest.

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

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

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

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

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

17 *(a) Aggregated each month; and*

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

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

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

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

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

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

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

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

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

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

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

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

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

42 179A.350 1. The Repository for Information Concerning Orders for
43 Protection Against Domestic Violence is hereby created within the Central
44 Repository.

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

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

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

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

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

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

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

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

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

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

27 6. The Repository for Information Concerning Orders for Protection Against
28 Domestic Violence must not contain any information concerning an event that
29 occurred before October 1, 1998.