

Amendment No. 572

Senate Amendment to Assembly Bill No. 313 First Reprint (BDR 11-627)

Proposed by: Senate Committee on Judiciary

Amends: Summary: No Title: No Preamble: No Joint Sponsorship: Yes 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 underlining* is newly added transitory language.

AMI/RRY



Date: 5/16/2011

A.B. No. 313—Revises provisions governing the custody and visitation of children for persons who are members of the military. (BDR 11-627)



ASSEMBLY BILL NO. 313—ASSEMBLYMEN BUSTAMANTE ADAMS,
BOBZIEN, ANDERSON AND HORNE

MARCH 18, 2011

JOINT SPONSOR: SENATOR GUSTAVSON

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing the custody and visitation of children for persons who are members of the military. (BDR 11-627)

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 child custody; providing for the expiration by operation of law of certain orders modifying custody and visitation of children for persons who are members of the military; authorizing a court to delegate the visitation rights of a member of the military to a family member of the member of the military under certain circumstances; requiring a court, under certain circumstances, to provide an expedited hearing concerning custody or visitation matters to allow participation in such a hearing by affidavit or electronic means, or to both hold an expedited hearing and allow such participation; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that an award of child custody or visitation may only be made by considering the best interest of the child. (NRS 125.480, 125C.010) Existing law further provides that the court is authorized, with certain exceptions, to modify its order at any time. (NRS 125.510) **Section 10** of this bill prohibits a court from entering a final order modifying the terms of an existing custody or visitation order of a parent or legal guardian who is a member of the military and who has received mandatory written orders for deployment until 90 days after the deployment ends. **Section 11** of this bill provides that deployment or the potential for future deployment of a parent or legal guardian must not, by itself, constitute a substantial change sufficient to justify a permanent modification of a custody or visitation order.

Section 12 of this bill authorizes a court to modify a custody or visitation order to reasonably accommodate the deployment of a parent or legal guardian and deems any such modification to be a temporary order. **Section 13** of this bill provides, with certain exceptions, that such a temporary order expires automatically upon the completion of the deployment and the custody or visitation order that was in place before the order was modified by the temporary order is automatically reinstated.

Section 15 of this bill authorizes a court to delegate the visitation rights of the parent or legal guardian who is deployed to a family member of the parent or legal guardian under certain circumstances.

Section 14 of this bill requires a court, upon a motion of a parent or legal guardian who is deployed or has received mandatory written orders for deployment and ~~who is prevented by military duties from appearing~~ **whose ability, or anticipated ability, to appear** in person at a regularly scheduled hearing concerning custody or visitation matters ~~is~~ **is materially affected by his or her military duties**, to: (1) hold an expedited hearing; (2) allow the parent or legal guardian to present testimony and evidence by affidavit or electronic means; or (3) both hold an expedited hearing and allow testimony and evidence to be presented by affidavit or electronic means.

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

Section 1. NRS 125.510 is hereby amended to read as follows:

125.510 1. In determining the custody of a minor child in an action brought pursuant to this chapter, the court may, except as otherwise provided in this section and chapter 130 of NRS ~~and sections 3 to 20, inclusive, of this act~~:

(a) During the pendency of the action, at the final hearing or at any time thereafter during the minority of any of the children of the marriage, make such an order for the custody, care, education, maintenance and support of the minor children as appears in their best interest; and

(b) At any time modify or vacate its order, even if the divorce was obtained by default without an appearance in the action by one of the parties.

➤ The party seeking such an order shall submit to the jurisdiction of the court for the purposes of this subsection. The court may make such an order upon the application of one of the parties or the legal guardian of the minor.

2. Any order for joint custody may be modified or terminated by the court upon the petition of one or both parents or on the court's own motion if it is shown that the best interest of the child requires the modification or termination. The court shall state in its decision the reasons for the order of modification or termination if either parent opposes it.

3. Any order for custody of a minor child or children of a marriage entered by a court of another state may, subject to **the provisions of sections 3 to 20, inclusive, of this act and to** the jurisdictional requirements in chapter 125A of NRS, be modified at any time to an order of joint custody.

4. A party may proceed pursuant to this section without counsel.

5. Any order awarding a party a limited right of custody to a child must define that right with sufficient particularity to ensure that the rights of the parties can be properly enforced and that the best interest of the child is achieved. The order must include all specific times and other terms of the limited right of custody. As used in this subsection, "sufficient particularity" means a statement of the rights in absolute terms and not by the use of the term "reasonable" or other similar term which is susceptible to different interpretations by the parties.

6. All orders authorized by this section must be made in accordance with the provisions of chapter 125A of NRS **and sections 3 to 20, inclusive, of this act** and must contain the following language:

PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION, CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE AS A CATEGORY D FELONY AS PROVIDED IN

1 NRS 193.130. NRS 200.359 provides that every person having a limited right of
2 custody to a child or any parent having no right of custody to the child who
3 willfully detains, conceals or removes the child from a parent, guardian or other
4 person having lawful custody or a right of visitation of the child in violation of an
5 order of this court, or removes the child from the jurisdiction of the court without
6 the consent of either the court or all persons who have the right to custody or
7 visitation is subject to being punished for a category D felony as provided in NRS
8 193.130.
9

10 7. In addition to the language required pursuant to subsection 6, all orders
11 authorized by this section must specify that the terms of the Hague Convention of
12 October 25, 1980, adopted by the 14th Session of the Hague Conference on Private
13 International Law, apply if a parent abducts or wrongfully retains a child in a
14 foreign country.

15 8. If a parent of the child lives in a foreign country or has significant
16 commitments in a foreign country:

17 (a) The parties may agree, and the court shall include in the order for custody
18 of the child, that the United States is the country of habitual residence of the child
19 for the purposes of applying the terms of the Hague Convention as set forth in
20 subsection 7.

21 (b) Upon motion of one of the parties, the court may order the parent to post a
22 bond if the court determines that the parent poses an imminent risk of wrongfully
23 removing or concealing the child outside the country of habitual residence. The
24 bond must be in an amount determined by the court and may be used only to pay
25 for the cost of locating the child and returning the child to his or her habitual
26 residence if the child is wrongfully removed from or concealed outside the country
27 of habitual residence. The fact that a parent has significant commitments in a
28 foreign country does not create a presumption that the parent poses an imminent
29 risk of wrongfully removing or concealing the child.

30 9. Except where a contract providing otherwise has been executed pursuant to
31 NRS 123.080, the obligation for care, education, maintenance and support of any
32 minor child created by any order entered pursuant to this section ceases:

33 (a) Upon the death of the person to whom the order was directed; or

34 (b) When the child reaches 18 years of age if the child is no longer enrolled in
35 high school, otherwise, when the child reaches 19 years of age.

36 10. As used in this section, a parent has "significant commitments in a foreign
37 country" if the parent:

38 (a) Is a citizen of a foreign country;

39 (b) Possesses a passport in his or her name from a foreign country;

40 (c) Became a citizen of the United States after marrying the other parent of the
41 child; or

42 (d) Frequently travels to a foreign country.

43 **Sec. 2.** Chapter 125C of NRS is hereby amended by adding thereto the
44 provisions set forth as sections 3 to 20, inclusive, of this act.

45 **Sec. 3.** *As used in sections 3 to 20, inclusive, of this act, unless the context*
46 *otherwise requires, the words and terms defined in sections 4 to 9, inclusive, of*
47 *this act have the meanings ascribed to them in those sections.*

48 **Sec. 4.** "Custody or visitation order" means:

49 1. *A judgment, decree or order issued by a court of competent jurisdiction*
50 *in this State which provides for custody or visitation with respect to a child; and*

51 2. *A judgment, decree or order issued by a court of another state which*
52 *provides for custody or visitation with respect to a child if the judgment, decree or*
53 *order has been registered in this State pursuant to NRS 125A.465.*

1 Sec. 5. *“Deployment” means the transfer or reassignment of a member of*
2 *the military, unaccompanied by any family member, on active duty status in*
3 *support of combat or another military operation, including, without limitation,*
4 *temporary duty. The term does not include annual training of a reserve*
5 *component of the Armed Forces of the United States or of the National Guard.*

6 Sec. 6. *“Member of the military” means a person who is presently serving*
7 *in the Armed Forces of the United States, a reserve component thereof or the*
8 *National Guard.*

9 Sec. 7. *“Parent” means a parent or legal guardian of a child under the age*
10 *of 18 years.*

11 Sec. 8. *“Parent who received orders for deployment” means a parent who*
12 *has received mandatory written orders for deployment and who is awaiting*
13 *deployment or has been deployed pursuant to those orders.*

14 Sec. 9. *“Temporary duty” means the transfer of a member of the military,*
15 *unaccompanied by any family member, from a military base to a different*
16 *location, including, without limitation, another military base, for a limited time to*
17 *accomplish training or to assist in the performance of a combat mission.*

18 Sec. 10. 1. *Except as otherwise provided in subsection 2, if a parent who*
19 *is a member of the military and who has been awarded sole or joint custody or*
20 *visitation of a child receives mandatory written orders for deployment, the court*
21 *shall not enter a final order modifying the terms of the existing custody or*
22 *visitation order until 90 days after the termination of the parent’s deployment.*

23 2. *If the matter was fully adjudicated by a court before the parent’s*
24 *deployment, the court may enter such a final order at any time.*

25 Sec. 11. *Deployment or the potential for future deployment must not, by*
26 *itself, constitute a substantial change in circumstances sufficient to warrant a*
27 *permanent modification of a custody or visitation order.*

28 Sec. 12. 1. *The court may temporarily modify a custody or visitation order*
29 *to reasonably accommodate the deployment of a parent. Any such modification*
30 *by the court of a custody or visitation order shall be deemed a temporary order.*

31 2. *A temporary order issued pursuant to subsection 1 must:*

32 (a) *Unless the court determines it is not in the best interest of the child, grant*
33 *the parent who received orders for deployment reasonable custody or visitation*
34 *during periods of approved military leave if the existing custody or visitation*
35 *order granted that parent custody or visitation before deployment;*

36 (b) *Include any restrictions concerning custody or visitation set forth in the*
37 *existing custody or visitation order;*

38 (c) *Specify that deployment is the reason for the modification of the existing*
39 *custody or visitation order; and*

40 (d) *Require the other parent to provide the court and the parent who received*
41 *orders for deployment with written notice of any change of his or her address or*
42 *telephone number as soon as practicable but not later than 30 days after such*
43 *change.*

44 3. *In issuing a temporary order pursuant to subsection 1, the court shall*
45 *consider issuing any such appropriate temporary order as will ensure the ability*
46 *of the parent who received orders for deployment to maintain frequent and*
47 *continuing contact with the child by means that are reasonably available.*

48 Sec. 13. 1. *Except as otherwise provided in subsection 2, a temporary*
49 *order issued pursuant to section 12 of this act expires by operation of law upon*
50 *the completion of the parent’s deployment and the previous custody or visitation*
51 *order is reinstated.*

2. The court may, upon a motion alleging immediate danger of irreparable harm to the child, hold an expedited hearing concerning custody or visitation upon the completion of the parent's deployment.

Sec. 14. 1. If the military duties ~~prevent~~ of a parent who received orders for deployment ~~from appearing~~ have a material effect on the ability, or anticipated ability, of the parent to appear in person at a regularly scheduled hearing concerning any custody or visitation matters, the court shall, upon a motion of that parent and for good cause shown:

(a) Hold an expedited hearing;

(b) Allow the parent who received orders for deployment to present testimony and evidence by affidavit or electronic means; or

(c) Both hold an expedited hearing pursuant to paragraph (a) and allow testimony and evidence to be presented pursuant to paragraph (b).

2. As used in this section, "electronic means" includes, without limitation, telephone, videoconference or the Internet.

Sec. 15. 1. Upon a motion by the parent who received orders for deployment, the court may delegate his or her visitation rights, or a portion of those rights, to a family member of that parent who has a substantial relationship with the child if the court determines that such delegated visitation is in the best interest of the child.

2. In determining whether visitation rights should be delegated to a family member pursuant to subsection 1, the court shall consider the factors set forth in paragraphs (a) to (i), inclusive, of subsection 6 of NRS 125C.050.

3. Any visitation rights delegated to a family member pursuant to subsection 1 terminate upon:

(a) The expiration of a temporary order pursuant to section 13 of this act; or

(b) A showing that the delegated visitation is no longer in the best interest of the child.

4. Nothing in this section increases the authority of a family member who is delegated visitation rights pursuant to subsection 1 to seek separate visitation rights of the child pursuant to NRS 125C.050.

Sec. 16. If a custody or visitation order has not been issued and a parent's deployment is imminent, the court shall, upon a motion of either parent, hold an expedited hearing for the purpose of issuing a temporary order establishing the custody and visitation arrangement in accordance with sections 3 to 20, inclusive, of this act.

Sec. 17. 1. If military necessity precludes court adjudication before deployment, the parent who received orders for deployment and the other parent shall cooperate with and provide information to each other in an effort to reach a mutually agreeable resolution with regard to custody and visitation matters.

2. Except as otherwise provided in this subsection, the parent who received orders for deployment shall, within 10 days after receiving the orders, provide a copy of the orders to the other parent. If the date of deployment is less than 10 days after receipt of the orders, a copy of the orders must be provided immediately to the other parent.

Sec. 18. 1. If a court in this State has issued a custody or visitation order, the absence of a child from this State during the deployment of a parent shall be deemed a temporary absence for the purposes of NRS 125A.085 and 125A.135 and this State retains exclusive, continuing jurisdiction as provided in NRS 125A.315.

2. The deployment of a parent may not be used as a basis to assert the issue of inconvenient forum pursuant to NRS 125A.365.

1 **Sec. 19.** *In making a determination pursuant to sections 3 to 20, inclusive,*
2 *of this act, a court may award costs and reasonable attorney's fees against any*
3 *parent:*

- 4 1. *Who the court determines caused unreasonable delays;*
5 2. *Who failed to provide any information required pursuant to sections 3 to*
6 *20, inclusive, of this act; and*
7 3. *In such other circumstances as the court deems proper.*

8 **Sec. 20.** *The provisions of sections 3 to 20, inclusive, of this act do not*
9 *apply to any custody or visitation arrangement requested in a verified application*
10 *for a temporary or extended order for protection against domestic violence filed*
11 *pursuant to NRS 33.020.*