

ASSEMBLY BILL NO. 370—ASSEMBLYMEN STEWART;
HICKEY AND WOODBURY

MARCH 17, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing child visitation.
(BDR 11-201)

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; revising the factors a court is required to consider when determining whether to grant visitation rights with a child to certain persons; 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 or her parental rights or had his or her parental rights terminated. Generally, 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 revises the factors the court must consider in determining whether a person seeking visitation rights has rebutted the presumption that granting visitation rights is not in the best interests of the child. Specifically, this bill provides that if the child and the person seeking visitation rights do not have a prior relationship, the court is required to consider: (1) any attempt by the person seeking visitation to establish a meaningful relationship with the child; and (2) whether, if it were not for a parent of the child denying or unreasonably restricting visits with the child, the person seeking visitation would have had a meaningful relationship with the child.



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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, if a parent of an 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 or her parental rights or his or her parental rights have been terminated,

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 the child's minority.

2. If the child has resided with a person with whom the child 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 the child's minority, regardless of whether the person is related to the child.

3. A party may seek a reasonable right to visit the child during the child's minority pursuant to subsection 1 or 2 only if a parent of the child has denied or unreasonably restricted visits with the child.

4. 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 it is in the best interests of the child to grant visitation.

5. The court may grant a party seeking visitation pursuant to subsection 1 or 2 a reasonable right to visit the child during the child's minority only if the court finds that the party seeking visitation has rebutted the presumption established in subsection 4.

6. In determining whether the party seeking visitation has rebutted the presumption established in subsection 4, 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) *If the child and the party seeking visitation do not have a prior relationship:*

(1) Any attempt by the party seeking visitation to establish a meaningful relationship with the child, including, without limitation, any attempt to contact the child through a parent of the child and any attempt to send birthday or holiday presents to the child; and

(2) Whether, if it were not for a parent of the child denying or unreasonably restricting visits with the child, the party seeking visitation would have had a meaningful relationship with the child.

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

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

~~(g)~~ (g) 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.

~~(h)~~ (h) 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.

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

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

~~(k)~~ (k) 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 or 2 against the wishes of a parent of the child.

7. 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



1 children in homes, the district court in the county in which the child
2 resides may grant to the great-grandparents and grandparents of the
3 child and to other children of either parent of the child a reasonable
4 right to visit the child during the child's minority if a petition
5 therefor is filed with the court before the date on which the parental
6 rights are relinquished or terminated. In determining whether to
7 grant this right to a party seeking visitation, the court must find, by a
8 preponderance of the evidence, that the visits would be in the best
9 interests of the child in light of the considerations set forth in
10 paragraphs (a) to ~~(i)~~ (j), inclusive, of subsection 6.

11 8. Rights to visit a child may be granted:

12 (a) In a divorce decree;

13 (b) In an order of separate maintenance; or

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

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

17 (2) If the parents of the child were not legally married and
18 were cohabitating, after the death of a parent or after the separation
19 of the parents of the child; or

20 (3) If the petition is based on the provisions of subsection 2,
21 after the eligible person ceases to reside with the child.

22 9. If a court terminates the parental rights of a parent who is
23 divorced or separated, any rights previously granted pursuant to
24 subsection 1 also must be terminated, unless the court finds, by a
25 preponderance of the evidence, that visits by those persons would be
26 in the best interests of the child.

27 10. For the purposes of this section, "separation" means:

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

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

