

ASSEMBLY BILL NO. 98—ASSEMBLYMAN ELLISON

PREFILED JANUARY 30, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing child custody, child support and visitation. (BDR 11-49)

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; clarifying that there is a presumption that joint legal custody and joint physical custody would be in the best interest of a minor child of a marriage under certain circumstances; providing a new formula by which to calculate child support when parents have joint physical custody of a child; defining the term “monthly household income” for the purposes of such a formula; revising the factors a court must consider in adjusting the amount of child support when parents have joint physical custody of a child; revising the circumstances which constitute changed circumstances for purposes of modifying a child support order; revising provisions governing orders awarding visitation of a minor child; defining the term “minor child” for the purposes of such visitation orders; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Under existing law, there is a presumption that joint custody is in the best interest of a minor child of a marriage if the parents agree to an award of joint custody. (NRS 125.490) **Section 2** of this bill clarifies that the presumption concerns joint legal custody and joint physical custody of such a minor child.

In determining the amount of child support in a case in which the parents of a minor child have joint physical custody of the child, Nevada courts currently use the formula set forth by the Nevada Supreme Court in *Wright v. Osburn*, 114 Nev. 1367 (1998), which takes into account the gross monthly income of each parent.

Section 6 of this bill sets forth a new formula by which a court will determine the amount of child support in cases involving joint physical custody, which takes into account the monthly household income of each parent. **Section 5** of this bill defines



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the term “monthly household income” to include the gross monthly income of a parent and the gross monthly income of the current spouse or domestic partner or a cohabitant of the parent.

Existing law specifies certain factors that a court must take into consideration when adjusting an amount of child support. (NRS 125B.080) **Section 9** of this bill provides that if the amount of child support is determined pursuant to **section 6**, the court must take into consideration the relative monthly household income of both parents.

Existing law also provides that a child support order may be reviewed by a court at any time on the basis of changed circumstances. (NRS 125B.145) **Section 10** of this bill provides that if the amount of child support ordered was determined pursuant to **section 6**, an increase in the monthly household income of the person entitled to receive child support payments pursuant to the order such that his or her monthly household income exceeds that of the person obligated to pay child support pursuant to the order is deemed to constitute changed circumstances requiring a review for modification of the order.

Existing law additionally sets forth certain requirements regarding any order that awards a party a right of visitation of a minor child. (NRS 125C.010) **Section 11** of this bill requires any such order to provide that such a right of visitation generally remains effective as long as the child remains a minor child. **Section 11** defines the term “minor child” using the definition of the term as it is used for purposes of child support, meaning a person who is: (1) under the age of 18 years; (2) under the age of 19 years, if the person is enrolled in high school; (3) under a legal disability; or (4) not declared emancipated.

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 or her contribution. The amount of reimbursement must not



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

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

12 (b) The length of the marriage; and

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

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

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

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 the
12 spouse has been ordered to pay.

13 8. In addition to any other factors the court considers relevant
14 in determining whether to award alimony and the amount of such an
15 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 spouse;
- 23 (f) The standard of living during the marriage;
- 24 (g) The career before the marriage of the spouse who would
25 receive the alimony;
- 26 (h) The existence of specialized education or training or the
27 level of marketable skills attained by each spouse during the
28 marriage;
- 29 (i) The contribution of either spouse as homemaker;
- 30 (j) The award of property granted by the court in the divorce,
31 other than child support and alimony, to the spouse who would
32 receive the alimony; and
- 33 (k) The physical and mental condition of each party as it relates
34 to the financial condition, health and ability to work of that spouse.

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

- 40 (a) Whether the spouse who would pay such alimony has
41 obtained greater job skills or education during the marriage; and
- 42 (b) Whether the spouse who would receive such alimony
43 provided financial support while the other spouse obtained job skills
44 or education.



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

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

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

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

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

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

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

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

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

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

22 (I) The equivalent of a high school diploma;

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

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

27 11. For the purposes of this section, a change of 20 percent or
28 more in the gross monthly income of a spouse who is ordered to pay
29 alimony shall be deemed to constitute changed circumstances
30 requiring a review for modification of the payments of alimony. As
31 used in this subsection, "gross monthly income" has the meaning
32 ascribed to it in ~~NRS 125B.070.~~ *section 4 of this act.*

33 **Sec. 2.** NRS 125.490 is hereby amended to read as follows:

34 125.490 1. There is a presumption, affecting the burden of
35 proof, that joint *legal* custody *and joint physical custody* would be
36 in the best interest of a minor child if the parents have agreed to an
37 award of joint *legal* custody *and joint physical custody* or so agree
38 in open court at a hearing for the purpose of determining the custody
39 of the minor child or children of the marriage.

40 2. The court may award joint legal custody without awarding
41 joint physical custody in a case where the parents have agreed to
42 joint legal custody.

43 3. For assistance in making a determination whether an award
44 of joint *legal* custody *and joint physical custody* is appropriate, the
45 court may direct that an investigation be conducted.



1 **Sec. 3.** Chapter 125B of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 4, 5 and 6 of this act.

3 **Sec. 4.** *“Gross monthly income” means the total amount of*
4 *income received each month from any source of a person who is*
5 *not self-employed or the gross income from any source of a self-*
6 *employed person, after deduction of all legitimate business*
7 *expenses, but without deduction for personal income taxes,*
8 *contributions for retirement benefits, contributions to a pension or*
9 *for any other personal expenses.*

10 **Sec. 5.** *“Monthly household income” means the total amount*
11 *of income received in a parent’s household from the gross*
12 *monthly income of the parent and the gross monthly income of the*
13 *current spouse or domestic partner or a cohabitant of the parent.*
14 *As used in this section, “domestic partner” means a person who is*
15 *in a domestic partnership that is registered pursuant to chapter*
16 *122A of NRS and that has not been terminated pursuant to that*
17 *chapter.*

18 **Sec. 6.** *If the parents of a child or children are awarded joint*
19 *physical custody of the child or children, the amount of child*
20 *support to be paid by the parent with the higher monthly*
21 *household income to the parent with the lower monthly household*
22 *income must be calculated as follows:*

23 1. *The total combined monthly household income of both*
24 *parents is multiplied by the applicable percentage according to the*
25 *following schedule:*

26 (a) *For one child, 18 percent;*

27 (b) *For two children, 25 percent;*

28 (c) *For three children, 29 percent;*

29 (d) *For four children, 31 percent; and*

30 (e) *For each additional child, an additional 2 percent.*

31 2. *The amount determined pursuant to subsection 1 is*
32 *multiplied by 50 percent. The resulting amount is added to the*
33 *amount determined pursuant to subsection 1 to determine the total*
34 *combined child support obligation of both parents.*

35 3. *The amount determined pursuant to subsection 2 is*
36 *multiplied by 50 percent, resulting in the total child support*
37 *obligation for each household.*

38 4. *Each parent is assigned a percentage of the amount*
39 *determined pursuant to subsection 3 for which he or she is*
40 *responsible. The percentage a parent is assigned is determined in*
41 *accordance with the percentage attributable to him or her of the*
42 *total combined monthly household income of both parents. To*
43 *calculate such a percentage, the monthly household income of a*
44 *parent is divided by the total combined monthly household income*
45 *of both parents. The resulting decimal amount, when converted to*



1 *a percentage, represents the percentage attributable to that parent*
2 *of the total combined monthly household income of both parents.*
3 *The percentage assigned to that parent is used to determine the*
4 *amount of child support for which he or she is responsible.*

5 5. *To determine the amount of child support for which a*
6 *parent is responsible, the total child support obligation determined*
7 *pursuant to subsection 3 is multiplied by the percentage assigned*
8 *to the parent in subsection 4.*

9 6. *The difference between the amount of child support for*
10 *which each parent is responsible, as determined pursuant to*
11 *subsection 5, represents the final amount of child support to be*
12 *paid by the parent with the higher monthly household income to*
13 *the parent with the lower monthly household income.*

14 **Sec. 7.** NRS 125B.002 is hereby amended to read as follows:

15 125B.002 As used in NRS 125B.002 to 125B.180, inclusive,
16 *and sections 4, 5 and 6 of this act*, unless the context otherwise
17 requires, the words and terms defined in NRS 125B.004 and
18 125B.008 *and sections 4 and 5 of this act* have the meanings
19 ascribed to them in those sections.

20 **Sec. 8.** NRS 125B.070 is hereby amended to read as follows:

21 125B.070 1. As used in this section and NRS 125B.080,
22 unless the context otherwise requires ~~†~~:

23 ~~—(a) “Gross monthly income” means the total amount of income~~
24 ~~received each month from any source of a person who is not self-~~
25 ~~employed or the gross income from any source of a self-employed~~
26 ~~person, after deduction of all legitimate business expenses, but~~
27 ~~without deduction for personal income taxes, contributions for~~
28 ~~retirement benefits, contributions to a pension or for any other~~
29 ~~personal expenses.~~

30 ~~—(b) “Obligation†~~, *“obligation* for support” means the sum
31 certain dollar amount determined according to the following
32 schedule:

33 ~~†(1)†~~ (a) For one child, 18 percent;

34 ~~†(2)†~~ (b) For two children, 25 percent;

35 ~~†(3)†~~ (c) For three children, 29 percent;

36 ~~†(4)†~~ (d) For four children, 31 percent; and

37 ~~†(5)†~~ (e) For each additional child, an additional 2 percent,

38 ↪ of a parent’s gross monthly income, but not more than the
39 presumptive maximum amount per month per child set forth for the
40 parent in subsection 2 for an obligation for support determined
41 pursuant to ~~†subparagraphs (1) to (4).†~~ *paragraphs (a) to (d),*
42 inclusive, unless the court sets forth findings of fact as to the basis
43 for a different amount pursuant to subsection 6 of NRS 125B.080.



2. For the purposes of ~~paragraph (b) of~~ subsection 1, the presumptive maximum amount per month per child for an obligation for support, as adjusted pursuant to subsection 3, is:

PRESUMPTIVE MAXIMUM AMOUNT			
The Presumptive Maximum Amount the			
Parent May Be Required to Pay			
per Month per Child Pursuant to			
Paragraph (b) of Subsection 1 Is			
INCOME RANGE			
If the Parent's Gross	But		
Monthly Income Is at Least	Less Than		
\$0	-	\$4,168	\$500
4,168	-	6,251	550
6,251	-	8,334	600
8,334	-	10,418	650
10,418	-	12,501	700
12,501	-	14,583	750

If a parent's gross monthly income is equal to or greater than \$14,583, the presumptive maximum amount the parent may be required to pay pursuant to ~~paragraph (b) of~~ subsection 1 is \$800.

3. The presumptive maximum amounts set forth in subsection 2 for the obligation for support must be adjusted on July 1 of each year for the fiscal year beginning that day and ending June 30 in a rounded dollar amount corresponding to the percentage of increase or decrease in the Consumer Price Index (All Items) published by the United States Department of Labor for the preceding calendar year. On April 1 of each year, the Office of Court Administrator shall determine the amount of the increase or decrease required by this subsection, establish the adjusted amounts to take effect on July 1 of that year and notify each district court of the adjusted amounts.

4. As used in this section, "Office of Court Administrator" means the Office of Court Administrator created pursuant to NRS 1.320.

Sec. 9. NRS 125B.080 is hereby amended to read as follows:
125B.080 Except as otherwise provided in NRS 425.450:

1. A court of this State shall apply the appropriate formula set forth in NRS 125B.070 *or section 6 of this act, as applicable*, to:

(a) Determine the required support in any case involving the support of children.

(b) Any request filed after July 1, 1987, to change the amount of the required support of children.

2. If the parties agree as to the amount of support required, the parties shall certify that the amount of support is consistent with the appropriate formula set forth in NRS 125B.070 *H or section 6 of*



1 *this act, as applicable.* If the amount of support deviates from the
2 *applicable* formula, the parties must stipulate sufficient facts in
3 accordance with subsection 9 which justify the deviation to the
4 court, and the court shall make a written finding thereon. Any
5 inaccuracy or falsification of financial information which results in
6 an inappropriate award of support is grounds for a motion to modify
7 or adjust the award.

8 3. If the parties disagree as to the amount of the gross monthly
9 income *or monthly household income* of either party, *as*
10 *applicable*, the court shall determine the amount and may direct
11 either party to furnish financial information or other records,
12 including income tax returns for the preceding 3 years. Once a court
13 has established an obligation for support by reference to a formula
14 set forth in NRS 125B.070 *or section 6 of this act, as applicable*,
15 any subsequent modification or adjustment of that support, except
16 for any modification or adjustment made pursuant to subsection 3 of
17 NRS 125B.070 or NRS 425.450 or as a result of a review conducted
18 pursuant to subsection 1 of NRS 125B.145, must be based upon
19 changed circumstances.

20 4. Notwithstanding the formulas set forth in NRS 125B.070,
21 the minimum amount of support that may be awarded by a court in
22 any case *in which a parent has primary physical custody* is \$100
23 per month per child, unless the court makes a written finding that
24 the obligor is unable to pay the minimum amount. Willful
25 underemployment or unemployment is not a sufficient cause to
26 deviate from the awarding of at least the minimum amount.

27 5. It is presumed that the basic needs of a child are met by the
28 formulas set forth in NRS 125B.070 *or and section 6 of this act*.
29 This presumption may be rebutted by evidence proving that the
30 needs of a particular child are not met by the applicable formula.

31 6. If the amount of the awarded support for a child is greater or
32 less than the amount which would be established under the
33 applicable formula, the court shall:

34 (a) Set forth findings of fact as to the basis for the deviation
35 from the formula; and

36 (b) Provide in the findings of fact the amount of support that
37 would have been established under the applicable formula.

38 7. Expenses for health care which are not reimbursed,
39 including expenses for medical, surgical, dental, orthodontic and
40 optical expenses, must be borne equally by both parents in the
41 absence of extraordinary circumstances.

42 8. If a parent who has an obligation for support is willfully
43 underemployed or unemployed to avoid an obligation for support of
44 a child, that obligation must be based upon the parent's true
45 potential earning capacity.



9. The court shall consider the following factors when adjusting the amount of support of a child upon specific findings of fact:

- (a) The cost of health insurance;
- (b) The cost of child care;
- (c) Any special educational needs of the child;
- (d) The age of the child;
- (e) The legal responsibility of the parents for the support of others;
- (f) The value of services contributed by either parent;
- (g) Any public assistance paid to support the child;
- (h) Any expenses reasonably related to the mother's pregnancy and confinement;
- (i) The cost of transportation of the child to and from visitation if the custodial parent moved with the child from the jurisdiction of the court which ordered the support and the noncustodial parent remained;
- (j) The amount of time the child spends with each parent;
- (k) Any other necessary expenses for the benefit of the child;

~~and~~ (l) The relative income of both parents ~~H~~; and
(m) *If the amount of support is determined pursuant to section 6 of this act, the relative monthly household income of both parents.*

Sec. 10. NRS 125B.145 is hereby amended to read as follows:
125B.145 1. An order for the support of a child must, upon the filing of a request for review by:

(a) The Division of Welfare and Supportive Services of the Department of Health and Human Services, its designated representative or the district attorney, if the Division of Welfare and Supportive Services or the district attorney has jurisdiction in the case; or

(b) A parent or legal guardian of the child,
➔ be reviewed by the court at least every 3 years pursuant to this section to determine whether the order should be modified or adjusted. Each review conducted pursuant to this section must be in response to a separate request.

2. If the court:

(a) Does not have jurisdiction to modify the order, the court may forward the request to any court with appropriate jurisdiction.

(b) Has jurisdiction to modify the order and, taking into account the best interests of the child, determines that modification or adjustment of the order is appropriate, the court shall enter an order modifying or adjusting the previous order for support in accordance



1 with the requirements of NRS 125B.070 *or section 6 of this act, as*
2 *applicable*, and 125B.080.

3 3. The court shall ensure that:

4 (a) Each person who is subject to an order for the support of a
5 child is notified, not less than once every 3 years, that the person
6 may request a review of the order pursuant to this section; or

7 (b) An order for the support of a child includes notification that
8 each person who is subject to the order may request a review of the
9 order pursuant to this section.

10 4. An order for the support of a child may be reviewed at any
11 time on the basis of changed circumstances. For the purposes of this
12 subsection, ~~the following shall be deemed to constitute changed~~
13 ~~circumstances requiring a review for modification of the order for~~
14 ~~the support of a child:~~

15 (a) A change of 20 percent or more in the gross monthly income
16 of a person who is subject to an order for the support of a child .
17 ~~{shall be deemed to constitute changed circumstances requiring a~~
18 ~~review for modification of the order for the support of a child.}~~

19 (b) *Notwithstanding the provisions of paragraph (a), if the*
20 *amount of support set forth in an order for the support of a child*
21 *was determined pursuant to section 6 of this act, an increase in the*
22 *monthly household income of the person entitled to receive the*
23 *payments for the support of the child pursuant to the order such*
24 *that the person's monthly household income exceeds the monthly*
25 *household income of the person obligated to make payments for*
26 *the support of the child pursuant to the order.*

27 5. As used in this section ~~the~~

28 ~~—(a) “Gross monthly income” has the meaning ascribed to it in~~
29 ~~NRS 125B.070.~~

30 ~~—(b) “Order” , “order~~ for the support of a child” means such an
31 order that was issued or is being enforced by a court of this State.

32 **Sec. 11.** NRS 125C.010 is hereby amended to read as follows:

33 125C.010 1. Any order awarding a party a right of visitation
34 of a minor child must:

35 (a) Define that right with sufficient particularity to ensure that
36 the rights of the parties can be properly enforced and that the best
37 interest of the child is achieved; ~~and~~

38 (b) *Provide that, subject to a subsequent finding by a court of*
39 *competent jurisdiction that the best interest of the child is not*
40 *achieved by such visitation, the right of visitation remains effective*
41 *as long as the child remains a minor child; and*

42 (c) Specify that the State of Nevada or the state where the child
43 resides within the United States of America is the habitual residence
44 of the child.



1 ➡ The order must include all specific times and other terms of the
2 right of visitation.

3 2. As used in this section ~~the “sufficient”~~ :

4 (a) *“Minor child” has the meaning ascribed to it in*
5 *NRS 125B.200.*

6 (b) *“Sufficient particularity”* means a statement of the rights in
7 absolute terms and not by the use of the term “reasonable” or other
8 similar term which is susceptible to different interpretations by the
9 parties.

