

Amendment No. 745

Senate Amendment to Assembly Bill No. 263 First Reprint (BDR 11-199)

Proposed by: Senate Committee on Judiciary**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) variations of green bold underlining is language proposed to be added 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 proposed to be retained in this amendment.

MNM/BAW



Date: 5/16/2015

A.B. No. 263—Revises provisions governing the custody and support of children.
(BDR 11-199)



ASSEMBLY BILL NO. 263--ASSEMBLYMEN STEWART;
MUNFORD, SILBERKRAUS AND WOODBURY

MARCH 11, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing the custody and support of children.
(BDR 11-199)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; repealing certain provisions relating to the custody of children and enacting certain similar provisions relating to the custody of children; prohibiting a parent ~~with~~ **who has** primary or joint physical custody of a child **pursuant to an order, judgment or decree of a court** from relocating with the child outside this State or to certain locations within this State without the written consent of the noncustodial parent or the permission of the court as the circumstances require; authorizing a non-relocating parent to recover reasonable attorney's fees and costs in certain circumstances; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law sets forth provisions concerning the custody of children as it relates to the dissolution of marriage. (NRS 125.450-125.520) **Section 19** of this bill repeals almost all of these provisions. **Sections 3-12** of this bill add such repealed provisions, with certain revisions, to chapter 125C of NRS, which concerns custody and visitation of children generally. The addition of such provisions to chapter 125C of NRS expands their applicability to the custody of all children regardless of whether they were born to parents who were married or unmarried.

Section 4 provides that absent a determination by a court regarding the custody of a child, each parent has joint legal custody and joint physical custody of the child until otherwise ordered by a court. **Sections 5 and 6** provide that if a parent has demonstrated, or has attempted to demonstrate but has had his or her efforts frustrated by the other parent, an intent to establish a meaningful relationship with a child, such a demonstration or attempted demonstration creates a presumption that joint legal and physical custody, respectively, is in the best interest of the child. **Section 7** authorizes a court to award primary physical custody to a parent if the court determines that joint physical custody is not in the best interest of a child, and sets forth circumstances in which an award of joint physical custody is presumed not to be in the best interest of a child. **Section 7** also sets forth the circumstances in which a court may award primary physical custody to a mother or father of a child born out of wedlock.

Existing law requires a parent with primary physical custody of a child who intends to move outside this State with the child to: (1) obtain the written consent of the noncustodial

parent; or (2) if the noncustodial parent refuses to give such consent, petition the court for permission to move with the child. (NRS 125C.200) **Section 16** of this bill additionally requires a parent with primary physical custody of a child to take such actions if the parent intends to relocate to a place within this State that is ~~more than 100 miles from the place of his or her residence at the time the existing custody arrangement was established.~~ at such a distance that would substantially impair the ability of the other parent to maintain a meaningful relationship with the child. **Section 13** of this bill requires a parent who has joint physical custody of a child pursuant to an order, judgment or decree of a court and wants to relocate outside this State or to a place within this State that is at such a distance that would substantially impair the ability of the other parent to maintain a meaningful relationship with the child to petition the court for primary physical custody of the child for the purpose of relocating.

Section 14 of this bill requires a parent who files a petition for permission to relocate with a child to demonstrate to the court certain reasons and benefits relating to the relocation. **Section 14** also requires the court to consider certain factors in determining whether to allow a parent to relocate with a child. Under **section 18** of this bill, a parent who relocates with a child without the required written consent of the noncustodial parent or the permission of the court or before the court enters an order granting the parent primary physical custody of the child and permission to relocate with the child, as applicable, is guilty of a category D felony unless the parent: (1) demonstrates a compelling excuse for the relocation; or (2) relocated to protect the child or the parent from danger. Additionally, **section 15** of this bill provides that if a parent relocates with a child in violation of **section 18**: (1) the court cannot consider any post-relocation facts or circumstances regarding the welfare of the child or the relocating parent in making any determination; and (2) the non-relocating parent can recover reasonable attorney's fees and costs incurred as a result of the relocating parent's violation.

Section 18 further provides that a parent who, pursuant to section 4, has joint legal and physical custody of a child because a court has not made a determination regarding the custody of the child is prohibited from willfully concealing or removing the child from the custody of the other parent with the specific intent to frustrate the efforts of the other parent to establish or maintain a meaningful relationship with the child. Unless a parent who takes such actions can demonstrate to the satisfaction of the court that he or she was protecting the child or himself or herself from an act that constitutes domestic violence, the parent is guilty of a category D felony.

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

Section 1. NRS 125.040 is hereby amended to read as follows:
125.040 1. In any suit for divorce the court may, in its discretion, upon application by either party and notice to the other party, require either party to pay moneys necessary to assist the other party in accomplishing one or more of the following:

- (a) To provide temporary maintenance for the other party;
- (b) To provide temporary support for children of the parties; or
- (c) To enable the other party to carry on or defend such suit.

2. The court may make any order affecting property of the parties, or either of them, which it may deem necessary or desirable to accomplish the purposes of this section. Such orders shall be made by the court only after taking into consideration the financial situation of each of the parties.

3. The court may make orders pursuant to this section concurrently with orders pursuant to ~~NRS 125.470.~~ **section 12 of this act.**

Sec. 2. Chapter 125C of NRS is hereby amended by adding thereto the provisions set forth as sections 3 to 15, inclusive, of this act.

Sec. 3. *The Legislature declares that it is the policy of this State:*

1 1. To ensure that minor children have frequent associations and a
2 continuing relationship with both parents after the parents have ended their
3 relationship, become separated or dissolved their marriage;

4 2. To encourage such parents to share the rights and responsibilities of
5 child rearing; and

6 3. To establish that such parents have an equivalent duty to provide their
7 minor children with necessary maintenance, health care, education and financial
8 support. As used in this subsection, "equivalent" must not be construed to mean
9 that both parents are responsible for providing the same amount of financial
10 support to their children.

11 Sec. 4. 1. The parent and child relationship extends equally to every child
12 and to every parent, regardless of the marital status of the parents.

13 2. If a court has not made a determination regarding the custody of a child,
14 each parent has joint legal custody and joint physical custody of the child until
15 otherwise ordered by a court of competent jurisdiction.

16 Sec. 5. 1. When a court is making a determination regarding the legal
17 custody of a child, there is a presumption, affecting the burden of proof, that joint
18 legal custody would be in the best interest of a minor child if:

19 (a) The parents have agreed to an award of joint legal custody or so agree in
20 open court at a hearing for the purpose of determining the legal custody of the
21 minor child; or

22 (b) A parent has demonstrated, or has attempted to demonstrate but has had
23 his or her efforts frustrated by the other parent, an intent to establish a
24 meaningful relationship with the minor child.

25 2. The court may award joint legal custody without awarding joint physical
26 custody.

27 Sec. 6. 1. When a court is making a determination regarding the physical
28 custody of a child, there is a preference that joint physical custody would be in
29 the best interest of a minor child if:

30 (a) The parents have agreed to an award of joint physical custody or so agree
31 in open court at a hearing for the purpose of determining the physical custody of
32 the minor child; or

33 (b) A parent has demonstrated, or has attempted to demonstrate but has had
34 his or her efforts frustrated by the other parent, an intent to establish a
35 meaningful relationship with the minor child.

36 2. For assistance in determining whether an award of joint physical custody
37 is appropriate, the court may direct that an investigation be conducted.

38 Sec. 7. 1. A court may award primary physical custody to a parent if the
39 court determines that joint physical custody is not in the best interest of a child.
40 An award of joint physical custody is presumed not to be in the best interest of the
41 child if:

42 (a) The court determines by substantial evidence that a parent is unable to
43 adequately care for a minor child for at least 146 days of the year;

44 (b) A child is born out of wedlock and the provisions of subsection 2 are
45 applicable; or

46 (c) Except as otherwise provided in subsection 6 of section 8 of this act or
47 NRS 125C.210, there has been a determination by the court after an evidentiary
48 hearing and finding by clear and convincing evidence that a parent has engaged
49 in one or more acts of domestic violence against the child, a parent of the child or
50 any other person residing with the child. The presumption created by this
51 paragraph is a rebuttable presumption.

52 2. A court may award primary physical custody of a child born out of
53 wedlock to:

- 1 (a) *The mother of the child if:*
2 (1) *The mother has not married the father of the child;*
3 (2) *A judgment or order of a court, or a judgment or order entered*
4 *pursuant to an expedited process, determining the paternity of the child has not*
5 *been entered; and*
6 (3) *The father of the child:*
7 (I) *Is not subject to any presumption of paternity under NRS*
8 *126.051;*
9 (II) *Has never acknowledged paternity pursuant to NRS 126.053; or*
10 (III) *Has had actual knowledge of his paternity but has abandoned*
11 *the child.*
12 (b) *The father of the child if:*
13 (1) *The mother has abandoned the child; and*
14 (2) *The father has provided sole care and custody of the child in her*
15 *absence.*
16 3. *As used in this section:*
17 (a) *"Abandoned" means that a mother or father has:*
18 (1) *Failed, for a continuous period of not less than 6 months, to provide*
19 *substantial personal and economic support to the child; or*
20 (2) *Knowingly declined, for a continuous period of not less than 6*
21 *months, to have any meaningful relationship with the child.*
22 (b) *"Expedited process" has the meaning ascribed to it in NRS 126.161.*
23 Sec. 8. 1. *In any action for determining physical custody of a minor child,*
24 *the sole consideration of the court is the best interest of the child. If it appears to*
25 *the court that joint physical custody would be in the best interest of the child, the*
26 *court may grant physical custody to the parties jointly.*
27 2. *Preference must not be given to either parent for the sole reason that the*
28 *parent is the mother or the father of the child.*
29 3. *The court shall award physical custody in the following order of*
30 *preference unless in a particular case the best interest of the child requires*
31 *otherwise:*
32 (a) *To both parents jointly pursuant to section 6 of this act or to either parent*
33 *pursuant to section 7 of this act. If the court does not enter an order awarding*
34 *joint physical custody of a child after either parent has applied for joint physical*
35 *custody, the court shall state in its decision the reason for its denial of the*
36 *parent's application.*
37 (b) *To a person or persons in whose home the child has been living and*
38 *where the child has had a wholesome and stable environment.*
39 (c) *To any person related within the fifth degree of consanguinity to the child*
40 *whom the court finds suitable and able to provide proper care and guidance for*
41 *the child, regardless of whether the relative resides within this State.*
42 (d) *To any other person or persons whom the court finds suitable and able to*
43 *provide proper care and guidance for the child.*
44 4. *In determining the best interest of the child, the court shall consider and*
45 *set forth its specific findings concerning, among other things:*
46 (a) *The wishes of the child if the child is of sufficient age and capacity to*
47 *form an intelligent preference as to his or her physical custody.*
48 (b) *Any nomination of a guardian for the child by a parent.*
49 (c) *Which parent is more likely to allow the child to have frequent*
50 *associations and a continuing relationship with the noncustodial parent.*
51 (d) *The level of conflict between the parents.*
52 (e) *The ability of the parents to cooperate to meet the needs of the child.*
53 (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 physical 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.*

(l) *Whether either parent or any other person seeking physical custody has committed any act of abduction against the child or any other 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 physical 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 physical 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. *A determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking physical custody has committed any act of abduction against the child or any other child creates a rebuttable presumption that sole or joint physical custody or unsupervised visitation of the child by the perpetrator of the abduction is not in the best interest of the child. If the parent or other person seeking physical custody does not rebut the presumption, the court shall not enter an order for sole or joint physical custody or unsupervised visitation of the child by the perpetrator and the court shall set forth:*

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

1 (b) Findings that the custody or visitation arrangement ordered by the court
2 adequately protects the child and the parent or other person from whom the child
3 was abducted.

4 8. For the purposes of subsection 7, any of the following acts constitute
5 conclusive evidence that an act of abduction occurred:

6 (a) A conviction of the defendant of any violation of NRS 200.310 to
7 200.340, inclusive, or 200.359 or a law of any other jurisdiction that prohibits the
8 same or similar conduct;

9 (b) A plea of guilty or nolo contendere by the defendant to any violation of
10 NRS 200.310 to 200.340, inclusive, or 200.359 or a law of any other jurisdiction
11 that prohibits the same or similar conduct; or

12 (c) An admission by the defendant to the court of the facts contained in the
13 charging document alleging a violation of NRS 200.310 to 200.340, inclusive, or
14 200.359 or a law of any other jurisdiction that prohibits the same or similar
15 conduct.

16 9. If, after a court enters a final order concerning physical custody of the
17 child, a magistrate determines there is probable cause to believe that an act of
18 abduction has been committed against the child or any other child and that a
19 person who has been awarded sole or joint physical custody or unsupervised
20 visitation of the child has committed the act, the court shall, upon a motion to
21 modify the order concerning physical custody, reconsider the previous order
22 concerning physical custody pursuant to subsections 7 and 8.

23 10. As used in this section:

24 (a) "Abduction" means the commission of an act described in NRS 200.310
25 to 200.340, inclusive, or 200.359 or a law of any other jurisdiction that prohibits
26 the same or similar conduct.

27 (b) "Domestic violence" means the commission of any act described in NRS
28 33.018.

29 Sec. 9. 1. Before the court makes an order awarding custody to any
30 person other than a parent, without the consent of the parents, it shall make a
31 finding that an award of custody to a parent would be detrimental to the child
32 and the award to a nonparent is required to serve the best interest of the child.

33 2. No allegation that parental custody would be detrimental to the child,
34 other than a statement of that ultimate fact, may appear in the pleadings.

35 3. The court may exclude the public from any hearing on this issue.

36 Sec. 10. 1. In any action for determining the custody of a minor child, the
37 court may, except as otherwise provided in this section and NRS 125C.0601 to
38 125C.0693, inclusive, and chapter 130 of NRS:

39 (a) During the pendency of the action, at the final hearing or at any time
40 thereafter during the minority of the child, make such an order for the custody,
41 care, education, maintenance and support of the minor child as appears in his or
42 her best interest; and

43 (b) At any time modify or vacate its order, even if custody was determined
44 pursuant to an action for divorce and the divorce was obtained by default without
45 an appearance in the action by one of the parties.

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

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

3. Any order for custody of a minor child entered by a court of another state may, subject to the provisions of NRS 125C.0601 to 125C.0693, inclusive, 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 NRS 125C.0601 to 125C.0693, inclusive, 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 NRS 193.130. NRS 200.359 provides that every person having a limited right of custody to a child or any parent having no right of custody to the child who willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child in violation of an order of this court, or removes the child from the jurisdiction of the court without the consent of either the court or all persons who have the right to custody or visitation is subject to being punished for a category D felony as provided in NRS 193.130.

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

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

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

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

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

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

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

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

(a) Is a citizen of a foreign country;

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

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

(d) Frequently travels to a foreign country.

Sec. 11. 1. The court may, when appropriate, require the parents to submit to the court a plan for carrying out the court's order concerning custody.

2. Access to records and other information pertaining to a minor child, including, without limitation, medical, dental and school records, must not be denied to a parent for the reason that the parent is not the child's custodial parent.

Sec. 12. 1. If, during any action for determining the custody of a minor child, either before or after the entry of a final order concerning the custody of a minor child, it appears to the court that any minor child of either party has been, or is likely to be, taken or removed out of this State or concealed within this State, the court shall forthwith order such child to be produced before it and make such disposition of the child's custody as appears most advantageous to and in the best interest of the child and most likely to secure to him or her the benefit of the final order or the modification or termination of the final order to be made in his or her behalf.

2. If, during any action for determining the custody of a minor child, either before or after the entry of a final order concerning the custody of a minor child, the court finds that it would be in the best interest of the minor child, the court may enter an order providing that a party may, with the assistance of the appropriate law enforcement agency, obtain physical custody of the child from the party having physical custody of the child. The order must provide that if the party obtains physical custody of the child, the child must be produced before the court as soon as practicable to allow the court to make such disposition of the child's custody as appears most advantageous to and in the best interest of the child and most likely to secure to him or her the benefit of the final order or the modification or termination of the final order to be made in his or her behalf.

3. If the court enters an order pursuant to subsection 2 providing that a party may obtain physical custody of a child, the court shall order that party to give the party having physical custody of the child notice at least 24 hours before the time at which he or she intends to obtain physical custody of the child, unless the court deems that requiring the notice would likely defeat the purpose of the order.

4. All orders for a party to appear with a child issued pursuant to this section may be enforced by issuing a warrant of arrest against that party to secure his or her appearance with the child.

5. A proceeding under this section must be given priority on the court calendar.

Sec. 13. 1. If joint physical custody has been established pursuant to an order, judgment or decree of a court ~~for section 4 of this act or by operation of law~~ and one parent intends to relocate his or her residence to a place outside of this State or to a place within this State that is at such a distance that would substantially impair the ability of the other parent to maintain a meaningful relationship with the child, and the relocating parent desires to take the child with

1 *him or her, the relocating parent shall petition the court for primary physical*
2 *custody for the purpose of relocating.*

3 *2. A parent who relocates with a child pursuant to this section before the*
4 *court enters an order granting the parent primary physical custody of the child*
5 *and permission to relocate with the child is subject to the provisions of NRS*
6 *200.359.*

7 *Sec. 14. 1. In every instance of a petition for permission to relocate with a*
8 *child that is filed pursuant to NRS 125C.200 or section 13 of this act, the*
9 *relocating parent must demonstrate to the court that:*

10 *(a) There exists a sensible, good-faith reason for the move, and the move is*
11 *not intended to deprive the non-relocating parent of his or her parenting time;*

12 *(b) The best interests of the child are substantially better served by allowing*
13 *the relocating parent to relocate;*

14 *(c) The child and the relocating parent will benefit from an actual advantage*
15 *that currently exists or is certain to exist before the time of the relocation; and*

16 *(d) If the parents currently share joint custody of the child, the child will do*
17 *substantially better in the new location than the child would if he or she remained*
18 *in this State with the non-relocating parent.*

19 *2. If a relocating parent demonstrates to the court the provisions set forth in*
20 *subsection 1, the court must then weigh the following factors and the impact of*
21 *each on the child, the relocating parent and the non-relocating parent, including,*
22 *without limitation, the extent to which the compelling interests of the child, the*
23 *relocating parent and the non-relocating parent are accommodated:*

24 *(a) The extent to which the relocation is likely to improve the quality of life*
25 *for the child and the relocating parent;*

26 *(b) Whether the motives of the relocating parent are honorable and not*
27 *designed to frustrate or defeat any visitation rights accorded to the non-relocating*
28 *parent;*

29 *(c) Whether the relocating parent will comply with any substitute visitation*
30 *orders issued by the court if permission to relocate is granted;*

31 *(d) Whether the motives of the non-relocating parent are honorable in*
32 *resisting the petition for permission to relocate or to what extent any opposition to*
33 *the petition for permission to relocate is intended to secure a financial advantage*
34 *in the form of ongoing support obligations or otherwise;*

35 *(e) Whether there will be a realistic opportunity for the non-relocating parent*
36 *to maintain a visitation schedule that will adequately foster and preserve the*
37 *parental relationship between the child and the non-relocating parent if*
38 *permission to relocate is granted; and*

39 *(f) Any other factor necessary to assist the court in determining whether to*
40 *grant permission to relocate.*

41 *3. A parent who desires to relocate with a child pursuant to NRS 125C.200*
42 *or section 13 of this act has the burden of proving that relocating with the child is*
43 *in the best interest of the child.*

44 *Sec. 15. If a parent with primary physical custody or joint physical custody*
45 *relocates with a child in violation of NRS 200.359:*

46 *1. The court shall not consider any post-relocation facts or circumstances*
47 *regarding the welfare of the child or the relocating parent in making any*
48 *determination.*

49 *2. If the non-relocating parent files an action in response to the violation,*
50 *the non-relocating parent is entitled to recover reasonable attorney's fees and*
51 *costs incurred as a result of the violation.*

Sec. 16. NRS 125C.200 is hereby amended to read as follows:

125C.200 1. If *primary physical* custody has been established *pursuant to an order, judgment or decree of a court* and the custodial parent intends to ~~move~~ *relocate* his or her residence to a place outside of this State *or to a place within this State that is more than 100 miles from the place of his or her residence at the time the existing custody arrangement was established,* at such a distance that would substantially impair the ability of the other parent to maintain a meaningful relationship with the child, and *the custodial parent desires* to take the child with him or her, the custodial parent ~~must, as soon as possible and before the planned move, attempt~~ *shall*:

(a) *Attempt* to obtain the written consent of the noncustodial parent to ~~move~~ *relocate with* the child ~~from this State. If~~; and

(b) *If* the noncustodial parent refuses to give that consent, ~~the custodial parent shall, before leaving this State with the child,~~ petition the court for permission to ~~move~~ *relocate with* the child. ~~The failure of a parent to comply with the provisions of this section may be considered as a factor if a change of custody is requested by the noncustodial parent.~~

2. *A parent who relocates with a child pursuant to this section without the written consent of the noncustodial parent or the permission of the court is subject to the provisions of NRS 200.359.*

Sec. 17. NRS 146.010 is hereby amended to read as follows:

146.010 Except as otherwise provided in this chapter or in ~~NRS 125.510,~~ *section 10 of this act*, if a person dies leaving a surviving spouse or a minor child or minor children, the surviving spouse, minor child or minor children are entitled to remain in possession of the homestead and of all the wearing apparel and provisions in the possession of the family, and all the household furniture, and are also entitled to a reasonable provision for their support, to be allowed by the court.

Sec. 18. NRS 200.359 is hereby amended to read as follows:

200.359 1. A person having a limited right of custody to a child by operation of law or pursuant to an order, judgment or decree of any court, including a judgment or decree which grants another person rights to custody or visitation of the child, or any parent having no right of custody to the child, who:

(a) In violation of an order, judgment or decree of any court willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child; or

(b) In the case of an order, judgment or decree of any court that does not specify when the right to physical custody or visitation is to be exercised, removes the child from the jurisdiction of the court without the consent of either the court or all persons who have the right to custody or visitation,

is guilty of a category D felony and shall be punished as provided in NRS 193.130.

2. ~~Except as otherwise provided in this subsection,~~ *a* parent who has joint legal and physical custody of a child pursuant to ~~NRS 125.465~~ *section 4 of this act* shall not willfully conceal or remove the child from the custody of the other parent with the specific intent to ~~deprive~~ frustrate the efforts of the other parent ~~of the parent and child~~ to establish or maintain a meaningful relationship with the child. A person who violates this subsection shall be punished as provided in subsection 1. ~~unless the person demonstrates to the satisfaction of the court that he or she violated this subsection to protect the child or himself or herself from an act that constitutes domestic violence pursuant to NRS 33.018.~~

3. If the mother of a child has primary physical custody pursuant to subsection 2 of ~~NRS 126.031~~ *section 7 of this act*, the father of the child shall not willfully conceal or remove the child from the physical custody of the mother. If

1 the father of a child has primary physical custody pursuant to subsection 2 of ~~NRS~~
2 ~~126.031~~ *section 7 of this act*, the mother of the child shall not willfully conceal or
3 remove the child from the physical custody of the father. A person who violates this
4 subsection shall be punished as provided in subsection 1.

5 4. *A parent who has joint physical custody of a child pursuant to an order,*
6 *judgment or decree of a court* ~~for section 4 of this act~~ *shall not relocate with the*
7 *child pursuant to section 13 of this act before the court enters an order granting*
8 *the parent primary physical custody of the child and permission to relocate with*
9 *the child. A person who violates this subsection shall be punished as provided in*
10 *subsection 1.*

11 5. *A parent who has primary physical custody of a child pursuant to an*
12 *order, judgment or decree of a court shall not relocate with the child pursuant to*
13 *NRS 125C.200 without the written consent of the non-relocating parent or the*
14 *permission of the court. A person who violates this subsection shall be punished*
15 *as provided in subsection 1.*

16 6. Before an arrest warrant may be issued for a violation of this section, the
17 court must find that:

18 (a) This is the home state of the child, as defined in NRS 125A.085; and

19 (b) There is cause to believe that the entry of a court order in a civil proceeding
20 brought pursuant to chapter 125, 125A or 125C of NRS will not be effective to
21 enforce the rights of the parties and would not be in the best interests of the child.

22 ~~15~~ 7. Upon conviction for a violation of this section, the court shall order
23 the defendant to pay restitution for any expenses incurred in locating or recovering
24 the child.

25 ~~16~~ 8. The prosecuting attorney may recommend to the judge that the
26 defendant be sentenced as for a misdemeanor and the judge may impose such a
27 sentence if the judge finds that:

28 (a) The defendant has no prior conviction for this offense and the child has
29 suffered no substantial harm as a result of the offense; or

30 (b) The interests of justice require that the defendant be punished as for a
31 misdemeanor.

32 ~~17~~ 9. A person who aids or abets any other person to violate this section
33 shall be punished as provided in subsection 1.

34 ~~18~~ 10. *In addition to the exemption set forth in subsection 11, subsections*
35 *4 and 5 do not apply to a person who demonstrates a compelling excuse, to the*
36 *satisfaction of the court, for relocating with a child in violation of NRS 125C.200*
37 *or section 13 of this act.*

38 11. This section does not apply to a person who detains, conceals, ~~19~~
39 removes *or relocates with* a child to protect the child from the imminent danger of
40 abuse or neglect or to protect himself or herself from imminent physical harm, and
41 reported the detention, concealment, ~~20~~ removal *or relocation* to a law
42 enforcement agency or an agency which provides child welfare services within 24
43 hours after detaining, concealing, ~~21~~ removing *or relocating with* the child, or as
44 soon as the circumstances allowed. As used in this subsection:

45 (a) "Abuse or neglect" has the meaning ascribed to it in paragraph (a) of
46 subsection 4 of NRS 200.508.

47 (b) "Agency which provides child welfare services" has the meaning ascribed
48 to it in NRS 432B.030.

49 **Sec. 19.** NRS 125.460, 125.465, 125.470, 125.480, 125.490, 125.500,
50 125.510, 125.520 and 126.031 are hereby repealed.

LEADLINES OF REPEALED SECTIONS

125.460 State policy.

125.465 Married parents have joint custody until otherwise ordered by court.

125.470 Order for production of child before court; determinations concerning physical custody of child.

125.480 Best interests of child; preferences; presumptions when court determines parent or person seeking custody is perpetrator of domestic violence or has committed act of abduction against child or any other child.

125.490 Joint custody.

125.500 Award of custody to person other than parent.

125.510 Court orders; modification or termination of orders; form for orders; court may order parent to post bond if parent resides in or has significant commitments in foreign country.

125.520 Plan for carrying out court's order; access to child's records.

126.031 Relationship of parent and child not dependent on marriage; primary physical custody of child born out of wedlock.