

Assembly Bill No. 228—Assemblymen Pickard;
Cohen and Tolles

Joint Sponsors: Senators Denis, Gansert, Goicoechea, Hammond,
Hardy, Harris, Parks and Roberson

CHAPTER.....

AN ACT relating to parental rights; revising provisions governing the required service regarding a proceeding for the termination of parental rights; revising the time for a hearing to terminate parental rights; making certain hearings, files and records of the court relating to a proceeding for the termination of parental rights confidential in certain circumstances; authorizing the termination of parental rights in certain circumstances involving a sexual assault; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires that service of notice, including, without limitation, by personal service, publication or mailing, must be attempted on a parent, legal custodian or guardian or relative of a child before the commencement of a proceeding for the termination of parental rights. (NRS 128.060, 128.070) Existing law requires personal service to be attempted on a parent or legal custodian or guardian in such a case if the parent or legal custodian or guardian resides in this State. **Section 2** of this bill removes the requirement that the person live in this State so that personal service must be attempted on such a person regardless of residence. If personal service is not feasible, **sections 3 and 4** of this bill authorize the publication of a notice of hearing for the termination of parental rights under certain conditions, after the clerk of the court has replaced every instance of the name of the child with the initials of the child on the notice of hearing.

Existing law requires a hearing to terminate the parental rights of a father, at the request of the mother of an unborn child, to be held after the birth of the child or 6 months after the filing of the petition, whichever is later. (NRS 128.085) **Section 5** of this bill allows such a hearing to take place any time after the birth of the child and service on the father or putative father, if known, is completed.

Existing law requires all hearings, files and records of a court relating to an adoption proceeding to be confidential. (NRS 127.140) **Sections 6 and 8** of this bill similarly require that the hearings, files and records of a court relating to a proceeding to terminate parental rights are confidential, with certain exceptions.

Existing law specifies that if a child is conceived as the result of a sexual assault and the person convicted of the sexual assault is the natural father of the child, that person has no right to custody of the child or visitation except in certain circumstances. (NRS 125C.210) **Section 7** of this bill provides that the conviction of the natural parent of a child for a sexual assault which resulted in the conception of the child is grounds for terminating the parental rights of the natural parent.



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

Section 1. NRS 128.050 is hereby amended to read as follows:

128.050 1. The proceedings must be entitled, “In the matter of the parental rights as to, a minor.”

2. A petition must be verified and may be upon information and belief. It must set forth plainly:

(a) The facts which bring the child within the purview of this chapter.

(b) The name, age and residence of the child.

(c) The names and residences of the parents of the child.

(d) The name and residence of the person or persons having physical custody or control of the child.

(e) The name and residence of the child’s legal guardian, if there is one.

(f) The name and residence of the child’s nearest known relative , ~~residing within the State,~~ if no parent or guardian can be found.

(g) Whether the child is known to be an Indian child.

3. If any of the facts required by subsection 2 are not known by the petitioner, the petition must so state.

4. If the petitioner is a mother filing with respect to her unborn child, the petition must so state and must contain the name and residence of the father or putative father, if known.

5. If the petitioner or the child is receiving public assistance, the petition must so state.

Sec. 2. NRS 128.060 is hereby amended to read as follows:

128.060 1. After a petition has been filed, unless the party or parties to be served voluntarily appear and consent to the hearing, the court shall direct the clerk to issue a notice, reciting briefly the substance of the petition and stating the date set for the hearing thereof, and requiring the person served therewith to appear before the court at the time and place if that person desires to oppose the petition.

2. ~~The~~ ***Except as otherwise provided in NRS 128.070, the*** following persons must be personally served with the notice:

(a) The father or mother of the minor person, ~~if residing within this State, and~~ if his or her place of residence is known to the petitioner, ~~for, if there is no parent so residing,~~ or if the place of residence of the father or mother is not known to the petitioner, then



the nearest known relative of that person, if there is any residing within the State, and if his or her residence and relationship are known to the petitioner; and

(b) The minor's legal custodian or guardian, ~~{if residing within this State and}~~ if his or her place of residence is known to the petitioner.

3. If the petitioner or the child is receiving public assistance, the petitioner shall mail a copy of the notice of hearing and a copy of the petition to the Chief of the Child **Support** Enforcement Program of the Division of Welfare and Supportive Services of the Department of Health and Human Services by registered or certified mail return receipt requested at least 45 days before the hearing.

Sec. 3. NRS 128.070 is hereby amended to read as follows:

128.070 1. When the father or mother of a minor child or the child's legal custodian or guardian ~~{resides out of the State, has departed from the State, or}~~ cannot, after due diligence, be found ~~{within the State,}~~ or conceals himself or herself to avoid the service of the notice of hearing, and the fact appears, by affidavit, to the satisfaction of the court thereof, and it appears, either by affidavit or by a verified petition on file, that the named father or mother or custodian or guardian is a necessary or proper party to the proceedings, the court may grant an order that the service be made by the publication of the notice of hearing. When the affidavit is based on the fact that the **present address of the** father or mother or custodian or guardian ~~{resides out of the State, and his or her present address}~~ is unknown, it is a sufficient showing of that fact if the affiant states generally in the affidavit that:

(a) At a previous time the person resided ~~{out of this State}~~ in a certain place (naming the place and stating the latest date known to the affiant when the person so resided there);

(b) That place is the last place in which the person resided to the knowledge of the affiant;

(c) The person no longer resides at that place; **and**

(d) The affiant does not know the present place of residence of the person or where the person can be found. ~~{; and}~~

~~—(e) The affiant does not know and has never been informed and has no reason to believe that the person now resides in this State.}~~

↳ In such case, ~~{it shall be presumed that the person still resides and remains out of the State, and}~~ the affidavit shall be deemed to be a sufficient showing of due diligence to find the father or mother or custodian or guardian.



2. The order must direct the publication to be made in a newspaper, to be designated by the court, for a period of 4 weeks, and at least once a week during that time. ~~{In case of publication, where the residence of a nonresident or absent father or mother or custodian or guardian is known, the court shall also direct a copy of the notice of hearing and petition to be deposited in the post office, directed to the person to be served at his or her place of residence.}~~ When publication is ordered, personal service of a copy of the notice of hearing and petition ~~{, out of the State,}~~ is equivalent to completed service by publication , ~~{and deposit in the post office,}~~ and the person so served has 20 days after the service to appear and answer or otherwise plead. The service of the notice of hearing shall be deemed complete in cases of publication at the expiration of 4 weeks from the first publication . ~~{, and in cases when a deposit of a copy of the notice of hearing and petition in the post office is also required, at the expiration of 4 weeks from the deposit.}~~

3. ~~{Personal service outside the State upon a father or mother over the age of 18 years or upon the minor's legal custodian or guardian may be made in any action where the person served is a resident of this State. When the facts appear, by affidavit, to the satisfaction of the court, and it appears, either by affidavit or by a verified petition on file, that the person in respect to whom the service is to be made is a necessary or proper party to the proceedings, the court may grant an order that the service be made by personal service outside the State. The service must be made by delivering a copy of the notice of hearing together with a copy of the petition in person to the person served. The methods of service are cumulative, and may be utilized with, after or independently of other methods of service.}~~ *Before a notice of hearing is published pursuant to subsection 2, the clerk of the court shall ensure that the name of the minor child is replaced with the initials of the minor child in every instance where the name of the minor child appears in the notice of hearing.*

4. Whenever personal service cannot be made, the court may require, before ordering service by publication , ~~{or by publication and mailing,}~~ such further and additional search to determine the whereabouts of the person to be served as may be warranted by the facts stated in the affidavit of the petitioner to the end that actual notice be given whenever possible.

5. If one or both of the parents of the minor is unknown, or if the name of either or both of the parents of the minor is uncertain, then those facts must be set forth in the affidavit and the court shall order the notice to be directed and addressed to either the father or



the mother of the person, and to all persons claiming to be the father or mother of the person. The notice, after the caption, must be addressed substantially as follows: "To the father and mother of the above-named person, and to all persons claiming to be the father or mother of that person."

Sec. 4. NRS 128.080 is hereby amended to read as follows:

128.080 ~~The~~ *Except as otherwise provided in subsection 3 of NRS 128.070, the* notice must be in substantially the following form:

In the Judicial District Court of the State of Nevada,
in and for the County of

In the matter of parental rights
as to, a minor.

Notice

To, the father or, the mother of the above-named person; or, to the father and mother of the above-named person, and to all persons claiming to be the father or mother of this person; or, to, related to the above-named minor as; and, to, the legal custodian or guardian of the above-named minor:

You are hereby notified that there has been filed in the above-entitled court a petition praying for the termination of parental rights over the above-named minor person, and that the petition has been set for hearing before this court, at the courtroom thereof, at, in the County of, on the day of the month of of the year at..... o'clockm., at which time and place you are required to be present if you desire to oppose the petition.

Dated (month) (day) (year)

.....
Clerk of Court

(SEAL)

By.....
Deputy



Sec. 5. NRS 128.085 is hereby amended to read as follows:

128.085 When the mother of an unborn child files a petition for termination of the father's parental rights, the father or putative father, if known, shall be served with notice of the hearing in the manner provided for in NRS 128.060, 128.070 and 128.080. The hearing ~~shall not~~ *may* be held ~~until~~ *at any time after* the birth of the child ~~for 6 months after the filing of the petition, whichever is later,~~ *and service on the father or putative father, if known, is complete.*

Sec. 6. NRS 128.090 is hereby amended to read as follows:

128.090 1. At the time stated in the notice, or at the earliest time thereafter to which the hearing may be postponed, the court shall proceed to hear the petition.

2. The proceedings are civil in nature and are governed by the Nevada Rules of Civil Procedure. The court shall in all cases require the petitioner to establish the facts by clear and convincing evidence and shall give full and careful consideration to all of the evidence presented, with regard to the rights and claims of the parent of the child and to any and all ties of blood or affection, but with a dominant purpose of serving the best interests of the child.

3. Information contained in a report filed pursuant to NRS 432.0999 to 432.130, inclusive, or chapter 432B of NRS may not be excluded from the proceeding by the invoking of any privilege.

4. In the event of postponement, all persons served, who are not present or represented in court at the time of the postponement, must be notified thereof in the manner provided by the Nevada Rules of Civil Procedure.

5. Any hearing held pursuant to this section must be held in closed court without admittance of any person other than those necessary to the action or proceeding, unless the court determines that holding such a hearing in open court will not be detrimental to the child.

6. Except as otherwise provided in subsection 7, any hearing held pursuant to NRS 128.005 to 128.150, inclusive, is confidential and must be held in closed court without the admittance of any person other than the petitioner, attorneys, any witnesses, the director of an agency which provides child welfare services or an authorized representative of such person and any other person entitled to notice, except by order of the court.

7. The files and records of the court in a proceeding to terminate parental rights pursuant to NRS 128.005 to 128.150, inclusive, are not open to inspection by any person except:



(a) The person petitioning for the termination of parental rights and a person who intends to file a response to such a petition; or

(b) Upon an order of the court expressly so permitting pursuant to a petition setting forth the reasons therefor.

Sec. 7. NRS 128.105 is hereby amended to read as follows:

128.105 1. The primary consideration in any proceeding to terminate parental rights must be whether the best interests of the child will be served by the termination. An order of the court for the termination of parental rights must be made in light of the considerations set forth in this section and NRS 128.106 to 128.109, inclusive, and based on evidence and include a finding that:

(a) The best interests of the child would be served by the termination of parental rights; and

(b) The conduct of the parent or parents was the basis for a finding made pursuant to subsection 3 of NRS 432B.393 or demonstrated at least one of the following:

(1) Abandonment of the child;

(2) Neglect of the child;

(3) Unfitness of the parent;

(4) Failure of parental adjustment;

(5) Risk of serious physical, mental or emotional injury to the child if the child were returned to, or remains in, the home of his or her parent or parents;

(6) Only token efforts by the parent or parents:

(I) To support or communicate with the child;

(II) To prevent neglect of the child;

(III) To avoid being an unfit parent; or

(IV) To eliminate the risk of serious physical, mental or emotional injury to the child; ~~for~~

(7) With respect to termination of the parental rights of one parent, the abandonment by that parent ~~+~~ ; or

(8) The child was conceived as a result of a sexual assault for which the natural parent was convicted.

2. Before making a finding pursuant to subparagraph (5) of paragraph (b) of subsection 1, if the child has been out of the care of his or her parent or guardian for at least 12 consecutive months, the court shall consider, without limitation:

(a) The placement options for the child;

(b) The age of the child; and

(c) The developmental, cognitive and psychological needs of the child.



Sec. 8. NRS 239.010 is hereby amended to read as follows:

239.010 1. Except as otherwise provided in this section and NRS 1.4683, 1.4687, 1A.110, 41.071, 49.095, 62D.420, 62D.440, 62E.516, 62E.620, 62H.025, 62H.030, 62H.170, 62H.220, 62H.320, 75A.100, 75A.150, 76.160, 78.152, 80.113, 81.850, 82.183, 86.246, 86.54615, 87.515, 87.5413, 87A.200, 87A.580, 87A.640, 88.3355, 88.5927, 88.6067, 88A.345, 88A.7345, 89.045, 89.251, 90.730, 91.160, 116.757, 116A.270, 116B.880, 118B.026, 119.260, 119.265, 119.267, 119.280, 119A.280, 119A.653, 119B.370, 119B.382, 120A.690, 125.130, 125B.140, 126.141, 126.161, 126.163, 126.730, 127.007, 127.057, 127.130, 127.140, 127.2817, **128.090**, 130.312, 130.712, 136.050, 159.044, 172.075, 172.245, 176.015, 176.0625, 176.09129, 176.156, 176A.630, 178.39801, 178.4715, 178.5691, 179.495, 179A.070, 179A.165, 179A.450, 179D.160, 200.3771, 200.3772, 200.5095, 200.604, 202.3662, 205.4651, 209.392, 209.3925, 209.419, 209.521, 211A.140, 213.010, 213.040, 213.095, 213.131, 217.105, 217.110, 217.464, 217.475, 218A.350, 218E.625, 218F.150, 218G.130, 218G.240, 218G.350, 228.270, 228.450, 228.495, 228.570, 231.069, 231.1473, 233.190, 237.300, 239.0105, 239.0113, 239B.030, 239B.040, 239B.050, 239C.140, 239C.210, 239C.230, 239C.250, 239C.270, 240.007, 241.020, 241.030, 241.039, 242.105, 244.264, 244.335, 250.087, 250.130, 250.140, 250.150, 268.095, 268.490, 268.910, 271A.105, 281.195, 281A.350, 281A.440, 281A.550, 284.4068, 286.110, 287.0438, 289.025, 289.080, 289.387, 289.830, 293.5002, 293.503, 293.558, 293B.135, 293D.510, 331.110, 332.061, 332.351, 333.333, 333.335, 338.070, 338.1379, 338.16925, 338.1725, 338.1727, 348.420, 349.597, 349.775, 353.205, 353A.049, 353A.085, 353A.100, 353C.240, 360.240, 360.247, 360.255, 360.755, 361.044, 361.610, 365.138, 366.160, 368A.180, 372A.080, 378.290, 378.300, 379.008, 385A.830, 385B.100, 387.626, 387.631, 388.1455, 388.259, 388.501, 388.503, 388.513, 388.750, 391.035, 392.029, 392.147, 392.264, 392.271, 392.850, 394.167, 394.1698, 394.447, 394.460, 394.465, 396.3295, 396.405, 396.525, 396.535, 398.403, 408.3885, 408.3886, 408.3888, 408.5484, 412.153, 416.070, 422.2749, 422.305, 422A.342, 422A.350, 425.400, 427A.1236, 427A.872, 432.205, 432B.175, 432B.280, 432B.290, 432B.407, 432B.430, 432B.560, 433.534, 433A.360, 439.840, 439B.420, 440.170, 441A.195, 441A.220, 441A.230, 442.330, 442.395, 445A.665, 445B.570, 449.209, 449.245, 449.720, 450.140, 453.164, 453.720, 453A.610, 453A.700, 458.055, 458.280, 459.050, 459.3866, 459.555, 459.7056, 459.846, 463.120, 463.15993, 463.240, 463.3403, 463.3407, 463.790, 467.1005, 480.365, 481.063,



482.170, 482.5536, 483.340, 483.363, 483.575, 483.659, 483.800, 484E.070, 485.316, 503.452, 522.040, 534A.031, 561.285, 571.160, 584.655, 587.877, 598.0964, 598.098, 598A.110, 599B.090, 603.070, 603A.210, 604A.710, 612.265, 616B.012, 616B.015, 616B.315, 616B.350, 618.341, 618.425, 622.310, 623.131, 623A.137, 624.110, 624.265, 624.327, 625.425, 625A.185, 628.418, 628B.230, 628B.760, 629.047, 629.069, 630.133, 630.30665, 630.336, 630A.555, 631.368, 632.121, 632.125, 632.405, 633.283, 633.301, 633.524, 634.055, 634.214, 634A.185, 635.158, 636.107, 637.085, 637B.288, 638.087, 638.089, 639.2485, 639.570, 640.075, 640A.220, 640B.730, 640C.400, 640C.745, 640C.760, 640D.190, 640E.340, 641.090, 641A.191, 641B.170, 641C.760, 642.524, 643.189, 644.446, 645.180, 645.625, 645A.050, 645A.082, 645B.060, 645B.092, 645C.220, 645C.225, 645D.130, 645D.135, 645E.300, 645E.375, 645G.510, 645H.320, 645H.330, 647.0945, 647.0947, 648.033, 648.197, 649.065, 649.067, 652.228, 654.110, 656.105, 661.115, 665.130, 665.133, 669.275, 669.285, 669A.310, 671.170, 673.430, 675.380, 676A.340, 676A.370, 677.243, 679B.122, 679B.152, 679B.159, 679B.190, 679B.285, 679B.690, 680A.270, 681A.440, 681B.260, 681B.410, 681B.540, 683A.0873, 685A.077, 686A.289, 686B.170, 686C.306, 687A.110, 687A.115, 687C.010, 688C.230, 688C.480, 688C.490, 692A.117, 692C.190, 692C.3536, 692C.3538, 692C.354, 692C.420, 693A.480, 693A.615, 696B.550, 703.196, 704B.320, 704B.325, 706.1725, 706A.230, 710.159, 711.600, sections 35, 38 and 41 of chapter 478, Statutes of Nevada 2011 and section 2 of chapter 391, Statutes of Nevada 2013 and unless otherwise declared by law to be confidential, all public books and public records of a governmental entity must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. Any such copies, abstracts or memoranda may be used to supply the general public with copies, abstracts or memoranda of the records or may be used in any other way to the advantage of the governmental entity or of the general public. This section does not supersede or in any manner affect the federal laws governing copyrights or enlarge, diminish or affect in any other manner the rights of a person in any written book or record which is copyrighted pursuant to federal law.

2. A governmental entity may not reject a book or record which is copyrighted solely because it is copyrighted.

3. A governmental entity that has legal custody or control of a public book or record shall not deny a request made pursuant to subsection 1 to inspect or copy or receive a copy of a public book or



record on the basis that the requested public book or record contains information that is confidential if the governmental entity can redact, delete, conceal or separate the confidential information from the information included in the public book or record that is not otherwise confidential.

4. A person may request a copy of a public record in any medium in which the public record is readily available. An officer, employee or agent of a governmental entity who has legal custody or control of a public record:

(a) Shall not refuse to provide a copy of that public record in a readily available medium because the officer, employee or agent has already prepared or would prefer to provide the copy in a different medium.

(b) Except as otherwise provided in NRS 239.030, shall, upon request, prepare the copy of the public record and shall not require the person who has requested the copy to prepare the copy himself or herself.

