

ASSEMBLY BILL NO. 262—ASSEMBLYMEN
WHEELER; AND ELLISON

MARCH 14, 2019

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to children.
(BDR 11-131)

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 children; revising provisions relating to the support and custody of children; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law imposes a duty on a parent of a child to provide the child with the necessary maintenance, health care, education and support and authorizes certain persons or public agencies to recover from a parent without physical custody a reasonable portion of the cost of the necessary maintenance, health care, education and support. (NRS 125B.020, 125B.030, 125B.040) Under existing law, an obligation for support may be enforced while the child is: (1) under the age of 18 years; (2) under the age of 19 years, if the child is enrolled in high school; (3) under a legal disability; or (4) not declared emancipated. (NRS 125B.200) **Section 1** of this bill requires every court order for the support of a child issued or modified on or after October 1, 2019, to include a provision that one or both parents are required to provide support until the child: (1) reaches the age of 24 years, if the child is enrolled in a college or university; or (2) graduates from a college or university, whichever occurs earlier. **Sections 2-4 and 6** of this bill make conforming changes.

Existing law requires a court in a child custody proceeding to determine the physical custody of a child based on the best interest of the child. Existing law requires the court to consider several factors in determining the best interest of the child, including, the opinion of the child if he or she is of sufficient age and capacity to form an intelligent opinion concerning his or her physical custody. (NRS 125C.0035) **Section 5** of this bill requires a court to consider the opinion of the child if he or she is 11 years of age or older, as determined by the court through an interview with the child.



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

Section 1. Chapter 125B of NRS is hereby amended by adding thereto a new section to read as follows:

1. Every court order for the support of a child issued or modified in this State on or after October 1, 2019, must include a provision specifying that one or both parents are required to provide support for the child until the earlier of the child for whom support was ordered:

(a) Reaches 24 years of age, if the child is enrolled in a college or university; or

(b) Graduates from a college or university.

2. Nothing in this section shall be construed to prohibit a court from issuing a new order pursuant to subsection 1 for the support of a child who enrolls in a college or university after such a time that a parent would otherwise not be required to provide support for a child as a matter of law.

Sec. 2. NRS 125B.002 is hereby amended to read as follows:

125B.002 As used in NRS 125B.002 to 125B.180, inclusive, *and section 1 of this act*, unless the context otherwise requires, the words and terms defined in NRS 125B.004 and 125B.008 have the meanings ascribed to them in those sections.

Sec. 3. NRS 125B.200 is hereby amended to read as follows:

125B.200 As used in NRS 125B.200 to 125B.300, inclusive, unless the context otherwise requires:

1. "Court" includes a referee or master appointed by the court.

2. ~~["Minor child"]~~ *"Child"* means a person who is:

(a) Under the age of 18 years;

(b) Under the age of 19 years, if the person is enrolled in high school;

(c) Under a legal disability; ~~for~~

(d) Not declared emancipated pursuant to NRS 129.080 to 129.140, inclusive ~~for~~; *or*

(e) The subject for whom support was ordered pursuant to section 1 of this act.

3. "Obligor-parent" means a parent who has been ordered by a court to pay for the support of a ~~minor~~ child.

Sec. 4. NRS 125B.210 is hereby amended to read as follows:

125B.210 1. Except as otherwise provided in NRS 125B.230, if, in any proceeding where the court has ordered a parent to pay for the support of a ~~minor~~ child:

(a) A declaration is signed under penalty of perjury by the person to whom support has been ordered to have been paid stating



1 that the obligor-parent is in arrears in payment in a sum equal to or
2 greater than the amount of 30 days of payments;

3 (b) Notice and opportunity for hearing on an application to the
4 court, an order to show cause, or a notice of motion has been given
5 to the obligor-parent; and

6 (c) The court makes a finding that good cause has been shown
7 and that there exists one or more of the conditions set forth in
8 NRS 125B.240,

9 ➤ the court shall issue to the obligor-parent an order requiring the
10 obligor-parent to deposit assets to secure future payments of support
11 with a trustee designated by the court and to pay reasonable
12 attorney's fees and costs to the person to whom support has been
13 ordered. The court may designate the district attorney, another
14 county officer or any other person as trustee.

15 2. Upon receipt of the assets, the trustee designated by the
16 court to receive the assets shall use the money or sell or otherwise
17 generate income from the deposited assets for an amount sufficient
18 to pay the arrearage, administrative costs, any amount currently due
19 pursuant to an order of the court for the care, support, education and
20 maintenance of the ~~minor~~ child, interest upon the arrearage, and
21 attorney's fees, if:

22 (a) The obligor-parent fails, within the time specified by the
23 court, to cure the default in the payment of the support of a child due
24 at the time the trustee receives the deposited assets, or fails to
25 comply with a plan for payment approved by the court;

26 (b) Further arrears in payments accrue after the trustee receives
27 the deposited assets, or the arrearage specified in the declaration is
28 not paid current within any 30-day period following the trustee's
29 receipt of the assets;

30 (c) No fewer than 25 days before the sale or use of the assets,
31 written notice of the trustee's intent to sell or use the assets is served
32 personally on the obligor-parent or is mailed to the obligor-parent
33 by certified mail, return receipt requested; and

34 (d) A motion or order to show cause has not been filed to stop
35 the use or sale, or if filed, has been denied by the court.

36 ➤ The sale of assets must be conducted in accordance with the
37 provisions set forth in NRS 21.130 to 21.260, inclusive, governing
38 the sale of property under execution.

39 3. To cover the administrative costs of the trustee, the trustee
40 may deduct from the deposited money all actual costs incurred in a
41 sale and 5 percent of each payment made pursuant to subsection 2.

42 **Sec. 5.** NRS 125C.0035 is hereby amended to read as follows:
43 125C.0035 1. In any action for determining physical custody
44 of a minor child, the sole consideration of the court is the best
45 interest of the child. If it appears to the court that joint physical



1 custody would be in the best interest of the child, the court may
2 grant physical custody to the parties jointly.

3 2. Preference must not be given to either parent for the sole
4 reason that the parent is the mother or the father of the child.

5 3. The court shall award physical custody in the following
6 order of preference unless in a particular case the best interest of the
7 child requires otherwise:

8 (a) To both parents jointly pursuant to NRS 125C.0025 or to
9 either parent pursuant to NRS 125C.003. If the court does not enter
10 an order awarding joint physical custody of a child after either
11 parent has applied for joint physical custody, the court shall state in
12 its decision the reason for its denial of the parent's application.

13 (b) To a person or persons in whose home the child has been
14 living and where the child has had a wholesome and stable
15 environment.

16 (c) To any person related within the fifth degree of
17 consanguinity to the child whom the court finds suitable and able to
18 provide proper care and guidance for the child, regardless of
19 whether the relative resides within this State.

20 (d) To any other person or persons whom the court finds
21 suitable and able to provide proper care and guidance for the child.

22 4. In determining the best interest of the child, the court shall
23 consider and set forth its specific findings concerning, among other
24 things:

25 (a) The wishes of the child if the child is ~~of sufficient age and~~
26 ~~capacity to form an intelligent preference as to his or her physical~~
27 ~~custody.]~~ *11 years of age or older. The wishes of the child must be*
28 *determined by the court through an interview with the child.*

29 (b) Any nomination of a guardian for the child by a parent.

30 (c) Which parent is more likely to allow the child to have
31 frequent associations and a continuing relationship with the
32 noncustodial parent.

33 (d) The level of conflict between the parents.

34 (e) The ability of the parents to cooperate to meet the needs of
35 the child.

36 (f) The mental and physical health of the parents.

37 (g) The physical, developmental and emotional needs of the
38 child.

39 (h) The nature of the relationship of the child with each parent.

40 (i) The ability of the child to maintain a relationship with any
41 sibling.

42 (j) Any history of parental abuse or neglect of the child or a
43 sibling of the child.

44 (k) Whether either parent or any other person seeking physical
45 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

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

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

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

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

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

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

10. As used in this section:

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

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

Sec. 6. NRS 125C.0045 is hereby amended to read as follows:

125C.0045 1. In any action for determining the custody of a minor child, the court may, except as otherwise provided in this section and NRS 125C.0601 to 125C.0693, inclusive, and chapter 130 of NRS:

(a) During the pendency of the action, at the final hearing or at any time thereafter during the minority of the child, make such an



1 order for the custody, care, education, maintenance and support of
2 the minor child as appears in his or her best interest; and

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

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

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

17 3. Any order for custody of a minor child entered by a court of
18 another state may, subject to the provisions of NRS 125C.0601 to
19 125C.0693, inclusive, and to the jurisdictional requirements in
20 chapter 125A of NRS, be modified at any time to an order of joint
21 custody.

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

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

33 6. All orders authorized by this section must be made in
34 accordance with the provisions of chapter 125A of NRS and NRS
35 125C.0601 to 125C.0693, inclusive, and must contain the following
36 language:

37
38 PENALTY FOR VIOLATION OF ORDER: THE
39 ABDUCTION, CONCEALMENT OR DETENTION OF A
40 CHILD IN VIOLATION OF THIS ORDER IS
41 PUNISHABLE AS A CATEGORY D FELONY AS
42 PROVIDED IN NRS 193.130. NRS 200.359 provides that
43 every person having a limited right of custody to a child or
44 any parent having no right of custody to the child who
45 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, *and except as otherwise provided in section 1 of this act*, 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;



- 1 (c) Became a citizen of the United States after marrying the
2 other parent of the child; or
3 (d) Frequently travels to a foreign country.

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