

Amendment No. 977

Assembly Amendment to Assembly Bill No. 262	(BDR 11-131)
<b>Proposed by:</b> Assembly Committee on Ways and Means	
<b>Amends:</b> Summary: Yes 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.





ASSEMBLY BILL NO. 262—ASSEMBLYMEN  
WHEELER; AND ELLISON

MARCH 14, 2019

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to the custody of 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~~ the ~~opinion~~ wishes of the child if he or she is of sufficient age and capacity to form an intelligent ~~opinion~~ preference concerning his or her physical custody. (NRS 125C.0035) **Section 5** of this bill : (1) requires a court to consider the ~~opinion~~ wishes of the child if he or she is 11 years of age or older ~~as~~ ; and provides that the wishes of the child must be 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.} (Deleted by amendment.)~~

**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.} (Deleted by amendment.)~~

**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; [or]~~

~~(d) Not declared emancipated pursuant to NRS 129.080 to 129.140, inclusive [;} 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.} (Deleted by amendment.)~~

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

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

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

~~the court shall issue to the obligor parent an order requiring the obligor parent to deposit assets to secure future payments of support with a trustee designated by the court and to pay reasonable attorney's fees and costs to the person to whom support~~

1 ~~has been ordered. The court may designate the district attorney, another county~~  
2 ~~officer or any other person as trustee.~~

3 ~~2. Upon receipt of the assets, the trustee designated by the court to receive the~~  
4 ~~assets shall use the money or sell or otherwise generate income from the deposited~~  
5 ~~assets for an amount sufficient to pay the arrearage, administrative costs, any~~  
6 ~~amount currently due pursuant to an order of the court for the care, support,~~  
7 ~~education and maintenance of the [minor] child, interest upon the arrearage, and~~  
8 ~~attorney's fees, if:~~

9 ~~(a) The obligor parent fails, within the time specified by the court, to cure the~~  
10 ~~default in the payment of the support of a child due at the time the trustee receives~~  
11 ~~the deposited assets, or fails to comply with a plan for payment approved by the~~  
12 ~~court;~~

13 ~~(b) Further arrears in payments accrue after the trustee receives the deposited~~  
14 ~~assets, or the arrearage specified in the declaration is not paid current within any~~  
15 ~~30 day period following the trustee's receipt of the assets;~~

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

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

21 ~~The sale of assets must be conducted in accordance with the provisions set forth~~  
22 ~~in NRS 21.130 to 21.260, inclusive, governing the sale of property under execution.~~

23 ~~3. To cover the administrative costs of the trustee, the trustee may deduct~~  
24 ~~from the deposited money all actual costs incurred in a sale and 5 percent of each~~  
25 ~~payment made pursuant to subsection 2.] (Deleted by amendment.)~~

26 **Sec. 5.** NRS 125C.0035 is hereby amended to read as follows:

27 125C.0035 1. In any action for determining physical custody of a minor  
28 child, the sole consideration of the court is the best interest of the child. If it appears  
29 to the court that joint physical custody would be in the best interest of the child, the  
30 court may grant physical custody to the parties jointly.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (j) Any history of parental abuse or neglect of the child or a sibling of the  
10 child.

11 (k) Whether either parent or any other person seeking physical custody has  
12 engaged in an act of domestic violence against the child, a parent of the child or any  
13 other person residing with the child.

14 (l) Whether either parent or any other person seeking physical custody has  
15 committed any act of abduction against the child or any other child.

16 5. Except as otherwise provided in subsection 6 or NRS 125C.210, a  
17 determination by the court after an evidentiary hearing and finding by clear and  
18 convincing evidence that either parent or any other person seeking physical custody  
19 has engaged in one or more acts of domestic violence against the child, a parent of  
20 the child or any other person residing with the child creates a rebuttable  
21 presumption that sole or joint physical custody of the child by the perpetrator of the  
22 domestic violence is not in the best interest of the child. Upon making such a  
23 determination, the court shall set forth:

24 (a) Findings of fact that support the determination that one or more acts of  
25 domestic violence occurred; and

26 (b) Findings that the custody or visitation arrangement ordered by the court  
27 adequately protects the child and the parent or other victim of domestic violence  
28 who resided with the child.

29 6. If after an evidentiary hearing held pursuant to subsection 5 the court  
30 determines that each party has engaged in acts of domestic violence, it shall, if  
31 possible, then determine which person was the primary physical aggressor. In  
32 determining which party was the primary physical aggressor for the purposes of this  
33 section, the court shall consider:

34 (a) All prior acts of domestic violence involving either party;

35 (b) The relative severity of the injuries, if any, inflicted upon the persons  
36 involved in those prior acts of domestic violence;

37 (c) The likelihood of future injury;

38 (d) Whether, during the prior acts, one of the parties acted in self-defense; and

39 (e) Any other factors which the court deems relevant to the determination.

40 ➤ In such a case, if it is not possible for the court to determine which party is the  
41 primary physical aggressor, the presumption created pursuant to subsection 5  
42 applies to both parties. If it is possible for the court to determine which party is the  
43 primary physical aggressor, the presumption created pursuant to subsection 5  
44 applies only to the party determined by the court to be the primary physical  
45 aggressor.

46 7. A determination by the court after an evidentiary hearing and finding by  
47 clear and convincing evidence that either parent or any other person seeking  
48 physical custody has committed any act of abduction against the child or any other  
49 child creates a rebuttable presumption that sole or joint physical custody or  
50 unsupervised visitation of the child by the perpetrator of the abduction is not in the  
51 best interest of the child. If the parent or other person seeking physical custody does  
52 not rebut the presumption, the court shall not enter an order for sole or joint

1 physical custody or unsupervised visitation of the child by the perpetrator and the  
2 court shall set forth:

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

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

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

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

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

16 (c) An admission by the defendant to the court of the facts contained in the  
17 charging document alleging a violation of NRS 200.310 to 200.340, inclusive, or  
18 200.359 or a law of any other jurisdiction that prohibits the same or similar  
19 conduct.

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

27 10. As used in this section:

28 (a) "Abduction" means the commission of an act described in NRS 200.310 to  
29 200.340, inclusive, or 200.359 or a law of any other jurisdiction that prohibits the  
30 same or similar conduct.

31 (b) "Domestic violence" means the commission of any act described in NRS  
32 33.018.

33 **Sec. 6. [NRS 125C.0045 is hereby amended to read as follows:]**

34 ~~125C.0045 1. In any action for determining the custody of a minor child,~~  
35 ~~the court may, except as otherwise provided in this section and NRS 125C.0601 to~~  
36 ~~125C.0693, inclusive, and chapter 130 of NRS:~~

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

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

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

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

52 ~~3. Any order for custody of a minor child entered by a court of another state~~  
53 ~~may, subject to the provisions of NRS 125C.0601 to 125C.0693, inclusive, and to~~

1 the jurisdictional requirements in chapter 125A of NRS, be modified at any time to  
2 an order of joint custody;

3 ~~4. A party may proceed pursuant to this section without counsel.~~

4 ~~5. Any order awarding a party a limited right of custody to a child must define~~  
5 ~~that right with sufficient particularity to ensure that the rights of the parties can be~~  
6 ~~properly enforced and that the best interest of the child is achieved. The order must~~  
7 ~~include all specific times and other terms of the limited right of custody. As used in~~  
8 ~~this subsection, "sufficient particularity" means a statement of the rights in absolute~~  
9 ~~terms and not by the use of the term "reasonable" or other similar term which is~~  
10 ~~susceptible to different interpretations by the parties.~~

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

14  
15 ~~PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION,~~  
16 ~~CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF~~  
17 ~~THIS ORDER IS PUNISHABLE AS A CATEGORY D FELONY AS~~  
18 ~~PROVIDED IN NRS 193.130. NRS 200.259 provides that every person~~  
19 ~~having a limited right of custody to a child or any parent having no right of~~  
20 ~~custody to the child who willfully detains, conceals or removes the child~~  
21 ~~from a parent, guardian or other person having lawful custody or a right of~~  
22 ~~visitation of the child in violation of an order of this court, or removes the~~  
23 ~~child from the jurisdiction of the court without the consent of either the~~  
24 ~~court or all persons who have the right to custody or visitation is subject to~~  
25 ~~being punished for a category D felony as provided in NRS 193.130.~~

26  
27 ~~7. In addition to the language required pursuant to subsection 6, all orders~~  
28 ~~authorized by this section must specify that the terms of the Hague Convention of~~  
29 ~~October 25, 1980, adopted by the 14th Session of the Hague Conference on Private~~  
30 ~~International Law, apply if a parent abducts or wrongfully retains a child in a~~  
31 ~~foreign country.~~

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

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

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

47 ~~9. Except where a contract providing otherwise has been executed pursuant to~~  
48 ~~NRS 123.080, and except as otherwise provided in section 1 of this act, the~~  
49 ~~obligation for care, education, maintenance and support of any minor child created~~  
50 ~~by any order entered pursuant to this section ceases:~~

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

52 ~~(b) When the child reaches 18 years of age if the child is no longer enrolled in~~  
53 ~~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.]~~ (Deleted by amendment.)