

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Eightieth Session
March 25, 2019**

The Senate Committee on Judiciary was called to order by Chair Nicole J. Cannizzaro at 8:10 a.m. on Monday, March 25, 2019, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Nicole J. Cannizzaro, Chair
Senator Dallas Harris, Vice Chair
Senator James Ohrenschall
Senator Marilyn Dondero Loop
Senator Melanie Scheible
Senator Scott Hammond
Senator Ira Hansen
Senator Keith F. Pickard

GUEST LEGISLATORS PRESENT:

Assemblywoman Lesley E. Cohen, Assembly District No. 29

STAFF MEMBERS PRESENT:

Patrick Guinan, Committee Policy Analyst
Andrea Franko, Committee Secretary

OTHERS PRESENT:

John T. Jones, Jr., Nevada District Attorneys Association
Nova Murray, Deputy Administrator, Division of Welfare and Supportive Services, Department of Health and Human Services

CHAIR CANNIZZARO:

I will open the Senate Committee on Judiciary with Senate Bill (S.B.) 248.

SENATE BILL 248: Revises provisions relating to domestic relations.
(BDR 11-38)

ASSEMBLYWOMAN LESLEY E. COHEN (Assembly District No. 29):

Divorce and child custody determinations can be costly and time consuming, leading to stress and mental anguish of all parties including children when involved. In instances of divorce, the law has made the process as efficient as possible by authorizing summary procedures. It is not the case in custody or legal separation cases. If a couple agrees on all aspects of the resolution, including support payments, property distribution and child custody issues, statute forces them to go to court. This measure expands the summary procedure process to other areas relating to permanent support, maintenance and child custody. In addition, the measure revises provisions relating to the relocation of parents and child. For example, a couple are in agreement, but the law requires one of them to be a plaintiff and one a defendant. You are already separated and you are served with a complaint. One of the parties feels he or she needs an attorney. Going to court causes added stress to an already stressful situation. Opening a case also burdens the court. What could have been a summary procedure has turned into a case the court has to address.

SENATOR KEITH PICKARD (Senatorial District No. 20):

Most litigants in family court do not have lawyers. When we force litigants into an adversarial posture, it causes additional stress on the family. If they have the resources available, they hire attorneys; if not, they do nothing. When both parties are representing themselves, one person will file a complaint and the other person does not do anything. The process is delayed and requires the court to be involved with the day-to-day instruction on how to proceed.

Senate Bill 248 makes revisions to summary procedures relating to child custody and legal separation. We call an order for permanent support and maintenance a legal separation. In legal separations, the marriage contract is not terminated. In some circumstances, we want to move easily from a legal separation to divorce. Nevada law requires only one party request a divorce, over the objection of the other party. Statute authorizes parties in a divorce to use a summary procedure to dissolve a marriage when both parties have waived spousal support, have no community liabilities or minor children from marriage

involved. In addition, statute authorizes a person to seek support, maintenance or legal separation without applying for divorce when desertion or abandonment has occurred.

Sections 2 through 4 and 9 through 11 create summary procedures for a person to seek permanent support and maintenance under the provisions of *Nevada Revised Statutes* (NRS) 125.190. The procedures are similar to the summary procedure for divorce. In addition sections 5 through 7 provide for an ex parte divorce by summary procedure when a judgment for permanent support, maintenance or a decree of legal separation is absent. A legal separation ends everything but the marital relationship. Under this circumstance, the measure provides the court may enter a decree of divorce upon notice to the other party and an opportunity for that other party to object. Nevada law allows for divorce even over the objection of the other party. Here, the objection to the petition for divorce after a legal separation will be limited to when parties had an agreement attached to the legal separation that should be considered or when one party has defrauded the other into first the legal separation and then the divorce. In these instances, a court may proceed to issue a judgment once proof of service and the opportunity to object has passed. In cases where child custody is involved, section 7 makes any part of the judgment of permanent support and maintenance continue in accordance of its terms and provide such a judgment is deemed to be a judgment of alimony.

Sections 15 through 18 create a summary procedure to determine child custody when parents or legal guardians have a child and have reached a detailed agreement on the custody, care, education, maintenance and support of the child. The court determines if using the summary procedure is in the best interest of the child. When the best interest of the child is being deliberated, section 19 provides the court must also consider whether the parents have established a detailed agreement on the division of rights and duties relating to the child and whether either parent is seeking joint custody primarily to avoid the payment of child support. Law requires a custodial parent or parent with joint custody who wishes to relocate with a child to obtain written consent of the noncustodial parent or petition the court for permission to relocate even if it occurs after a prior permission to relocate was granted.

Sections 20 and 21 authorize a parent who has relocated with the required consent to subsequently relocate without obtaining additional permission upon providing notice to the other parent at least 30 days before relocating.

However, if the stationary parent establishes the subsequent relocation will prevent contact with the child or participation in certain decisions concerning the child, consent of the court is required.

The law uses terms sole physical custody and primary physical custody within the statutory scheme. However, there is no statutory provision defining sole physical custody, only primary physical custody is defined. Sections 19 and 22 through 30 replace the term "sole" with "primary" for consistency and to conform to statutory authorization. Sections 1, 8 and 12 through 14 provide conforming changes.

SENATOR HAMMOND:

What is an example of a parent coming back to get permission of the court to relocate?

SENATOR PICKARD:

It is common within relocation cases. One party obtained consent from the court to relocate. If the parties have agreed to the relocation, the court will adopt it. If relocation was contested in the first instance, the parties will go to court; the relocating party will get permission, the stationary parent gets substitute visitation which is intended to maintain contact. If the relocating parent wants to move a second time, the assumption is the substitute visitation will continue. The relocating parent gives 30 days or more to the stationary parent. If the stationary parent believes subsequent relocation will impair their ability to maintain the relationship with the child, he or she files an objection. Many practitioners believe you must go to court every time you want to relocate, even if subsequent relocation makes no appreciable change to the situation.

SENATOR HAMMOND:

Section 14 of the bill, states "Nevada Rules of Civil Procedure as nearly as conveniently possible." Is this typical language? If not, can you explain why it is in the bill?

SENATOR PICKARD:

This language is a result of conversations with Legislative Council Bureau and practitioners. In the conceptual amendment ([Exhibit C](#)), section 14 is deleted.

SENATOR DONDERO LOOP:

Is there a specific case the bill is trying to work around?

SENATOR PICKARD:

We are trying to be sure there is no significant change to the substitute schedule enacted after the first relocation. The relocating parent is covering the costs; additional costs and inconvenience are on the relocating parent. It would not change the custodial schedule for the stationary parent. If the relocation impairs the stationary parent's ability to maintain contact, it would trigger another review to ensure the subsequent substitute visitation schedule continues to maintain the contact. We want to eliminate the ability of parents to use this as a tool to harass the other. One person relocates many times in the same area; why would we give the stationary parent the opportunity to go to court? If the moves do not change the stationary parent's visitation, we do not want to go back to court. This will relieve the court of the burden of reviewing every time. Most relocations occur when the stationary parent is disengaged. Why do we want the relocating parent to come back to Nevada every time they move when the coparent does not care to be involved?

SENATOR DONDERO LOOP:

I appreciate we do not want this to go back to the court every time, and we do not want the children in the middle. What other issues are we solving?

ASSEMBLYWOMAN COHEN:

The parents can go back to court. If one parent is moving and it is the same distance but not as convenient, they can go back to court. But this makes it easier when the move is no more of a hardship than the previous move. You do not have to go to court. If the move makes visitation inconvenient, the stationary parent can go back to court.

SENATOR DONDERO LOOP:

I am trying to figure out the logistics.

SENATOR PICKARD:

Ultimately, we are relieving the parent who is relocating with permission from having to come back to court every time he or she wants to move, even if the move does not change the undermining circumstance. In most cases, the stationary parent does not care, but the law requires the moving parent to come back to court every time. It burdens the courts unnecessarily. In most cases

both parties agree and they are allowed to make the move. They make adjustments to the logistics, but the visitation does not change. In instances where the visitation schedule changes, they must or should come back to court, revise the visitation schedule and have a new court order. This only affects the cases where underlying issues do not change.

SENATOR DONDERO LOOP:

Section 9 talks about no minor children, community or joint property. Would you go over section 9 again?

SENATOR PICKARD:

Section 9 is referring to a legal separation, permanent support and maintenance orders. There are a couple of typical situations in a legal separation. The parties do not want to live together, they have no children and no assets but do not want to terminate the marriage relationship. In those situations, they have to go to complaint and answer. It is a full adversarial situation. Often when attorneys get involved, it turns into litigation. We are trying to make it easy for people who have come to an agreement to merely submit an agreement to the court and get an order. It relieves the courts of a significant amount of time. Two-thirds of litigants are representing themselves.

If the parties agree, some things can continue past the separation. For example, for insurance, religious purposes or a joint account, community property continues past the point of separation. In these situations, the summary proceedings are not available.

SENATOR SCHEIBLE:

The language relates to married and divorced couples. What about parents who were never married?

SENATOR PICKARD:

Legal separation only applies to married couples. The custody is the most commonly used provision. We must determine custody regardless of the marital status. There is no summary proceeding for custodial matters. We are providing an option.

SENATOR SCHEIBLE:

Does this section of the law apply to parents regardless of marital status?

SENATOR PICKARD:
That is correct.

JOHN T. JONES, JR. (Nevada District Attorneys Association):
We submitted an amendment to S.B. 248 ([Exhibit D](#)) which makes a change in section 18, subsection 2. It adds NRS 125B.145 to that section and subsection. In NRS 125B.145 is the child support order modification statute. It makes clear you can still bring a motion before the child support court to these types of proceedings.

This is a friendly amendment, and we support S.B. 248.

SENATOR PICKARD:
We are comfortable with the amendment.

CHAIR CANNIZZARO:
We will close the Senate Hearing on S.B.248 and open the hearing on Senate Bill 277.

SENATE BILL 277: Revises provisions relating to the support of children.
(BDR 11-630)

SENATOR PICKARD:
The bill revises the provisions relating to child support. This bill addresses gross monthly income, the authority courts have to modify support orders and the factors constituting a change in circumstances for a child. Senate Bill 277 also ensures future changes to child support orders must comply with the definition of gross monthly income provided in the bill. The Committee to Review Child Support Guidelines and the Division of Welfare and Social Services (DWSS) submitted a proposed conceptual amendment ([Exhibit E](#)). The 2017 Legislature created the Committee to Review Child Support Guidelines and charged it with reviewing and updating Nevada's child support regulation. Federal law requires states review their child support calculation every four years to remain eligible for federal funds. The funds pay for the majority of our child support enforcement efforts in Nevada. However, because Nevada's calculation is found in statute, the review and revision had not taken place for over 20 years, threatening our continued funding.

Assembly Bill (A.B.) No. 278 of the 79th Session established the Committee to perform the review and move the calculation from statute to regulation under the Department of Health and Human Services. The process is in its final stages with adoption of the new regulation expected any day. In the process of deliberation by the Committee, it was discovered the courts of Nevada were inconsistent in what they considered income for purposes of calculating child support and other areas defining income. Unlike most other states, including Wisconsin, upon which our entire child support regime is based, Nevada does not have a definition of income. To rectify this, the Committee recommended the definition of income be dropped into the statutory scheme. Our definition is almost identical to Wisconsin. When to modify child support is another factor. Statutory grounds were beyond the authority, but the Committee recognized existing law was too narrow. The law allows modification of child support when a party's income changes more than 20 percent. Parents cannot request a modification of support even if there is a need to do so. This bill expands the courts permissible view to consider instances where a child emancipates or when expenses change significantly.

Section 4, subsections 1 through 4 revise the definition of gross monthly income for the purposes of calculating child support payments and set out the factors to be considered in making calculations. Arguably, the Committee was tasked with reviewing and revising the calculation but not expressly the definition of income as it also relates to other parts of statutory scheme not included in the definition sections. The bill places the definition of income within that section of NRS 125.150.

Section 4, subsection 1, paragraphs (a) through (n) on pages 6 and 7 are intended to capture income not contemplated by the current formula found in NRS 125B.070, which is vague given the complexity of today's finances. For example, if a party receives a personal injury settlement which replaces income, arguably, that is income; but if it is purely for noneconomic damages such as pain and suffering, it is not income, even if it is paid out over time. We have experienced a significant disparity between how the various courts north, south and rural handle various types of money or cash flow as opposed to income. Exclusions from the definition of gross monthly income are also listed on page 7. Excluded are child support, foster care or kinship care payments, which are not intended to be income but are by many courts. Supplemental Nutritional Assistance Program, public assistance benefits and personal injury awards are not included in lost income.

Section 7 authorizes the court to modify a support order when a review has been requested. A legal or factual change in circumstances is not required for a court to modify or adjust an order pursuant to this subsection, as long as the modification complies with the requirements of this section. In addition to the 20 percent change in gross monthly income and after the proposed amendment, these circumstance would now include the child's emancipation, a material change in the expenses of a child or change in a child's custodial arrangement whether or not a court ordered the change.

It is assumed when a child turns 18, the obligor no longer has to pay. In fact, it is not in the statute. Under circumstances where the child has emancipated, if the obligor does not seek modification, the court can and has maintained, since the prior order was in place, you are under the obligation of the court order and you are in arrears. This is an automatic trigger ending those types of payments.

The special needs of a child are discovered after an initial child support award. If the obligor's income has not changed by more than 20 percent, the court has no authority to make a modification. Both parents should be equally responsible to pay for the expenses of the special needs. This would authorize the obligee to seek a modification to recover half of the expenses, although that is an equitable determination by the courts. This would allow the modification to happen in a timely fashion and the custodial parent is not unduly burdened. Most cases are handled by the litigants. Often we see the parents will decide, after two or three years, the custodial arrangement is not working. They make a modification to suit them.

Section 9 stipulates any recommendation regarding the determination of the required support or a change in the amount of the child support order must be based on the definition of gross monthly income contained in this bill. We come full circle and make sure the appropriate factors are applied and remaining sections make conforming changes. Section 1 makes a slight change to NRS 125.150 at the end of subsection 12. Assembly Bill No. 278 of the 79th Session used an ambiguous definition this bill also seeks to clarify.

We are in the middle of the process where DWSS is adopting the regulation. Until adoption of the regulation, we are working with the language as is incorporated in the bill. Assembly Bill No. 278 of the 79th Session modified NRS 125.150 to add a definition of income that does not make sense as we examined it in the Committee. There are two sections of NRS 125.150. One

applies until the adoption of the new child support regulations, and one applies after the adoption. The intent of this bill is to replace the language in both sections, so clear language controls after the adoption of the DWSS regulations

SENATOR DONDERO LOOP:

I am concerned about the automation of child support. The parents have agreed to send children to college and get a divorce. What happens when a parent, financially capable of paying for college, decides not to pay?

SENATOR PICKARD:

Child support is awarded until the child is emancipated. It automates a trigger for cessation of child support. Child support continues until a child turns 18 or graduates high school. The bill allows the termination to occur as an operation of law, rather than another hearing to stop child support when it is time. The court has the ability to look at equitable reasons to set aside some of the community assets for a college education. It happens infrequently, but it is available.

SENATOR OHRENSCHALL:

Has the Family Law Section of the State of Nevada Bar taken a position?

SENATOR PICKARD:

This bill was not submitted as a bill the State Bar would endorse. There is a process in the State of Nevada Bar for endorsing bills. When we discussed A.B. No. 278 of the 79th Session, it was involved and the conceptual amendment included that entity.

CHAIR CANNIZZARO:

Why are we putting this into statute instead of regulation?

SENATOR PICKARD:

The definition of income goes beyond the need for defining income for child support. If we moved all of the definition of income to child support regulation, then it would apply to the child support regulation. Because we need the definition of gross income for purposes of alimony and other things, we needed it to stay in the statutory piece because the language we used in A.B. No. 278 of the 79th Session was too vague. It would have perpetuated problems. We thought it was best to modify NRS 125.150 with the definition of income. It

would apply across the entire statutory scheme and not be limited to child support.

CHAIR CANNIZZARO:

It was the intent of the bill to put the definition of gross monthly income into statute so it would apply to everything. How does it impact the work done by the Committee to Review Child Support Guidelines?

SENATOR PICKARD:

We are using the definition the Committee defined for the regulation. The federal requirement for review is for the calculation. We discovered the issue while we were discussing the best way to modify child support statutes. It deals with an issue going beyond the scope and authority of the Committee. It should have no negative effect on the Social Security Act under Title IV, Part D.

CHAIR CANNIZZARO:

Is the Committee putting into statute what was previously in regulation, so they can be reviewed?

The definition of gross monthly income would apply to more than child support situations; therefore, it should be in statute. It would apply to things such as alimony. We want it in statute because it goes beyond what the Committee would be studying. The two answers seem to be at odds.

SENATOR PICKARD:

The definition used in the bill is the definition proposed by the Committee. Because we recognize the term gross monthly income is used beyond the child support guidelines, we are proposing we move it into statute. The definitions are not inconsistent with each other, and the federal government requires the calculation be reviewed every four years, not the definition of income. Moving it from regulation to statute has no direct effect on the Committee.

CHAIR CANNIZZARO:

Did the Committee discuss moving it from statute to regulation?

SENATOR PICKARD:

Yes.

CHAIR CANNIZZARO:

Compensation for losses, both general and special damages, would not be intended to replace income and is not included as a source of income. It is in another section and would apply to gross monthly income. Can you explain why?

SENATOR PICKARD:

Noneconomic-related injuries are generally not included. It is not a loss of wages recovery, so these are excluded.

CHAIR CANNIZZARO:

Would it be things like damages, and why would we not include it in the definition of income?

SENATOR PICKARD:

Damages for lost income would be included because by definition those are a source of income such as interest income.

CHAIR CANNIZZARO:

Section 4, subsection 2, paragraph (g), on page 7, talks about compensation for general and special damages in personal injury awards not intended to replace income. Is it included as part of the definition of gross monthly income?

SENATOR PICKARD:

They relate to injuries and not income. For instance, a child lost a leg in an automobile accident; the child is getting compensated for the loss of the leg, not loss of income.

NOVA MURRAY (Deputy Administrator, Division of Welfare and Supportive Services, Department of Health and Human Services):

We are neutral. Initially we placed a fairly large fiscal note on the bill based on the language in section 7. The language has been changed, and there is no impact on the State. We are working with the sponsor to clear up the vague language in this section of the bill.

CHAIR CANNIZZARO:

Can you describe the vague language you are referring to?

MS. MURRAY:

Section 7, subsection 4, paragraph (c) indicates a material change in the expenses related to a child. We would like to see the material change have a set dollar amount or percentage.

MR. JONES:

The Nevada District Attorneys Association is also neutral.

SENATOR PICKARD:

We use the term material in order to give the court the ability to decide what is justifiable. We are happy to work with DWSS. The district attorneys in the various counties are responsible for handling the bulk of child support enforcement; if we can make lives easier, we are certainly willing.

CHAIR CANNIZZARO:

I am requesting Committee introduction of the following bill draft requests (BDRs): BDR 15-926, BDR 14-927, BDR 56-369, BDR 7-1147, BDR 2-1148, BDR 14-271, BDR 14-439, BDR 52-1146, BDR 15-1151 and BDR 40-1152.

BILL DRAFT REQUEST 15-926: Revises provisions relating to firearms. (Later introduced as [Senate Bill 439](#).)

BILL DRAFT REQUEST 14-927: Revises provisions relating to criminal procedure. (Later introduced as [Senate Bill 438](#).)

BILL DRAFT REQUEST 56-369: Enacts the Marijuana Limited Charter Banking and Credit Union Law. (Later introduced as [Senate Bill 437](#).)

BILL DRAFT REQUEST 7-1147: Revises provisions relating to the regulation of business entities by the Secretary of State. (Later introduced as [Senate Bill 436](#).)

BILL DRAFT REQUEST 2-1148: Revises provisions relating to automobile insurance. (Later introduced as [Senate Bill 435](#).)

BILL DRAFT REQUEST 14-271: Makes certain changes relating to marijuana, including revising provisions governing the transferability of medical marijuana establishment registration certificates, providing for dual licensing of medical and recreational marijuana facilities, providing for

state certification of marijuana products sold in Nevada, appropriating \$1 million to study the feasibility of creating a marijuana stock exchange in Las Vegas, appropriating \$1 million from the existing 10% excise tax on marijuana for medical marijuana research grants to be given out by the Department of Health and Human Services, authorizing local governments to issue offsite marijuana licenses to marijuana dispensary owners to allow for tasting and sale of marijuana products in certain settings such as coffee shops, revising state laws concerning driving while under the influence of marijuana to provide a rebuttable presumption when a person's blood level is over the legal limit, authorizing District Attorneys to expunge misdemeanor convictions relating to marijuana from a person's criminal record, and prohibiting employers, under certain circumstances, from testing for marijuana pre-employment or without probable cause post-employment. (Later introduced as [Senate Bill 434](#).)

BILL DRAFT REQUEST 14-439: Revises provisions relating to the concurrent jurisdiction of California and Nevada on Lake Tahoe and Topaz Lake. (Later introduced as [Senate Bill 433](#).)

BILL DRAFT REQUEST 52-1146: Revises provisions relating to litigation lending. (Later introduced as [Senate Bill 432](#).)

BILL DRAFT REQUEST 15-1151: Revises provisions relating to organized retail theft and online black market sales. (Later introduced as [Senate Bill 431](#).)

BILL DRAFT REQUEST 40-1152: Revises provisions relating to medical marijuana. (Later introduced as [Senate Bill 430](#).)

SENATOR HARRIS MOVED TO INTRODUCE BDR 15-926, BDR 14-927, BDR 56-369, BDR 7-1147, BDR 2-1148, BDR 14-271, BDR 14-439, BDR 52-1146, BDR 15-1151 and BDR 40-1152.

SENATOR DONDERO LOOP SECONDED THE MOTION.

SENATOR OHRENSCHALL:

I have a disclosure on BDR 14-271 and BDR 56-369. I am advising the Committee that my wife is employed as executive director of a trade association consisting of marijuana dispensaries and cultivators, which actively lobbies

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Legislature and other governmental entities on issues affecting its members. I will be abstaining from the motion.

THE MOTION CARRIED. (SENATOR OHRENSCHALL ABSTAINED FOR THE VOTE.)

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CHAIR CANNIZZARO:
We are adjourned at 9:12 a.m.

RESPECTFULLY SUBMITTED:

Andrea Franko,
Committee Secretary

APPROVED BY:

Senator Nicole J. Cannizzaro, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	4		Attendance Roster
S.B. 248	C	4	Senator Keith F. Pickard	Proposed Amendment
S.B. 248	D	2	Clark County Department of Administrative Services	Proposed Amendment
S.B. 277	E	1	Senator Keith F. Pickard	Proposed Amendment