

ASSEMBLY BILL NO. 370—ASSEMBLYMEN STEWART;
HICKEY AND WOODBURY

MARCH 17, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing child visitation.
(BDR 11-201)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to domestic relations; revising the factors a court is required to consider when determining whether to grant visitation rights with a child to certain persons; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law authorizes a district court to grant visitation rights to certain
2 relatives of an unmarried minor child, including a grandparent and great-
3 grandparent of the child, under certain conditions. Visitation rights may be granted
4 if the parent of the child is deceased, divorced or separated from the other parent,
5 has relinquished his or her parental rights or had his or her parental rights
6 terminated. Generally, the court may only grant visitation rights if the parent of the
7 child has denied or unreasonably restricted visits with the child and the person
8 seeking visitation overcomes the presumption that granting visitation rights is not in
9 the best interests of the child. To overcome the presumption, the person seeking
10 visitation rights must prove by clear and convincing evidence that such visitation
11 rights are in the best interests of the child. (NRS 125C.050) Clear and convincing
12 evidence is established by presenting evidence which shows each factual element to
13 be highly probable or evidence which is so clear as to leave no substantial doubt.
14 (*In re Drakulich*, 111 Nev. 1556 (1995))

15 This bill revises the factors the court must consider in determining whether a
16 person seeking visitation rights has rebutted the presumption that granting visitation
17 rights is not in the best interests of the child. Specifically, this bill provides that if
18 the child and the person seeking visitation rights do not have a prior relationship,
19 the court is required to consider: (1) any attempt by the person seeking visitation to
20 establish a meaningful relationship with the child; and (2) whether, if it were not for
21 a parent of the child denying or unreasonably restricting visits with the child, the
22 person seeking visitation would have had a meaningful relationship with the child.



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

- 1 **Section 1.** NRS 125C.050 is hereby amended to read as
2 follows:
3 125C.050 1. Except as otherwise provided in this section, if a
4 parent of an unmarried minor child:
5 (a) Is deceased;
6 (b) Is divorced or separated from the parent who has custody of
7 the child;
8 (c) Has never been legally married to the other parent of the
9 child, but cohabitated with the other parent and is deceased or is
10 separated from the other parent; or
11 (d) Has relinquished his or her parental rights or his or her
12 parental rights have been terminated,
13 ↳ the district court in the county in which the child resides may
14 grant to the great-grandparents and grandparents of the child and to
15 other children of either parent of the child a reasonable right to visit
16 the child during the child's minority.
17 2. If the child has resided with a person with whom the child
18 has established a meaningful relationship, the district court in the
19 county in which the child resides also may grant to that person a
20 reasonable right to visit the child during the child's minority,
21 regardless of whether the person is related to the child.
22 3. A party may seek a reasonable right to visit the child during
23 the child's minority pursuant to subsection 1 or 2 only if a parent of
24 the child has denied or unreasonably restricted visits with the child.
25 4. If a parent of the child has denied or unreasonably restricted
26 visits with the child, there is a rebuttable presumption that the
27 granting of a right to visitation to a party seeking visitation is not in
28 the best interests of the child. To rebut this presumption, the party
29 seeking visitation must prove by clear and convincing evidence that
30 it is in the best interests of the child to grant visitation.
31 5. The court may grant a party seeking visitation pursuant to
32 subsection 1 or 2 a reasonable right to visit the child during the
33 child's minority only if the court finds that the party seeking
34 visitation has rebutted the presumption established in subsection 4.
35 6. In determining whether the party seeking visitation has
36 rebutted the presumption established in subsection 4, the court shall
37 consider:
38 (a) The love, affection and other emotional ties existing between
39 the party seeking visitation and the child.
40 (b) The capacity and disposition of the party seeking visitation
41 to:



1 (1) Give the child love, affection and guidance and serve as a
2 role model to the child;

3 (2) Cooperate in providing the child with food, clothing and
4 other material needs during visitation; and

5 (3) Cooperate in providing the child with health care or
6 alternative care recognized and permitted under the laws of this
7 State in lieu of health care.

8 (c) The prior relationship between the child and the party
9 seeking visitation, including, without limitation, whether the child
10 resided with the party seeking visitation and whether the child was
11 included in holidays and family gatherings with the party seeking
12 visitation.

13 (d) *If the child and the party seeking visitation do not have a*
14 *prior relationship:*

15 (1) *Any attempt by the party seeking visitation to establish a*
16 *meaningful relationship with the child, including, without*
17 *limitation, any attempt to contact the child through a parent of the*
18 *child and any attempt to send birthday or holiday presents to the*
19 *child; and*

20 (2) *Whether, if it were not for a parent of the child denying*
21 *or unreasonably restricting visits with the child, the party seeking*
22 *visitation would have had a meaningful relationship with the*
23 *child.*

24 (e) The moral fitness of the party seeking visitation.

25 ~~(e)~~ (f) The mental and physical health of the party seeking
26 visitation.

27 ~~(f)~~ (g) The reasonable preference of the child, if the child has
28 a preference, and if the child is determined to be of sufficient
29 maturity to express a preference.

30 ~~(g)~~ (h) The willingness and ability of the party seeking
31 visitation to facilitate and encourage a close and continuing
32 relationship between the child and the parent or parents of the child
33 as well as with other relatives of the child.

34 ~~(h)~~ (i) The medical and other needs of the child related to
35 health as affected by the visitation.

36 ~~(i)~~ (j) The support provided by the party seeking visitation,
37 including, without limitation, whether the party has contributed to
38 the financial support of the child.

39 ~~(j)~~ (k) Any other factor arising solely from the facts and
40 circumstances of the particular dispute that specifically pertains to
41 the need for granting a right to visitation pursuant to subsection 1
42 or 2 against the wishes of a parent of the child.

43 7. If the parental rights of either or both natural parents of a
44 child are relinquished or terminated, and the child is placed in the
45 custody of a public agency or a private agency licensed to place



1 children in homes, the district court in the county in which the child
2 resides may grant to the great-grandparents and grandparents of the
3 child and to other children of either parent of the child a reasonable
4 right to visit the child during the child's minority if a petition
5 therefor is filed with the court before the date on which the parental
6 rights are relinquished or terminated. In determining whether to
7 grant this right to a party seeking visitation, the court must find, by a
8 preponderance of the evidence, that the visits would be in the best
9 interests of the child in light of the considerations set forth in
10 paragraphs (a) to ~~(i)~~ (j), inclusive, of subsection 6.

11 8. Rights to visit a child may be granted:

12 (a) In a divorce decree;

13 (b) In an order of separate maintenance; or

14 (c) Upon a petition filed by an eligible person:

15 (1) After a divorce or separation or after the death of a
16 parent, or upon the relinquishment or termination of a parental right;

17 (2) If the parents of the child were not legally married and
18 were cohabitating, after the death of a parent or after the separation
19 of the parents of the child; or

20 (3) If the petition is based on the provisions of subsection 2,
21 after the eligible person ceases to reside with the child.

22 9. If a court terminates the parental rights of a parent who is
23 divorced or separated, any rights previously granted pursuant to
24 subsection 1 also must be terminated, unless the court finds, by a
25 preponderance of the evidence, that visits by those persons would be
26 in the best interests of the child.

27 10. For the purposes of this section, "separation" means:

28 (a) A legal separation or any other separation of a married
29 couple if the couple has lived separate and apart for 30 days or more
30 and has no present intention of resuming a marital relationship; or

31 (b) If a couple was not legally married but cohabitating, a
32 separation of the couple if the couple has lived separate and apart
33 for 30 days or more and has no present intention of resuming
34 cohabitation or entering into a marital relationship.

