

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 custody of children; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law requires a court in a child custody proceeding to determine the
2 physical custody of a child based on the best interest of the child. Existing law
3 requires the court to consider several factors in determining the best interest of the
4 child, including the wishes of the child if he or she is of sufficient age and capacity
5 to form an intelligent preference concerning his or her physical custody. (NRS
6 125C.0035) **Section 5** of this bill: (1) requires a court to consider the wishes of the
7 child if he or she is 11 years of age or older; and provides that the wishes of the
8 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:

1 **Section 1.** (Deleted by amendment.)
2 **Sec. 2.** (Deleted by amendment.)
3 **Sec. 3.** (Deleted by amendment.)
4 **Sec. 4.** (Deleted by amendment.)
5 **Sec. 5.** NRS 125C.0035 is hereby amended to read as follows:
6 125C.0035 1. In any action for determining physical custody
7 of a minor child, the sole consideration of the court is the best
8 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



1 child, a parent of the child or any other person residing with the
2 child.

3 (I) Whether either parent or any other person seeking physical
4 custody has committed any act of abduction against the child or any
5 other child.

6 5. Except as otherwise provided in subsection 6 or NRS
7 125C.210, a determination by the court after an evidentiary hearing
8 and finding by clear and convincing evidence that either parent or
9 any other person seeking physical custody has engaged in one or
10 more acts of domestic violence against the child, a parent of the
11 child or any other person residing with the child creates a rebuttable
12 presumption that sole or joint physical custody of the child by the
13 perpetrator of the domestic violence is not in the best interest of the
14 child. Upon making such a determination, the court shall set forth:

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

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

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

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

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

29 (c) The likelihood of future injury;

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

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

34 ➤ In such a case, if it is not possible for the court to determine
35 which party is the primary physical aggressor, the presumption
36 created pursuant to subsection 5 applies to both parties. If it is
37 possible for the court to determine which party is the primary
38 physical aggressor, the presumption created pursuant to subsection 5
39 applies only to the party determined by the court to be the primary
40 physical aggressor.

41 7. A determination by the court after an evidentiary hearing
42 and finding by clear and convincing evidence that either parent or
43 any other person seeking physical custody has committed any act of
44 abduction against the child or any other child creates a rebuttable
45 presumption that sole or joint physical custody or unsupervised



1 visitation of the child by the perpetrator of the abduction is not in
2 the best interest of the child. If the parent or other person seeking
3 physical custody does not rebut the presumption, the court shall not
4 enter an order for sole or joint physical custody or unsupervised
5 visitation of the child by the perpetrator and the court shall set forth:

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

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

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

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

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

20 (c) An admission by the defendant to the court of the facts
21 contained in the charging document alleging a violation of NRS
22 200.310 to 200.340, inclusive, or 200.359 or a law of any other
23 jurisdiction that prohibits the same or similar conduct.

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

32 10. As used in this section:

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

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

38 **Sec. 6.** (Deleted by amendment.)

