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## Domestic Relations; Child Custody

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# Domestic Relations

## Domestic Relations; separate maintenance actions

N.R.S. §§125.190, 125.200, 125.210, 125.220, 125.240, 125.250, 125.280 (amended).

SB 246 (Committee on Judiciary); STATS 1981, Ch 87

Prior to the enactment of Chapter 87, *only* a wife could bring an action for separate maintenance against a husband.<sup>1</sup> Chapter 87 revises the Nevada law of separate maintenance by providing that *either spouse* may commence these actions.<sup>2</sup> Chapter 87 also makes concomitant changes in specific provisions of the law of separate maintenance.<sup>3</sup> These provisions relate to support payments pending the separate maintenance action,<sup>4</sup> assignment of the defendant spouse's property to the complaining spouse,<sup>5</sup> filing of a notice of a *lis pendens* against the defendant spouse's real property,<sup>6</sup> enforcement of the final judgment,<sup>7</sup> procedure and venue of the action,<sup>8</sup> and issuance of orders directing entry of judgment when the defendant spouse is in default of a prior order to pay money.<sup>9</sup>

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1. See NEVADA COMPILED LAWS 1929, §9468 (amending N.R.S. §125.190).

2. Compare N.R.S. §125.190 with NEVADA COMPILED LAWS 1929, §9468 (the action under prior law *and* under Chapter 87 can be brought without seeking a divorce when the complaining spouse, formerly the wife, had been deserted by the defendant spouse, formerly the husband, for 90 days, or had a cause of action for divorce against the defendant spouse).

3. Compare N.R.S. §§125.200, 125.210, 125.220, 125.240, 125.250 with NEVADA COMPILED LAWS 1929, §§9469, 9470, 9471, 9473, 9474. Compare N.R.S. §125.280 with STATUTES OF NEVADA 1955, c. 128, §2, at 183.

4. See N.R.S. §125.200.

5. See *id.* §125.210.

6. See *id.* §125.220.

7. See *id.* §125.240.

8. See *id.* §125.250.

9. See *id.* §125.280.

## Domestic Relations; child custody

N.R.S. §§125.— - 125.— (new); §125.140 (amended).

SB 188 (Committee on Judiciary); STATS 1981, Ch 148

In an attempt to further the state policy of promoting frequent as-

sociations and a continuing relationship between minor children<sup>1</sup> and their parents after separation or the dissolution of the marriage<sup>2</sup> and to encourage both parents to share in the responsibilities of bringing up the child,<sup>3</sup> Chapter 148 establishes a priority system for granting custody of children.<sup>4</sup> Specifically, custody should be granted first to the parents jointly,<sup>5</sup> second, to either parent,<sup>6</sup> third, to persons in whose home the child has been living and who have provided a stable and wholesome environment,<sup>7</sup> or finally, to any other suitable person capable of providing proper care and guidance.<sup>8</sup> This priority system, however, is subject to the best interest of the child as the *sole* consideration of the court in determining custody.<sup>9</sup>

Chapter 148 specifically authorizes the court to award joint custody to the parents if joint custody is in the best interest of the child.<sup>10</sup> If the parents have agreed to joint custody or agree in open court during a custody hearing, there is a presumption that joint custody is in the best interest of the child.<sup>11</sup> The court may order an investigation to aid in the determination of whether joint custody should be awarded.<sup>12</sup> If the court does not award joint custody after either parent has petitioned for it, the reasons for the denial must be stated in the decision.<sup>13</sup>

Under the provisions of Chapter 148, an order for joint custody is subject to modification or termination by the court on its own motion or upon a petition by one or both parents if modification or termination is necessary to preserve the best interest of the child.<sup>14</sup> If either parent is opposed to the modification or termination, the court must state the reasons for issuing the order in its decision.<sup>15</sup> In a related change, Chapter 148 permits a Nevada court to modify an order for custody entered by the court of another state to award joint custody<sup>16</sup> if all ju-

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1. See N.R.S. §129.010 (definition of age of majority).

2. *Id.* §125.— 1.

3. *Id.* §125.— 2.

4. See *id.* §125.— 3.

5. See *id.* §125.— 3(a).

6. See *id.*

7. See *id.* §125.— 3(b).

8. See *id.* §125.— 3(c). See also *id.* §125.— (when appropriate the court may require the parents to submit a plan for carrying out the custody order).

9. See *id.* §125.— 1. See also *id.* §125.— 4(a) (the child's preference may be considered in determining the best interest of the child if he or she is of sufficient age and capacity to form an intelligent preference).

10. See *id.* §125.— 1. See also *id.* §125.— 2 (the court may also award joint legal custody without awarding joint physical custody when both parents have agreed to it).

11. See *id.* §125.— 1.

12. See *id.* §125.— 3.

13. See *id.* §125.— 3(a)(1).

14. See *id.* §125.140 2.

15. *Id.*

16. See *id.* §125.140 3.

isdictional requirements are met.<sup>17</sup>

Second in order of statutory preference to joint custody is an award to either parent.<sup>18</sup> One of the factors the court must consider is which parent is most likely to allow the child to have frequent associations with the noncustodial parent.<sup>19</sup> Preference for one parent over the other for the sole reason that the parent is either the mother or the father is prohibited.<sup>20</sup> Furthermore, when custody is awarded to one parent, access to records and other information pertaining to the child cannot be denied to the other parent merely because he or she does not have custody.<sup>21</sup>

When neither joint custody nor sole parental custody is considered to be in the best interest of the child, custody is awarded, first, to any persons in whose home the child has been living and who have provided a wholesome and stable environment<sup>22</sup> or, second, to any other person the court finds suitable and able to provide proper care and guidance for the child.<sup>23</sup> Any nomination of a guardian for the child made by either parent must be considered by the court.<sup>24</sup> Prior to awarding custody to any person other than a parent, however, the court must find that parental custody would be detrimental to the child and that the best interest of the minor mandates awarding custody to a nonparent.<sup>25</sup> No allegation other than the ultimate fact that parental custody would be detrimental to the child may appear in the pleadings;<sup>26</sup> the court also may exclude the public from a hearing on this issue.<sup>27</sup>

17. See generally *id.* §§125A.010-125A.250 (Uniform Child Custody Jurisdiction Act).

18. See *id.* §125.— 3(a).

19. See *id.* §125.— 3(a)(2).

20. Compare *id.* §125.003 2 with STATUTES OF NEVADA 1979, c.269, §2, at 368 (amending N.R.S. §125.140). See also *Arnold v. Arnold*, 95 Nev. 951, 604 P.2d 109 (1979) (overruling the "tender years doctrine" of maternal preference enunciated in *Peavey v. Peavey*, 85 Nev. 571, 573, 460 P.2d 110, 111 (1969)).

21. See N.R.S. §125.— 2.

22. See *id.* §125.— 3(b).

23. See *id.* §125.— 3(c).

24. See *id.* §125.— 4(b).

25. See *id.* §125.— 1.

26. See *id.* §125.— 2.

27. See *id.* §125.— 3.

## Domestic Relations; child support—assignment of wages and assessment of fees

N.R.S. §31.— (new); §§31.463, 31.467, 126.291, 130.100, 130.115, 130.160, 130.190, 130.210, 130.280, 130.290 (amended).