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## Domestic Relations; Child Support and Establishing Paternity

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## Domestic Relations; child support and establishing paternity

Nev. Rev. Stat. §§125.—, 126.—, 126.—, 126.—, 126.—, (new); §§31.463, 126.021, 126.041, 126.051, 126.071, 126.081, 126.101, 126.105, 126.141, 126.161, 126.191, 126.201, 126.231, 126.241, 126.251, 126.261, 126.281, 126.291, 126.295, 126.301, 126.371. 130.140, 130.245, 130.305, 201.020, 286.670, 440.280 (amended). SB 472 (Wagner); 1983 STAT. Ch 585

Chapter 585 was enacted in an apparent attempt to clarify provisions regarding the establishment of a parent-child relationship<sup>1</sup> and to simplify recovery of child support from the noncustodial parent.<sup>2</sup> While maintaining the general substance of existing law,<sup>3</sup> Chapter 585 simplifies statutory language and eliminates repetitive provisions.<sup>4</sup> Additionally, Chapter 585 expressly states that certain provisions governing the obligation of support will apply to the parents of *all* children, whether or not legitimated.<sup>5</sup>

### *Establishment of Paternity*

Existing law specifies the appropriate parties who can bring a cause of action to establish the existence or nonexistence of a father-child relationship.<sup>6</sup> Under Chapter 585, those existing provisions are simplified by consolidation.<sup>7</sup> Moreover, existing law provides that a cause of action brought to determine paternity is not barred until three years after the child reaches the age of majority.<sup>8</sup> Prior law permitted the

1. NEV. REV. STAT. §126.021(3) (definition of parent-child relationship, which includes father-child and mother-child relationships).

2. See 1983 Nev. Stat. c. 585, §§3-6, at 1866 (Chapter 585 also modifies existing law by including the word *physical* when referring to the custody of a child).

3. See generally NEV. REV. STAT. §§126.011-.391.

4. Compare NEV. REV. STAT. §126.051 (amended by 1983 Nev. Stat. c. 585, §8, at 1868) with 1979 Nev. Stat. c. 599, §6, at 1270 (enacting NEV. REV. STAT. §126.051).

5. 1983 Nev. Stat. c. 585, §2, at 1866; see 1983 Nev. Stat. c. 585, §8(2)(c), at 1868 (acknowledgement by both parents as to the parentage of a child makes the child legitimate from birth, and the birth must be documented as provided in NEV. REV. STAT. §§440.270, 440.280, 440.290).

6. See NEV. REV. STAT. §126.071 (amended by 1983 Nev. Stat. c. 585, §9, at 1869) A child, the natural mother, a man presumed or alleged to be the father or an interested third party may bring an action to declare the existence or nonexistence of a father-child relationship. *Id.*

7. Compare NEV. REV. STAT. §126.071 (amended by 1983 Nev. Stat. c. 585, §9, at 1869) with 1979 Nev. Stat. c. 599, §8, at 1271 (enacting NEV. REV. STAT. §126.071). Consequently, this section no longer delineates the specific sections under which each party can bring a cause of action. Instead, only one code section governs who may bring a cause of action to determine paternity. NEV. REV. STAT. §126.071 (amended by 1983 Nev. Stat. c. 585, §9, at 1869).

8. NEV. REV. STAT. §126.081 (amended by 1983 Nev. Stat. c. 585, §10(1), at 1870).

welfare division,<sup>9</sup> when acting on behalf of a child receiving public assistance,<sup>10</sup> to bring a cause of action to establish paternity within one year after the child had become a recipient of public assistance or within three years after the birth of the child, whichever event was later.<sup>11</sup> Chapter 585 eliminates this provision, and simply provides that *any* action brought to declare the existence or nonexistence of a father-child relationship is not barred until three years after the child reaches the age of majority.<sup>12</sup> In addition, if both the mother and father execute an affidavit acknowledging paternity, the presumption of paternity will be conclusive.<sup>13</sup>

*Child Support Obligations; Procedures*

Under Chapter 585, a demand in writing directed to the noncustodial parent requesting payment of support on behalf of the minor child will toll the statute of limitations for bringing an action regarding that support.<sup>14</sup> Existing law requires that the mother and each man presumed or alleged to be the father be made parties to the action.<sup>15</sup> Where the natural mother and each man presumed or alleged to be the father were not subject to the jurisdiction of the court, and therefore could not be made parties to the action, prior law required notice of the action and an opportunity to be heard.<sup>16</sup> Chapter 585 deletes the provision requiring notice and an opportunity to be heard and mandates that the natural mother and each man presumed or alleged to be the father be made parties to the action in all cases.<sup>17</sup> Additionally, prior law provided that an oral complaint in a proceeding to compel the payment of child support could be made if the complaint was reduced to writing in the presence of the complainant.<sup>18</sup> With the enactment of Chapter 585, the complaint must be written *and* verified, and no longer can be made orally.<sup>19</sup>

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9. *Id.* §422.055 (Welfare Division of the Department of Human Resources).

10. *Id.* §422.050 (definition of public assistance).

11. 1981 Nev. Stat. c. 660, §2, at 1573 (amending NEV. REV. STAT. §126.081).

12. *Compare* NEV. REV. STAT. §126.081 (amended by 1983 Nev. Stat. c. 585, §10, at 1870) with 1981 Nev. Stat. c. 660, §2, at 1573 (amending NEV. REV. STAT. §126.081).

13. 1983 Nev. Stat. c. 585, §36(6), at 1879 (the presumption of paternity is conclusive if not revoked or rescinded within six months after the filing of the affidavit with the State Registrar or after the attainment of the age of majority of the person seeking revocation or rescission, whichever is later).

14. *Id.* c. 585, §5, at 1867.

15. NEV. REV. STAT. §126.101 (amended by 1983 Nev. Stat. c. 585, §11, at 1870).

16. *Compare id.* §126.101 (amended by 1983 Nev. Stat. c. 585, §11, at 1870) with 1981 Nev. Stat. c. 660, §3, at 1573 (amending NEV. REV. STAT. §126.101).

17. NEV. REV. STAT. §126.101 (amended by 1983 Nev. Stat. c. 585, §11, at 1870).

18. 1923 Nev. Stat. c. 87, §10, at 143 (enacting NEV. REV. STAT. §126.120, substituted in revision for §126.295).

19. *Compare* NEV. REV. STAT. §126.295 (amended by 1983 Nev. Stat. c. 585, §26, at 1875)

Prior law, in setting forth the provisions for service of process, distinguished between a person identified as the natural father and a person presumed to be or claiming to be the father in an action to determine the existence or nonexistence of a father-child relationship.<sup>20</sup> Chapter 585 eliminates this distinction by providing that service of process is to be made pursuant to Rule 4 of the Nevada Rules of Civil Procedure<sup>21</sup> or by registered mail with proof of actual receipt.<sup>22</sup> In addition, prior law provided for the appointment of counsel to represent parties in an action determining the existence of a parent-child relationship.<sup>23</sup> Prior law also provided that the court may require the prosecuting attorney to represent the obligee in certain child support cases.<sup>24</sup> Chapter 585 consolidates these provisions by permitting the court to appoint counsel to represent any party financially unable to obtain counsel in an action regarding (1) the determination of the existence or nonexistence of a parent-child relationship, or (2) the duty of support.<sup>25</sup>

### *Judgments or Orders Regarding Support*

Pursuant to existing law, the court may require a parent to provide security for the payment of a judgment resulting from proceedings to compel the payment of support.<sup>26</sup> Under prior law, the security was forfeited and applied to the judgment if the defendant did not appear in the proceedings.<sup>27</sup> Chapter 585 deletes this provision and requires the court to proceed with the action as if the defendant were present.<sup>28</sup>

Prior to the enactment of Chapter 585 either parent was allowed to recover a reasonable share of the necessary costs of supporting the child.<sup>29</sup> Under Chapter 585, however, where the parents are separated,

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with 1923 Nev. Stat. c. 87, §10, at 143 (enacting NEV. REV. STAT. §126.120, substituted in revision for §126.295).

20. Compare NEV. REV. STAT. §126.105 (amended by 1983 Nev. Stat. c. 585, §12, at 1870) with 1981 Nev. Stat. c. 660, §1, at 1573 (enacting NEV. REV. STAT. §126.105).

21. See NEV. R. CIV. P. 4(d)-(e) (personal service or service by publication).

22. 1983 Nev. Stat. c. 585, §12, at 1870.

23. 1979 Nev. Stat. c. 599, §21, at 1276 (enacting NEV. REV. STAT. §126.201) (where the party was financially unable to obtain counsel).

24. 1969 Nev. Stat. c. 346, §48, at 609 (enacting NEV. REV. STAT. §130.305) (where the obligee is financially unable to obtain counsel or where the obligor has not complied with a support order or agreement for at least six months).

25. Compare NEV. REV. STAT. §126.201 (amended by 1983 Nev. Stat. c. 585, §18, at 1873) with 1979 Nev. Stat. c. 599, §21, at 1276 (enacting NEV. REV. STAT. §126.201) and 1969 Nev. Stat. c. 346, §48, at 609 (enacting NEV. REV. STAT. §130.305).

26. NEV. REV. STAT. §126.301.

27. Compare *id.* §126.301 (amended by 1983 Nev. Stat. c. 585, §27, at 1875) with 1979 Nev. Stat. c. 599, §36, at 1280 (amending NEV. REV. STAT. §126.301, substituted in revision for §126.190).

28. NEV. REV. STAT. §126.301 (amended by 1983 Nev. Stat. c. 585, §27, at 1875. §27, at 1875).

29. Compare *id.* §126.251 (amended by 1983 Nev. Stat. c. 585, §21, at 1873) with 1979 Nev.

only the parent with physical custody may recover a reasonable portion of the cost of support from the parent without physical custody.<sup>30</sup> Moreover, prior law provided that the parent with physical custody was limited to recovering the value of three years support prior to the action.<sup>31</sup> In the absence of a court order, Chapter 585 extends the recovery period to four years.<sup>32</sup> This four year limitation will also apply to actions brought on behalf of parents by third parties.<sup>33</sup> In addition, Chapter 585 mandates that a court granting a divorce, separate maintenance, or annulment must first provide for the care and support of a minor child residing in the state.<sup>34</sup>

Finally, under prior law, the court had continuing jurisdiction to modify or revoke a judgment or order concerning the parent-child relationship, custody, or support.<sup>35</sup> Chapter 585 provides that the court will have continuing jurisdiction only to modify judgments or orders concerning custody, visitation, or support.<sup>36</sup>

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Stat. c. 599, §31, at 1279 (amending NEV. REV. STAT. §126.251, substituted in revision for §126.040).

30. NEV. REV. STAT. §126.251 (amended by 1983 Nev. Stat. c. 585, §21, at 1873).

31. Compare *id.* §126.251 (amended by 1983 Nev. Stat. c. 585, §21, at 1873) with 1979 Nev. Stat. c. 599, §31, at 1279 (amending NEV. REV. STAT. §126.251, substituted in revision for §126.040).

32. NEV. REV. STAT. §126.251 (amended by 1983 Nev. Stat. c. 585, §21, at 1873).

33. See *id.* §126.261 (amended by 1983 Nev. Stat. c. 585, §22, at 1874). This four year limitation on reimbursement from the nonsupporting parent also applies to actions by third persons other than parents who are seeking recovery, including the legal representatives of the parents or public agencies furnishing support. *Id.*

34. 1983 Nev. Stat. c. 585, §29, at 1875.

35. Compare NEV. REV. STAT. §126.191 (amended by 1983 Nev. Stat. c. 585, §17, at 1873) with 1979 Nev. Stat. c. 599, §20, at 1276 (enacting NEV. REV. STAT. §126.191).

36. NEV. REV. STAT. §126.191 (amended by 1983 Nev. Stat. c. 585, §17, at 1873) (except that a court entering a judgment or order for the payment of a lump sum or the purchase of an annuity may specify that the order may not be modified or revoked).