

Custody and Paternity Process

1.5 Hour CLE Training

Friday, May 9, 2014
11:30 a.m. – 1:00 p.m.

Presenters:

**The Honorable Mathew Harter,
Family Court, Dept. N**

**Stephanie McDonald, Esq.,
Family Law Self Help Center,
Legal Aid Center of Southern
Nevada**

Sponsored by:

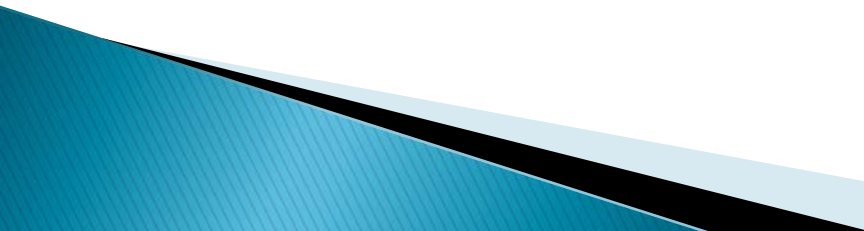
LEGAL AID CENTER¹⁹⁵⁸
■■■■ *of Southern Nevada*

MAY 9, 2014

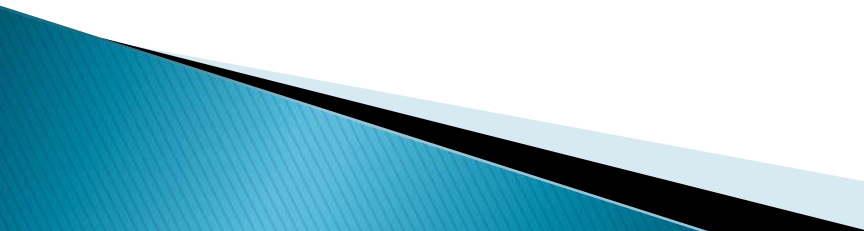
**▶ PATERNITY &
CUSTODY IN NEVADA**



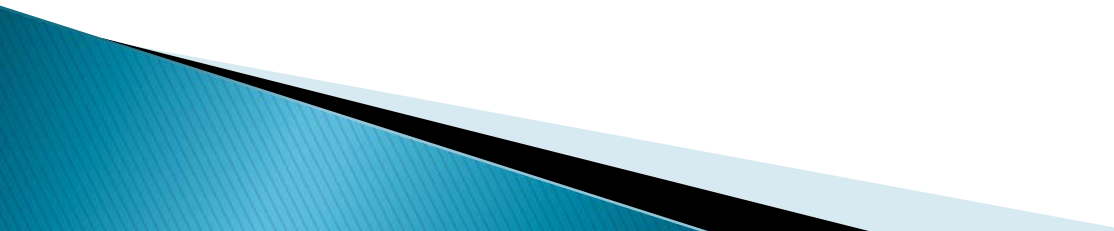
GOALS OF A CUSTODY / PATERNITY CASE

- ▶ Determine paternity of minor children
 - ▶ Establish legal custody
 - ▶ Establish physical custody / visitation
 - ▶ Establish child support and health insurance
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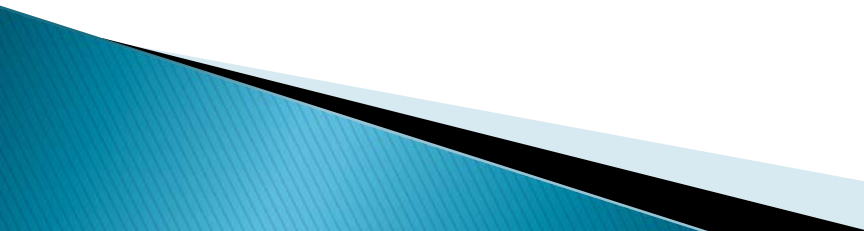
JURISDICTION

- ▶ **Personal jurisdiction over the parties**
Residency requirements – 6 weeks
 - ▶ **Subject matter jurisdiction**
Applies to the children – is Nevada the right state to issue custody orders?
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UCCJEA

- ▶ Uniform Child Custody Jurisdiction and Enforcement Act – NRS 125A
 - ▶ Determines which court has jurisdiction to enter, modify or enforce child custody orders between competing states
- 

INITIAL CUSTODY JURISDICTION

- ▶ Nevada is the home state of the child or was the home state within 6 months prior to filing
 - Home State = State where child lived for 6 consecutive months, or since birth (if under 6 months)
 - ▶ There is no home state, or the home state has declined jurisdiction in favor of Nevada, AND:
 - The child and at least one parent have a significant connection with Nevada; or
 - Substantial evidence is in Nevada concerning the child's care, protection, and personal relationships
 - ▶ All courts having jurisdiction have declined in favor of Nevada.
 - ▶ No other state has jurisdiction.
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COMPETING JURISDICTIONS

- ▶ If there are competing cases in different states, the judges will confer to determine the proper state under the UCCJEA.
 - The parties “may” be allowed to participate.
 - The parties must be allowed to present facts and arguments before a decision is made.
 - A record must be made, and the parties must be granted access to the record.

PATERNITY

- ▶ Do the parties agree that “Dad” is the Dad?
 - If yes, file a Complaint for Custody
 - If no, file a Complaint for Paternity

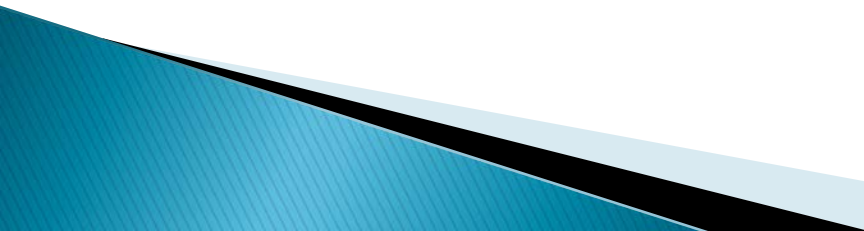
- ▶ Look For:
 - Court order has already established paternity
 - Father is named on the birth certificate
 - Father signed a Voluntary Acknowledgment of Paternity

VOLUNTARY ACKNOWLEDGEMENT OF PATERNITY

- ▶ If Dad is on the birth certificate, he probably signed this!
- ▶ A voluntary declaration of paternity:
 - “shall be deemed to have the same effect as a judgment or order of a court determining the existence of the relationship of parent and child”
NRS 126.053

RESCINDING THE VOLUNTARY ACKNOWLEDGEMENT OF PATERNITY

- ▶ Either party can rescind the acknowledgment:
 - Within 60 days; or
 - Before an administrative or judicial proceeding relating to the child begins if that person is a party to the proceeding
 - WHICHEVER HAPPENS FIRST.

 - ▶ The acknowledgment cannot be challenged after 60 days except on the grounds of:
 - Fraud
 - Duress
 - Material mistake of fact
- 

HOW TO ESTABLISH PATERNITY

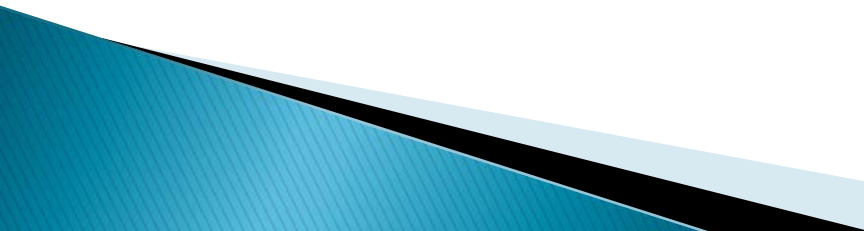
- ▶ Presumptions of Paternity from NRS 127.051:
 - Mom and Dad are or have been married to each other and the child is born during the marriage, or within 285 days after the marriage ends.
 - Mom and Dad lived together for at least 6 months before the period of conception and continued to cohabit through the period of conception.
 - Before the child's birth, Mom and Dad attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is invalid or could be declared invalid, and:
 - If the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 285 days after its termination by death, annulment, declaration of invalidity or divorce; or
 - If the attempted marriage is invalid without a court order, the child is born within 285 days after the termination of cohabitation.
 - While the child is under the age of majority, Dad receives the child into his home and openly holds out the child as his natural child.

HOW TO ESTABLISH PATERNITY, CONT.

▶ DNA TESTING

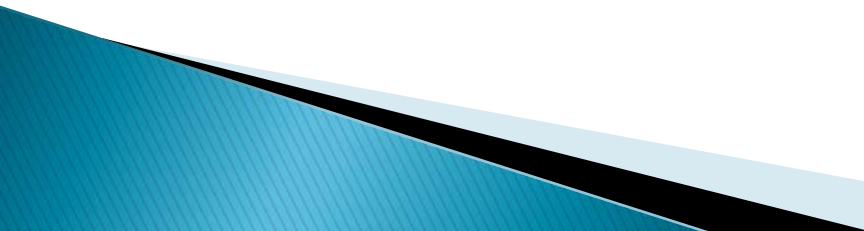
- The court may, and shall upon the motion of a party, order the mother, child, alleged father or any other person so involved to submit to DNA testing. (NRS 126.121)
- If DNA test shows a probability of 99 percent or more that a man is the father, there is a conclusive presumption that he is the natural father of a child (NRS 126.051(2))
 - Presumption can be rebutted if Dad shows he has an identical sibling who may be the father.

WHO'S THE DADDY?

- ▶ Mom is married to Andrew when the child is born.
 - ▶ Mom lived with Bob 6 months prior to conception up until the birth of the child.
 - ▶ Immediately after the birth, Mom moves in with Charlie. Charlie receives the child into his home and holds out the child as his own.
 - ▶ All men take DNA tests, which exclude them all.
 - ▶ Conflicting Presumptions – Court decides the father based on the “weightier considerations of policy and logic.” NRS 126.051(3)
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CUSTODY IN NEVADA

STATE POLICY

- ▶ NRS 125.460 states that it is the policy of this State:
 1. To ensure that minor children have frequent associations and a continuing relationship with both parents after the parents have become separated or have dissolved their marriage; and
 2. To encourage such parents to share the rights and responsibilities of child rearing.
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LEGAL CUSTODY

“Legal custody involves having basic legal responsibility for a child and making **major decisions** regarding the child, *including* the child's health, education, and religious upbringing.”

Rivero v. Rivero, 125 Nev. 410, 420-21, 216 P.3d 213, 221-22 (2009) (Rivero II)

▶ Joint Legal Custody

- ▶ Both parents have a say in the decisions regarding the children.
- ▶ Joint legal custody can exist regardless of the physical custody arrangements of the parties.
- ▶ Joint legal custody **requires** that the parents be able to *cooperate, communicate, and compromise* to act in the best interest of the child. In a joint legal custody situation, the parents *must consult* with each other to **make major decisions** regarding the child's upbringing, while the parent with whom the child is residing at that time usually makes minor day-to-day decisions.
- ▶ The parents need not have equal decision-making power in a joint legal custody situation. For example, one parent may have decision making authority regarding certain *areas* or *activities* of the child's life, such as *education* or *healthcare*. If the parents in a joint legal custody situation reach an impasse and are unable to agree on a decision, then the parties may appear before the court “on an equal footing” to have the court decide what is in the best interest of the child.

▶ Sole Legal Custody

- One parent makes all decisions

PHYSICAL CUSTODY

Refers to where the child physically lives.

- ▶ **Joint Physical Custody**
 - Parties share custody of the children
 - Does not have to be an equal split: 40% – 60%

- ▶ **Primary Physical Custody**
 - Children live with one parent more than 60% of the time
 - Visitation with non-custodial parent

- ▶ **Sole Physical Custody**
 - Children live with one parent
 - May or may not have visitation with other parent

ESTABLISHING CUSTODY

▶ NRS 126.031

- The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.


▶ NRS 125.480

- (1) In determining custody of a minor child in an action brought under this chapter, **the sole consideration of the court is the best interest of the child.**
- (2) Preference **must not** be given to either parent for the sole reason that the parent is the mother or the father of the child.

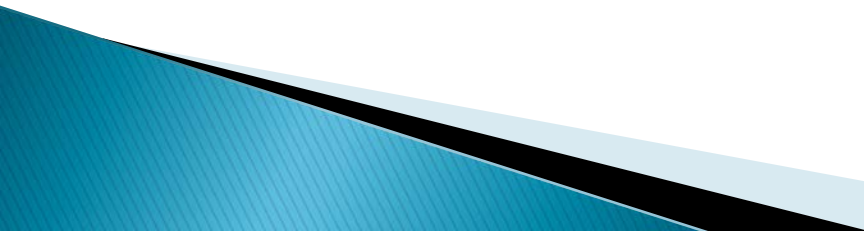
NRS 125.480

- ▶ **IN DETERMINING THE BEST INTEREST OF THE CHILD, THE COURT SHALL CONSIDER AND SET FORTH ITS SPECIFIC FINDINGS OF FACTS CONCERNING, *AMONG OTHER THINGS***
- ▶ (a) The **wishes of the child** if the child is of sufficient age and capacity to form an intelligent preference as to his or her custody.
- ▶ (b) Any nomination by a parent or a guardian for the child.
- ▶ (c) Which parent is **more likely to allow** the child to have frequent associations and a **continuing relationship** with the noncustodial parent.

NRS 125.480, CONT.

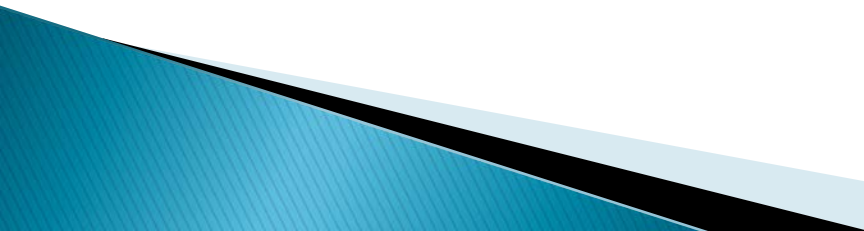
- ▶ (d) The **level of conflict** between the parents
 - ▶ (e) The **ability of the parents to cooperate** to meet the needs of the child.
 - ▶ (f) The **mental and physical** health of the parents
 - ▶ (g) The **physical, developmental and emotional needs** of the child.
 - ▶ (h) The **nature of the relationship** of the child with each parent.
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NRS 125.480, CONT.

- ▶ (i) The ability of the child to maintain a relationship with any **sibling**.
 - ▶ (j) Any history of parental **abuse or neglect** of the child or a sibling of the child.
 - ▶ (k) Whether either parent or any other person seeking custody has engaged in an act of **domestic violence** against the child, a parent of the child or any other person residing with the child.
 - ▶ (l) Whether either parent or any other person seeking custody has committed any **act of abduction** against the child or any other child.
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DOMESTIC VIOLENCE

▶ NRS 125.480(5)

- A determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking custody has engaged in one or more acts of domestic violence against the child, a parent of the child or any other person residing with the child creates **a rebuttable presumption** that sole or joint custody of the child by the perpetrator of the domestic violence is not in the best interest of the child.
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- ▶ TPO – Office at Family Court
 - Standard of Proof – satisfaction of the Court
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PARENTAL ABDUCTION

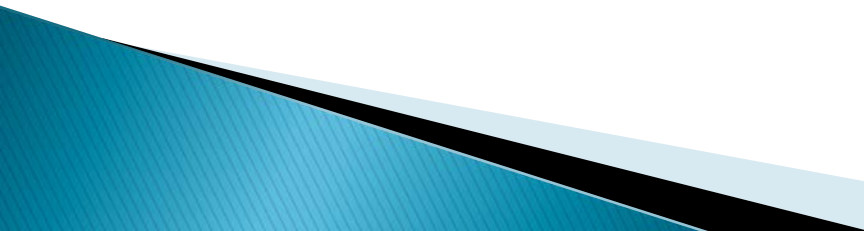
▶ NRS 125.480(7)

- A determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking custody has committed any act of abduction against the child or any other child **creates a rebuttable presumption** that sole or joint custody or unsupervised visitation of the child by the perpetrator of the abduction is **not** in the best interest of the child.

NON-ENUMERATED FACTORS

- ▶ Court acknowledged trial court's consideration of " the background of the parents, their relationship with the children before and after separation, their financial circumstances, the educational training of the children, the physical accommodations available for them, and the moral environment." Sisson v. Sisson, 77 Nev. 478, 484-85, 367 P.2d 98, 101 (1961).
- ▶ In determining best interests, the Court found the father had the more stable living environment considering his home environment, work history and marital status. Primm v. Lopez, 109 Nev. 502, 853 P.2d 103 (1993).
- ▶ The Court held that when determining the best interests of a child, a parent's immigration status is a factor that the district court may consider. Rico v. Rodriguez, 120 P.3d 812, 121 Nev. 695 (2005).

IMPLICATIONS OF PHYSICAL CUSTODY ORDER

- ▶ Child support
 - ▶ Who claims the child on their taxes
 - ▶ The burden to relocate out of Nevada
 - ▶ The burden to modify custody
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MODIFYING CUSTODY

- ▶ What standard does the Court use?
- ▶ “. . . [W]e hold that a district court has the discretion to deny a motion to modify custody without holding a hearing unless the moving party demonstrates *adequate cause* for holding a hearing. *Adequate cause* requires something more than allegations which, if proven, might permit inferences sufficient to establish grounds for a custody change. Adequate cause arises where the moving party presents a prima facie case for modification. To constitute a prima facie case **it must be shown** that:
 - (1) the facts alleged in the affidavits are relevant to the grounds for modification; and
 - (2) the evidence is not merely cumulative or impeaching.”

Rooney v. Rooney, 109 Nev. 540, 853 P.2d 123 (1993).

DE FACTO CUSTODY

- ▶ What is the De Facto Custody Arrangement?
- ▶ “The district court must evaluate the true nature of the custodial arrangement, pursuant to the definition of joint physical custody described above, by evaluating the arrangement the parties are exercising in practice, regardless of any contrary language in the divorce decree.”
 - ▶ Rivero v. Rivero, 125 Nev. 410, 430, 216 P.3d 213, 227 (2009)

MODIFYING JOINT PHYSICAL CUSTODY

▶ **NRS 125.510(2):**

- Any order for joint custody may be modified or terminated by the court upon the petition of one or both parents **or on the court's own motion** if it is shown that the best interest of the child *requires* the modification or termination.

▶ **NRS 125.490 (1):**

- There is a presumption, affecting the burden of proof, that joint custody would be in the best interest of a minor child if the parents have agreed to an award of joint custody or so agree in open court at a hearing for the purpose of determining the custody of the minor child or children of the marriage.

MODIFYING PRIMARY PHYSICAL CUSTODY

- ▶ [A] modification of primary custody is warranted only when:
 - (1) there has been a **substantial change of circumstances affecting the welfare of the child,**
and
 - (2) **the child's best interest** is served by the modification.

Ellis v. Carucci, 123 Nev. 145, 150-52 , 161 P.3d 239, 242-43 (2007).

MODIFYING PRIMARY PHYSICAL CUSTODY, CONT

- ▶ Changed Circumstances:
 - Must have occurred since the last custody order was entered.
 - Courts must not take this prong lightly – the prong “serves the important purpose of guaranteeing stability”
- ▶ Best Interest:
 - Courts apply the factors from NRS 125.480(4) as well as any other relevant considerations.

MODIFYING NON-PARENT CUSTODY

- ▶ If a court awarded custody to a non-parent:

“ . . . [A] parent seeking to modify custody must show that the circumstances of either the parent or non-parent have been materially altered and that the child's welfare would be substantially enhanced by the change in custody.”

Hudson v. Jones, 138 P.3d 429, 122 Nev. 708 (2006).



MEDIATION

- ▶ **Family Mediation Center (EDCR 5.70)**
 - Parties are routinely sent to mediation at FMC
- ▶ **When a party should file for mediation:**
 - When a contested answer is filed
 - If a Motion for Custody and Complaint for Divorce are filed simultaneously, the moving party must also complete a Request and Order for Mediation.
 - The Court may at any time, upon its own motion, refer the parties to mediation.

COPE CLASS

▶ EDCR 5.07

- All parties in contested custody cases must complete a seminar for separating parents

▶ Providers:

- Palo Verde – (702) 243-4357
<http://www.paloverdechild.org/>
- Family Solutions – (702) 395-8417
<http://www.familysolutionslv.org/>
- The Center for Divorce Education – (online)
<http://online.divorce-education.com/>

RESOURCES

- ▶ Legal Aid Center of Southern Nevada, Inc.
 - www.lacsn.org
- ▶ Self Help Center – located at the Family Court, 601 North Pecos Road, Las Vegas, Nevada
 - www.clarkcountycourts.us/shc/
- ▶ Willick Law Group
 - www.willicklawgroup.com
- ▶ Family Court docket
 - www.clarkcountycourts.us/Anonymous

1. State Policy

NRS 125.460 states that it is the policy of this State:

1. To ensure that minor children have **frequent associations and a continuing relationship** with both parents after the parents have become separated or have dissolved their marriage; and
2. To encourage such parents to share the rights and responsibilities of child rearing.

2. Establishing Custody

NRS 126.031(1) states:

The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

In Turner v. Saka, 92 Nev. 108, 546 P.2d 233 (1976), the Court indicated that “the best interests of the child” standard was to be used when determining parental relationships (custody/visitation) of parties that are not married.

NRS 125.480 states:

1. In determining custody of a minor child in an action brought under this chapter, **the sole consideration of the court is the best interest of the child**. If it appears to the court that joint custody would be in the best interest of the child, the court may grant custody to the parties jointly
2. Preference **must not** be given to either parent for the sole reason that the parent is the mother or the father of the child.¹
3. The court shall award custody in the following order of preference unless in a particular case the best interest of the child requires otherwise:
 - (a) To both parents jointly pursuant to [NRS-125.html](#)NRS 125.490 or to either parent. If the court does not enter an order awarding joint custody of a child after either parent has applied for joint custody, the court shall state in its decision the reason for its denial of the parent’s application.

¹Arnold v. Arnold, 95 Nev. 951, 604 P.2d 109 (1979) (“Tender Years Doctrine” expressly revoked.).

(b) To a person or persons in whose home the child has been living and where the child has had a wholesome and stable environment.²

(c) To any person related within the fifth degree of consanguinity to the child whom the court finds suitable and able to provide proper care and guidance for the child, regardless of whether the relative resides within this State.

(d) To any other person or persons whom the court finds suitable and able to provide proper care and guidance for the child.

4. In determining the best interest of the child, the court **shall** consider and set forth its specific findings concerning, *among other things*:

(a) The **wishes of the child** if the child is of sufficient age and capacity to form an intelligent preference as to his custody.

(b) Any nomination by a parent or a guardian for the child.

(c) Which parent is **more likely to allow** the child to have frequent associations and a **continuing relationship** with the noncustodial parent.

(d) The **level of conflict** between the parents.

(e) The **ability of the parents to cooperate** to meet the needs of the child.

(f) The **mental and physical** health of the parents.

(g) The **physical, developmental and emotional needs of the child**.³

(h) The **nature of the relationship of the child with each parent**.

(i) The ability of the child to maintain a relationship with any **sibling**.

(j) Any history of parental **abuse or neglect** of the child or a sibling of the child.

(k) Whether either parent or any other person seeking custody has engaged in an act of **domestic violence**⁴ against the child, a parent of the child or any other person residing with the child.

(l) Whether either parent or any other person seeking custody has committed any **act of abduction**⁵ against the child or any other child.

²Under **NRS 125.500(1)**, before the court makes an order awarding custody to any person other than a parent, without the consent of the parents, it **shall make a finding that** [1] an award of custody to a parent would be **detrimental to the child and** [2] the award to a non-parent is required to serve the **best interests of the child**. This statutory provision is known as the "parental preference" presumption. It must be "overcome either by a showing that the parent is [1] **unfit** or other [2] **extraordinary circumstances**." *Litz v. Bennum*, 111 Nev. 35, 38, 888 P.2d 438, 440 (1995).

³Compare NRS 128.005(2)(c) ("continuing needs of a child for proper physical, mental and emotional growth and development are the decisive considerations in proceedings for termination of parental rights"); NRS 128.107(2) (the Court "shall consider, without limitation . . . the physical, mental or emotional condition and needs of the child").

⁴NRS 33.018

⁵NRS 200.359

5. Except as otherwise provided in subsection 6 or NRS 125C.210, a determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking custody has engaged in one or more acts of domestic violence against the child, a parent of the child or any other person residing with the child **creates a rebuttable presumption** that sole or joint custody of the child by the perpetrator of the domestic violence is not in the best interest of the child.

...

7. A determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking custody has committed any act of abduction against the child or any other child **creates a rebuttable presumption** that sole or joint custody or unsupervised visitation of the child by the perpetrator of the abduction is not in the best interest of the child.

...

NRS 125.490 states:

1. There is a presumption, affecting the burden of proof, that joint custody would be in the best interest of a minor child if the parents have agreed to an award of joint custody or so agree in open court at a hearing for the purpose of determining the custody of the minor child or children of the marriage.
2. The court may award joint legal custody without awarding joint physical custody in a case where the parents have agreed to joint legal custody.
3. For assistance in making a determination whether an award of joint custody is appropriate, the court may direct that an investigation be conducted.

3. Examples of non-enumerated/caselaw factors

Sisson v. Sisson, 77 Nev. 478, 484-85, 367 P.2d 98, 101 (1961) (Court acknowledged trial court's consideration of "the background of the parents, their relationship with the children before and after separation, their financial circumstances, the educational training of the children, the physical accommodations available for them, and the moral environment.").

Primm v. Lopez, 109 Nev. 502, 853 P.2d 103 (1993) (in determining best interests, the Court found the father had the more stable living environment considering his home environment, work history and marital status).

Rico v. Rodriguez, 120 P.3d 812, 121 Nev. 695 (2005) the Court held that when determining the best interests of a child, a parent's immigration status is a factor that the district court may consider

4. Legal Custody

Rivero v. Rivero, 125 Nev. 410, 420-21, 216 P.3d 213, 221-22 (2009) (Rivero II) (*extensive citations omitted*):

Legal custody involves having basic legal responsibility for a child and making **major decisions** regarding the child, *including* the child's **health, education, and religious upbringing**. Sole legal custody vests this right with one parent, while joint legal custody vests this right with both parents. Joint legal custody **requires** that the parents be able to *cooperate, communicate, and compromise* to act in the best interest of the child. In a joint legal custody situation, the parents **must consult** with each other **to make major decisions** regarding the child's upbringing, while the parent with whom the child is residing at that time usually makes minor day-to-day decisions.

Joint legal custody can exist regardless of the physical custody arrangements of the parties. Also, **the parents need not have equal decision-making power in a joint legal custody situation**. For example, **one parent may have decision making authority regarding certain areas or activities** of the child's life, such as *education or healthcare*. If the parents in a joint legal custody situation reach an impasse and are unable to agree on a decision, then the parties may appear before the court “on an equal footing” to **have the court decide what is in the best interest of the child**.

5. Modification of Custody

A) ADEQUATE CAUSE

In Rooney v. Rooney, 109 Nev. 540, 853 P.2d 123 (1993), the Court held

District Court are granted broad discretion when determining child custody matters. Given such discretion in this area, we hereby adopt an *adequate cause* standard. That is, we hold that a district court has the discretion to deny a motion to modify custody without holding a hearing unless the moving party demonstrates *adequate cause* for holding a hearing. *Adequate cause* requires something more than allegations which, if proven, *might permit inferences sufficient to establish grounds for a custody change*. *Adequate cause* arises where the moving party presents a prima facie case for modification. To constitute a prima facie case **it must be shown** that: (1) the facts alleged in the affidavits are relevant to the grounds for modification; and (2) the evidence is not merely cumulative or impeaching. [*Internal Citations Omitted*].

B) DE FACTO MODIFICATION

“The type of physical custody arrangement is **particularly important in three situations**: [custody modifications, relocations, child support].” 125 Nev. 410, 422, 216 P.3d 213, 222.

“**The district court must evaluate** the true nature of the custodial arrangement, pursuant to the definition of joint physical custody described above, by evaluating **the arrangement the parties are exercising in practice, regardless of any contrary language in the divorce decree.**” **Rivero v. Rivero**, 125 Nev. 410, 430, 216 P.3d 213, 227 (2009):

The district court should calculate the time during which a party has physical custody of a child over one calendar year. Each parent must have physical custody of the child at least 40 percent of the time, which is 146 days per year. Calculating the timeshare over a one-year period allows the court to consider weekly arrangements as well as any deviations from those arrangements such as emergencies, holidays, and summer vacation. In calculating the time during which a party has physical custody of the child, the district court should look at the number of days during which a party provided **supervision** of the child, the child **resided with the party**, and during which the party **made the day-to-day decisions** regarding the child. The district court should not focus on, for example, the exact number of hours the child was in the care of the parent, whether the child was sleeping, or whether the child was in the care of a third-party caregiver or spent time with a friend or relative during the period of time in question. 125 Nev. 410, 427, 216 P.3d 213, 225.

C. MODIFICATION OF JOINT PHYSICAL CUSTODY

NRS 125.510(2): Any order for joint custody may be modified or terminated by the court upon the petition of one or both parents **or on the court’s own motion if it is shown that the best interest of the child requires the modification or termination.** The court shall state in its decision the reasons for the order of modification or termination if either parent opposes it.

Mosely v. Figliuzzi, 113 Nev. 51, 930 P.2d 1110 (1997) (overturning an order changing joint custody to every other weekend labeling it “**parentectomy** and in a certain sense, a **parricide**”):

NRS 125.490 provides that when parents ‘have agreed to an award of joint custody’ (as was the case here), there is a ‘presumption, affecting the burden of proof, that the joint custody would be in the best interest of the minor child’ and a statutory ‘order of preference’ [NRS 125.480(3)] which states as a first preference an award to both parents jointly unless the court is willing to ‘state in its decision the reasons’ for the denial of joint custody. **It does not appear from our reading of the record that in terminating joint custody the court gave effect to the stated ‘presumption’ or ‘preference’ or that it stated in its decision any reason for denying joint custody. 113 Nev. at 60, 930 P.2d at 1116.**

...
We stress the risks that are involved in terminating the joint custody in this case and

in changing father-custody to father-visitation. As we point out throughout this opinion, significant differences do emerge in social science studies between one-parent and two-parent families, differences that will most likely affect the future life of Michael. 113 Nev. at 64-65, 930 P.2d at 1118.

D. MODIFICATION OF PRIMARY CUSTODY

Ellis v. Carucci, 123 Nev. 145, 150-52 , 161 P.3d 239, 242-43 (2007):

[A] modification of primary custody is warranted only when (1) there has been a **substantial change of circumstances affecting the welfare of the child, and** (2) **the child's best interest** is served by the modification. Under this revised test, the party seeking a modification of custody bears the burden of satisfying both prongs.

...

The 'changed circumstances' prong of the revised test **serves the important purpose of guaranteeing stability** unless circumstances have changed to such an extent that a modification is appropriate. In determining whether the facts warrant a custody modification, **courts should not take the 'changed circumstances' prong lightly**. Moreover, any change in circumstance must generally have occurred since the last custodial determination. [McMonigle]

...

In making a determination as to whether a modification of custody would satisfy the 'best interest' prong of the revised test, courts should look to the factors set forth in NRS 125.480(4) as well as any other relevant considerations.

E. MODIFICATION OF NON-PARENT CUSTODY

After a district court grants a non-parent joint legal and primary physical custody of a child, the parental preference doctrine does not apply to subsequent motions to modify custody. Instead, a parent seeking to modify custody must show that the **circumstances of either the parent or non-parent have been materially altered and that the child's welfare would be substantially enhanced by the change in custody**. Hudson v. Jones, 138 P.3d 429, 122 Nev. 708 (2006).