



# CHILD CUSTODY 101

FACTORS

DIFFERENCES

AND THE BEST INTERESTS OF THE CHILD

# Does the Court have Jurisdiction?

- ▶ A Court can **only** enter an order on physical custody if it is the child's Home State
- ▶ NRS 125A.085 – “Home State”
  1. The state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months, including any temporary absence from the state, immediately before the commencement of a child custody proceeding.
  2. In the case of a child less than 6 months of age, the state in which the child lived from birth, including any temporary absence from the state, with a parent or a person acting as a parent.

# What if there is a dispute over Home State?

- ▶ UCCJEA Hearing – Must prove to the Court in the state you're seeking custody that they have a greater interest in deciding the matter than another forum
- ▶ In your initial petition for custody or divorce state you need this hearing set
- ▶ Factors to consider:
  1. Safety of child, (did parent flee from domestic violence in other state?)
  2. Resources available/set up for child in state parent is seeking an order from
  3. Other compelling interests of forum state

# Different Actions for Custody

## Divorce

- ▶ Different forms or documents to file with court
- ▶ Both parents presumed to have equal rights to custody – Joint Custody
- ▶ If child born during marriage  
Husband is presumed to be the natural father

## Never Married

- ▶ Can be initiated by either parent
- ▶ Court will look to names on birth certificate, if father held child out to be his own, and may order DNA/paternity testing
- ▶ Mother no longer presumed for primary custody



# Sole, Primary, Joint



# Physical vs. Legal Custody

► Legal Custody refers to major decisions impacting a child, such as:

1. Schooling
2. Religious upbringing
3. Medical decisions

► Physical Custody refers to the type of visitation and where and who child is physically spending time.

Example: Child lives with mother one week, father the next week.

Example 2: Child lives full time with mother but sees father from 9 – 5:00 on Sundays.

# Sole Custody

## Why would someone want this?

- ▶ One parent has sole physical custody of the child and can dictate what visitation (if any) other parent receives
- ▶ One parent has total say over legal custody decisions, such as school and medical
- ▶ Can still receive child support from non-custodial parent
- ▶ Preferred for cases with severe domestic violence, but generally not in the best interests of the child

# Primary Custody

- ▶ Refers to Physical custody only
- ▶ Child lives most of the time with one parent but still has visitation with non-custodial parent

Example: Father has primary physical custody but child sees mother every other weekend from Friday at 5:00 P.M. to Sunday at 5:00 P.M.



# Joint Custody

## **NRS 125C.0015 Parents have joint custody until otherwise ordered by court.**

- ▶ 1. The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.
- ▶ 2. If a court has not made a determination regarding the custody of a child, each parent has joint legal custody and joint physical custody of the child until otherwise ordered by a court of competent jurisdiction.
- ▶ A court may award joint legal custody without awarding joint physical custody (NRS 125C.002).

# Joint Custody Continued

- ▶ Joint custody does not mean 50/50 – It can mean 60/40, or even 65/35, or sometimes an even greater differential
- ▶ Often seen in cases where a parent works for the mines and has an extended work calendar for up to 9 or 10 days in a row
- ▶ Is important for tax reasons; parents can alternate claiming child



# Best Interests of the Child

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# NRS 125C.0035

1. In any action for determining physical custody of a minor child, the sole consideration of the court is the best interest of the child. If it appears to the court that joint physical custody would be in the best interest of the child, the court may grant physical 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.

► There are 12 factors the Court looks at when determining the best interests of the child

# The Factors

- (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 physical custody.
- (b) Any nomination of a guardian for the child by a parent.
- (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.



# The Factors Continued

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

# Factors Still Continued

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

- Presumption against Domestic Violence: If item (K) applies and can be proven with testimony, reports, ect., then there is a **rebuttable** presumption that sole, primary, or joint physical custody with the abuser is not in the child's best interests.

# Do children get a say in physical custody?

- ▶ Children 14 years and older can specify a custody preference
- ▶ Multiple issues involving child testimony on preference and it is generally (in my personal experience) not encouraged.
- ▶ Notion that child will say wants to live with one parent over the other because one parent is less strict, or child is being manipulative



# Child Support

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# Child Support and Custody

**NRS 125B.070 – Obligation for support means the sum certain dollar amount determined according to the following schedule, based off a parent's gross monthly income from all sources:**

- (1) For one child, 18 percent;**
- (2) For two children, 25 percent;**
- (3) For three children, 29 percent;**
- (4) For four children, 31 percent; and**
- (5) For each additional child, an additional 2 percent**



# Child Support and Presumptive Maximums

- Specific Formulas to determine amount of monthly child support in cases of sole or primary custody with one parent –

Gross Monthly Income Range is between:	Presumptive maximum monthly support
\$0 - \$4,168	\$500
\$4,168 - 6,251	\$550
\$6,251 - 8,334	\$600
\$8,334 - 10,418	\$650
\$10,418 - 12,501	\$700
\$12,501 - 14,583	\$750

# Child Support and Joint Custody

- ▶ The higher wage earner will pay support based on the following formula:

## Example Calculation for Joint Physical Custody

Dad's gross monthly income is **\$4,000** per month,

Mom's gross monthly income is **\$3,000** per month,

And they have **one child**

Dad's child support

**\$720** (18% of \$4,000)

Mom's child support

**\$540** (18% of \$3,000)

Dad to pay mom the difference

**\$180 per month**

# Child Support Continued

- ▶ Regardless of income the presumptive **minimum** amount of child support is \$100 per month, per child – This applies even if the obligor parent is out of work/not working
- ▶ The court MAY deviate from the schedule and enforce lower or higher child support payments after having made special findings (i.e. child has special needs, cost of health insurance, ect.)
- ▶ Child Support is to be paid until the child is 18, or, if still in high school, 19
- ▶ Social Security can be garnished for child support
- ▶ The District Attorney's Office is in charge of collecting child support in cases where one parent isn't paying their obligation – fines and sanctions will accrue on top of owed amount
- ▶ Child support never goes away – can have arrears from as far back as 40 years ago



# Parent Crafted Custody Agreements

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# The Best Kind of Custody

- ▶ Parents can draft whatever type of custody plan they feel is best for their child
- ▶ Can be more creative and free than court designated custody plan
- ▶ Preferred by all courts
- ▶ Unless it violates some rule or law, the court will grant pretty much all parent drafted custody plans



# Resources in Washoe

Help!

# Resources

## Second Judicial District Court

75 Court Street

Reno, NV 89501

[www.washoecourts.com](http://www.washoecourts.com)

Forms and Packets

Family Related Forms

# More Resources

## Lawyer in the Library

Tuesdays at 4:25 P.M.

75 Court St.

Room 101

Reno, NV 89501

## WLS Forms Clinic

299 S Arlington Ave

Reno, NV 89501

775-329-2727



# QUESTIONS?