



POLICY AND PROGRAM REPORT



Domestic Relations and Family Law

April 2016

One important subset of the Nevada justice system addresses interactions that take place within family units, including adoption, divorce, marriage, and other matters. These matters figure prominently in the well-being of all Nevadans.

MARRIAGE

Marriage in Nevada is a civil contract requiring the consent of each party and a formal ceremony before witnesses known as “solemnization.” Nevada does not recognize common-law marriages begun after March 29, 1943. Persons who are at least 18 years of age may marry. A person who is 16 or 17 years of age may marry with the consent of a parent or guardian, and a person less than 16 years of age may marry with the consent of a parent or guardian and the approval of a district court. No two persons who are closer in relationship than second cousins may marry.

In 2002, Nevada’s voters approved a constitutional amendment specifying that Nevada recognizes only a marriage between a male and a female. However, the 2013 Legislature approved Senate Joint Resolution No. 13 (File No. 43, *Statutes of Nevada*), which proposed to amend the *Nevada Constitution* to provide that the State of Nevada and its political subdivisions will recognize marriages and issue licenses to couples regardless of gender. Religious organizations and clergy would have the right to refuse to perform marriages, and no person would have the right to make a claim against a religious organization or clergy for such refusal. All legally valid marriages would be treated equally under the law. The 2015 Legislature also approved S.J.R. 13 in exactly the same form as in 2013, and it will be placed on the 2016 General Election ballot for final decision by the voters. While the S.J.R. 13 process plays out, in 2014, the United States Courts for the Ninth Circuit, Court of Appeals, ruled that Nevada’s prohibition on same-sex marriage was unconstitutional and, as of the writing of this report, Nevada does allow same-sex marriage.

Persons who wish to marry in Nevada must obtain a marriage license from the county clerk, but there is no residency requirement. In Clark County, the county clerk is the commissioner of civil marriages, and in other counties containing a township whose population is 15,500 or more, the board

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of county commissioners may appoint the county clerk to act as the commissioner. After obtaining a certificate of permission from the county clerk, any appointed, licensed, or ordained minister or other person authorized to solemnize a marriage who is in good standing with his or her church or religious organization organized in Nevada may perform a marriage. In addition, a commissioner of civil marriage, Supreme Court justice, district court judge, justice of the peace, municipal judge, or notary public may also perform a marriage. The Secretary of State must maintain a statewide database of persons authorized to solemnize a marriage.

DOMESTIC PARTNERSHIPS

In 2009, the Legislature enacted statutes relating to domestic partnerships. Two persons may register a domestic partnership with the Secretary of State if they have a common residence, are not married or a member of another domestic partnership, are not related by blood in a way that would prevent them from being married to each other in Nevada, are both at least 18 years of age, and are both competent to consent to the partnership.

Domestic partners have the same benefits, duties, obligations, protections, responsibilities, and rights as are granted to and imposed upon spouses. However, no employer is required to provide health care benefits to the domestic partner of an employee.

Domestic partners may terminate the partnership by filing a statement with the Secretary of State declaring that both partners have chosen to terminate the partnership, but only if the partnership has been registered for five years or less; there are no minor children of the relationship or the parties have executed an agreement regarding child custody and support; there is no community or joint property or the parties have executed an agreement regarding the division of property and liabilities; the parties waive any rights to support or have executed an agreement setting forth the amount and manner of support; and the parties waive any right to conduct of divorce proceedings. Otherwise, to terminate a partnership, the partners must follow the procedures for a divorce.

DIVORCE

To file for divorce, a person must have resided in Nevada for at least six weeks, unless the cause of action occurred in Nevada while both parties were actually domiciled here. There are three causes of action for divorce: (1) incompatibility; (2) insanity; or (3) one year of separation without cohabitation.

Nevada is a community property state. Unless the action is contrary to an enforceable premarital agreement, the court must, to the extent practicable, make an equal disposition of the community property, except that the court may make an unequal distribution as it deems just.

In granting a divorce, the court may award alimony to either party and may set apart a portion of either party's property for child support or spousal support. The Legislature has identified a list of factors the court must consider in determining whether to award alimony and the amount of the award.

A married couple may commence a summary proceeding for divorce by filing a joint petition with the court, provided that:

- They have been separated for one year without cohabitation or are incompatible;
- There are no minor children of the relationship and the wife is not pregnant, or the parties have executed an agreement regarding child custody and support;
- There is no community or joint property or the parties have executed an agreement regarding the division of property and liabilities;
- The parties waive any rights to spousal support or have executed an agreement setting forth the amount and manner of support; and
- The parties waive their rights to written notice of entry of the divorce decree, to appeal, to request findings of fact and conclusions of law, and to move for a new trial.

CHILD CUSTODY AND VISITATION

The Legislature has declared that it is the policy of the State to ensure that minor children have frequent associations and a continuing relationship with both parents after a separation or divorce and to encourage parents to share the rights and responsibilities of raising children. In determining custody of a minor child in a divorce action, the sole consideration of the court is the best interest of the child. The Legislature has identified an order of preference for awarding custody—with the first preference being joint custody or custody by either parent—and a list of factors the court must consider in determining the best interest of the child.

The Uniform Child Custody Jurisdiction and Enforcement Act of 1997, which addresses issues involving child custody cases that cross state lines, and the Uniform Child Abduction Prevention Act of 2006, which authorizes a court to order measures to prevent an abduction in a child custody proceeding if the court determines there is a credible risk of abduction, were enacted by the Nevada Legislature in 2003 and 2007, respectively. A similar measure, also enacted in Nevada in 1997, is the Uniform Interstate Family Support Act, which provides universal and uniform rules for the enforcement of family support orders.

With the continued possibility of overseas deployment, addressing custody issues and attending hearings is an increasing problem for military personnel. Because of this, the 2013 Legislature approved Assembly Bill 358 (Chapter 204, *Statutes of Nevada*) to enact the Uniform Deployed Parents Custody and Visitation Act and replace Nevada's existing laws on these subjects. When a parent of a child receives military deployment orders, the bill requires the parents to communicate regarding custody and visitation issues as soon as possible, declares that no permanent custody order may be entered before or during deployment without the service member's consent, and declares that the residence of the deploying parent is not changed by reason of the deployment.

When imminent deployment is not an issue, A.B. 358 prohibits a court from using a parent's past deployment or possible future deployment itself as a negative factor in determining the best interests of the child during a custody proceeding.

CHILD SUPPORT AND PARENTAGE

In Nevada, parents have a statutory duty to provide for a child's necessary education, health care, maintenance, and support, whether the child was born in or out of wedlock. Nevada's statutes contain a child support formula, based on the parent's gross monthly income and the number of children, subject to a minimum and presumptive maximum amount. The court may award a greater or lesser amount, if supported by evidence, and may modify the amount in some situations.

The obligation to support a minor child ends when the child turns 18 years of age or, if the child is enrolled in high school, 19 years of age.

A person may bring an action in district court to determine parentage. Such an action is not barred until three years after the child turns 18 years of age. After a hearing, the court may recommend a settlement including dismissal of the action or compromise by agreement, in which the alleged father assumes a defined economic obligation.

In some circumstances involving abandonment, neglect, or unfitness, a court may terminate parental rights. There is a procedure for the restoration of parental rights if the child has not been adopted.

ADOPTION

An adult person or married couple may petition a district court to adopt a child. A child welfare agency or licensed child-placing agency may accept children from parents or guardians for adoption and may consent to adoption of children. The person who adopts a child must be at least 10 years older than the child, and if the child is over 14 years of age, the child must consent to the adoption.

With some exceptions, all adoption proceedings are confidential and must be held in closed court. The Division of Child and Family Services in the Department of Health and Human Services maintains the State Register for Adoptions, which includes information submitted voluntarily to identify adults who were adopted and persons related to them.

A child welfare agency may grant financial assistance for the costs of adopting and maintaining a child with special needs due to age, mental or physical problems, or race.

Nevada has entered into the Interstate Compact on the Placement of Children, relating to cooperation among the states in the interstate placement of children, and the Interstate Compact on Adoption and Medical Assistance, relating to the interests of the states in obtaining adoptive families for children with special needs.

SOURCES OF ADDITIONAL INFORMATION

Clark County Family Law Self-Help Center: <http://www.familylawselfhelpcenter.org/>.

National Council of Juvenile and Family Court Judges: <http://www.ncjfcj.org/>.

National Court Appointed Special Advocate Association: <http://www.casaforchildren.org/>.

Nevada Legal Resources Directory: <http://www.nvlawdirectory.org/>.

Family Court Self Help Center, Second Judicial District Court, Washoe County, State of Nevada:
<https://www.washoecourts.com/index.cfm?page=selfhelp>.

STATE CONTACT INFORMATION

Division of Welfare and Supportive Services
Department of Health and Human Services
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