

CHANGE OF CUSTODY:

If a parent desires to change custody, the current physical custody status of the parents must be evaluated to determine which test to apply:

JOINT PHYSICAL CUSTODY: If you and the other parent share joint physical custody of the child(ren), and one of you wishes to be awarded primary physical custody of the child(ren):

NRS 125.510(2) specifically describes when a joint custody arrangement may be revisited and modified by the court:

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.

Pursuant to Truax vs. Truax, 110 Nev. 437 (1994):

Truax Test: joint custody may be modified or terminated by the Court when it is shown that the best interest of the child requires the modification or termination.

PRIMARY PHYSICAL CUSTODY: If one of the parents has primary physical custody of the child(ren), and the other parent is seeking a change of custody such that the other parent will be awarded joint or primary physical custody of the child(ren):

Pursuant to Ellis vs. Carucci, 161 P.3d 239 (2007):

Ellis Test: A modification of primary physical custody is warranted only when
(1) there has been a substantial change in circumstances affecting the welfare of the child, and
(2) the child's best interest is served by the modification

The Court cautioned that “The "changed circumstances" prong of the [Ellis] 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 circumstances must generally have occurred since the last custody determination.”

In Ellis, the Court heard testimony from the minor child's teacher that the minor child's academic preparation and performance had slipped while in her mother's primary care. The district court concluded that the minor child experienced a "sufficient decline" in her academic performance, which constituted a substantial change in circumstances affecting her welfare. In addition, the district court found that the modification served the minor child's best interest by allowing her father more time to be involved in her education.

IN EITHER SCENARIO:

Pursuant to NRS 125.480(4), the Court shall also evaluate the following factors in determining the best interest of the child(ren):

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.
- (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 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.