LEGISLATIVE BILL 1014

Approved by the Governor April 16, 2008

Introduced by Ashford, 20.

FOR AN ACT relating to courts; to amend sections 24-303, 24-508, 24-730, 25-534, 25-1129, 25-1130, 29-1816, 42-357, 42-925, 43-272.01, 43-276, 43-1311, 43-1312, 43-1411.01, 43-1608, 43-1609, 43-1610, 43-1611, 43-1612, and 43-1613, Reissue Revised Statutes of Nebraska, sections 24-312, 24-517, 24-1301, 24-1302, 25-2704, 25-2733, 25-2740, 29-2246, 29-3927, 43-247, 43-2,129, 43-2404.02, 43-3001, 79-215, 84-917, and 86-2,107, Revised Statutes Cumulative Supplement, 2006, and sections 42-353, 42-359, 42-364, 42-364.13, 42-371, 43-512.15, 43-2922, 43-2923, 43-2924, 43-2927, 43-2928, 43-2929, 43-2930, 43-2932, 43-2934, 43-2936, 43-2937, and 43-2943, Revised Statutes Supplement, 2007; to change and eliminate provisions relating to judicial hearings, court duties and authority, jurisdiction, retired judges, referees, protection orders, appeals, clerk magistrates, facilitated conferencing, mediators, support orders, support order liens, the Parenting Act, domestic relations matters, parenting plans, compulsory school attendance, and service of documents other than summons; to provide for court referral to mediation or another form of alternative dispute resolution, problem solving court programs, determination of criminal charge versus juvenile code adjudication, paternity proceedings, procedures and requirements for certain decrees, and admissibility of certified copies of school records; to permit jurors to take notes; to require notice of federal law in domestic violence cases; to adopt the Legal Education for Public Service Loan Repayment Act; to eliminate duplicative and conflicting provisions; to harmonize provisions; to provide duties for the Revisor of Statutes; to provide operative dates; to provide for severability; to repeal the original sections; to outright repeal sections 25-1133, 25-2734, and 43-261, Reissue Revised Statutes of Nebraska, and section 43-2931, Revised Statutes Supplement, 2007; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 24-303, Reissue Revised Statutes of Nebraska, is amended to read:

24-303 (1) The judges of the district court shall, the last two months in each year, fix the time of holding terms of court in the counties composing their respective districts during the ensuing year, and cause the same to be published throughout the district, if the same can be done without expense. All jury terms of the district court shall be held at the county seat in the courthouse, or other place provided by the county board, but nothing herein contained shall preclude the district court, or a judge thereof, from rendering a judgment or other final order or from directing the entry thereof in any cause, in any county other than where such cause is pending, where the trial or hearing upon which such judgment or other final order is rendered took place in the county in which such cause is pending. Terms of court may be held at the same time in different counties in the same judicial district, by the judge of the district court thereof, if there be more than one, and upon request of the judge or judges of such court, any term in such district may be held by a judge of the district court of any other district of the state. The Supreme Court may order the assignment of judges of the district court to other districts whenever it shall appear that their services are needed to relieve a congested calendar or to adjust judicial case loads, or on account of the disqualification, absence, disability, or death of a judge, or for other adequate cause. When necessary, a term of the district court sitting in any county may be continued into and held during the time fixed for holding such court in any other county within the district, or may be adjourned and held beyond such time.

(2) All nonevidentiary hearings, and any evidentiary hearings approved by the district court and by stipulation of all parties that have filed an appearance, may be heard by the court telephonically or by videoconferencing or similar equipment at any location within the judicial district as ordered by the court and in a manner that ensures the preservation of an accurate record. Such hearings shall not include trials before a jury. Hearings conducted in this manner shall be consistent with the public's access to the courts.

Sec. 2. Section 24-312, Revised Statutes Cumulative Supplement, 2006, is amended to read:

24-312 (1) The district judges may interchange and hold each other's court. Whenever it shall appear by affidavit, to the satisfaction of any district judge in the state, that the judge of any other district is unable to act, on account of sickness, interest, or absence from the district or from any other cause, the judge to whom application may be made shall have power to make any order or do any act relative to any suit, judicial matter, or proceeding or to any special matter arising within the district where such vacancy or disability exists which the judge of such district court could make or do. The order or act shall have the same effect as if made or done by the judge of such district.

(2) A district judge may appoint by order a consenting county judge residing in the district to act as a district judge in specific instances on any matter over which the district court has determined that it has jurisdiction over the parties and subject matter, except appeals from the county court. The appointed county judge shall have power to make any order or do any act relative to any suit, judicial matter, or proceeding or to any special matter which the district judge of such district could make or do if ~~(1)~~ (a) all parties have consented to the appointment or ~~(2)~~ (b) no party has objected to the appointment within ten days after service of the order of appointment upon him or her, except that in any ~~matter arising under Chapter 42,~~ domestic relations matter as defined in section 25-2740 or Class IV felony case, consent shall not be required and a party shall not have the right to object to the appointment of a county judge to act as a district judge. Any order or act by the county judge after appointment shall have the same effect as if made or done by the district judge of such district. A copy of the order of appointment shall be filed in each action in which a county judge acts as a district judge.

(3) In an effort to more efficiently administer the caseload, the presiding judges of the district court and county court in each judicial district may assign between the courts cases involving domestic relations matters as defined in section 25-2740 and Class IV felony cases. The presiding judges shall annually review the caseload of the two benches and determine whether to reassign cases involving domestic relations matters as defined in section 25-2740 and Class IV felony cases. The consent of the parties shall not be required for such cases, and such cases shall remain filed in the court where they were originally filed. The annual plan on the case assignments shall be sent to the Supreme Court, and if the presiding judges cannot agree on a plan, the matter shall be forwarded to the Supreme Court for resolution.

Sec. 3. Section 24-508, Reissue Revised Statutes of Nebraska, is amended to read:

24-508 (1) Clerk magistrates may be assigned by the presiding county judge to perform the duties of a clerk magistrate in any other county within the district.

(2) A person shall be eligible for appointment as a clerk magistrate if he or she is a graduate of a high school or holds a certificate of equivalency issued by the State Board of Education.

(3) A clerk magistrate shall ~~be permitted to take office on the condition that the clerk magistrate will attend the first available institute on the duties and functions of the office, unless such attendance is specifically waived by the Supreme Court. The Supreme Court shall provide for the establishment of such institute and also shall provide for annual institutes or training courses for all county judges and clerk magistrates. A clerk magistrate shall not be eligible for reappointment if he or she does not have a satisfactory record of attendance at such annual institutes or training courses, unless such attendance is specifically waived by the Supreme Court.~~ comply with the Supreme Court judicial branch education requirements as required by the Supreme Court.

~~(4) All associate county judges holding office on July 1, 1986, shall be eligible for appointment as clerk magistrates, and all associate county judges desiring such appointment shall be appointed clerk magistrates. If a county has more than one associate county judge holding office on July 1, 1986, such associate county judges shall be appointed as clerk magistrates for the remainder of the terms for which they were appointed as associate county judges.~~

Sec. 4. Section 24-517, Revised Statutes Cumulative Supplement, 2006, is amended to read:

24-517 Each county court shall have the following jurisdiction:

(1) Exclusive original jurisdiction of all matters relating to decedents' estates, including the probate of wills and the construction thereof, except as provided in subsection (c) of section 30-2464 and section

30-2486;

(2) Exclusive original jurisdiction in all matters relating to the guardianship of a person, except if a separate juvenile court already has jurisdiction over a child in need of a guardian, concurrent original jurisdiction with the separate juvenile court in such guardianship;

(3) Exclusive original jurisdiction of all matters relating to conservatorship of any person, including (a) original jurisdiction to consent to and authorize a voluntary selection, partition, and setoff of a ward's interest in real estate owned in common with others and to exercise any right of the ward in connection therewith which the ward could exercise if competent and (b) original jurisdiction to license the sale of such real estate for cash or on such terms of credit as shall seem best calculated to produce the highest price subject only to the requirements set forth in section 30-3201;

(4) Concurrent jurisdiction with the district court to involuntarily partition a ward's interest in real estate owned in common with others;

(5) Concurrent original jurisdiction with the district court in all civil actions of any type when the amount in controversy is forty-five thousand dollars or less through June 30, 2005, and as set by the Supreme Court pursuant to subdivision (b) of this subdivision on and after July 1, 2005.

(a) When the pleadings or discovery proceedings in a civil action indicate that the amount in controversy is greater than the jurisdictional amount of subdivision (5) of this section, the county court shall, upon the request of any party, certify the proceedings to the district court as provided in section 25-2706. An award of the county court which is greater than the jurisdictional amount of subdivision (5) of this section is not void or unenforceable because it is greater than such amount, however, if an award of the county court is greater than the jurisdictional amount, the county court shall tax as additional costs the difference between the filing fee in district court and the filing fee in county court.

(b) The Supreme Court shall adjust the jurisdictional amount for the county court every fifth year commencing July 1, 2005. The adjusted jurisdictional amount shall be equal to the then current jurisdictional amount adjusted by the average percentage change in the unadjusted Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics for the five-year period preceding the adjustment date. The jurisdictional amount shall be rounded to the nearest one-thousand-dollar amount;

(6) Concurrent original jurisdiction with the district court in any criminal matter classified as a misdemeanor or for any infraction. The district court shall have exclusive original jurisdiction in any criminal matter classified as a misdemeanor that arises from the same incident as a charged felony;

(7) Concurrent original jurisdiction with the district court in domestic relations matters as defined in section 25-2740 and with the district court and separate juvenile court in paternity determinations as provided in section 25-2740;

(8) Concurrent original jurisdiction with the district court in matters arising under the Nebraska Uniform Trust Code;

(9) Exclusive original jurisdiction in any action based on violation of a city or village ordinance;

(10) Exclusive original jurisdiction in juvenile matters in counties which have not established separate juvenile courts;

(11) Exclusive original jurisdiction in matters of adoption, except if a separate juvenile court already has jurisdiction over the child to be adopted, concurrent original jurisdiction with the separate juvenile court; and

(12) All other jurisdiction heretofore provided and not specifically repealed by Laws 1972, Legislative Bill 1032, and such other jurisdiction as hereafter provided by law.

Sec. 5. Section 24-730, Reissue Revised Statutes of Nebraska, is amended to read:

24-730 A retired judge holding court pursuant to sections 24-729 to 24-733 shall receive, in addition to his or her retirement benefits, for each day of temporary duty an amount established by the Supreme Court. ~~Such amount, when taken together with one-twentieth of the judge's monthly retirement benefit, shall not exceed one-twentieth of the monthly salary he or she would receive if he or she were an active judge of that court.~~

Sec. 6. Section 24-1301, Revised Statutes Cumulative Supplement, 2006, is amended to read:

24-1301 The Legislature finds and declares that drug use ~~contributes to~~ and other offenses contribute to increased crime in Nebraska, ~~costs~~ cost

millions of dollars in lost productivity, and ~~contributes~~ contribute to the burden placed upon law enforcement, court, and correctional systems in Nebraska.

The Legislature also finds and declares that drug court programs and problem solving court programs are effective in reducing recidivism of persons who participate in and complete ~~drug court~~ such programs. The Legislature recognizes that a drug court program or a problem solving court program offers a person accused of drug offenses and other offenses an alternative to traditional criminal justice or juvenile justice proceedings.

Sec. 7. Section 24-1302, Revised Statutes Cumulative Supplement, 2006, is amended to read:

24-1302 (1) Drug court programs and problem solving court programs shall be subject to rules which shall be promulgated by the Supreme Court for procedures to be implemented in the administration of such programs.

(2) It is the intent of the Legislature that funds be appropriated separately to the Supreme Court for each of the programs, the drug court programs and the problem solving court programs, to carry out this section and section 24-1301.

Sec. 8. Section 25-534, Reissue Revised Statutes of Nebraska, is amended to read:

25-534 Whenever in any action or proceeding, any order, motion, notice, or other document, except a summons, is required by statute or rule of the Supreme Court to be served upon or given to any party, the service or delivery shall be made in accordance with the rules of pleading in civil actions promulgated by the Supreme Court pursuant to section 25-801.01. ~~represented by an attorney whose appearance has been noted on the record, or is thus required to be served upon or given to the attorney for any party, such service or notice may be made upon or given to such attorney, unless service upon the party himself or herself is ordered by the court. Service upon such attorney or upon a party shall be made by delivering a copy to him or her or by mailing it to him or her.~~

~~Delivery of a copy shall mean handing it to the attorney or to the party; or leaving it at his or her office with his or her clerk or other person in charge thereof; or, if the office is closed or the person to be served has no office, leaving it at his or her dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.~~

~~Every party appearing in an action without an attorney, and every attorney appearing in an action, shall designate on the record an address to which mail addressed to such party or attorney may be sent. Service by mail shall be by ordinary first-class mail addressed to such designated address, or if none is so designated, to the last-known address of such party or attorney. Service by mail is complete upon mailing.~~

~~Proof of service may be made by certificate of the attorney causing the service to be made. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him or her and the notice or paper is served upon him or her by mail, three days shall be added to the prescribed period.~~

Sec. 9. A court may refer a civil case to mediation or another form of alternative dispute resolution and, unless otherwise ordered following a hearing upon a motion to object to such referral, may state a date for the case to return to court. Such date shall be no longer than ninety days after the date the order was signed unless the court grants an extension upon request of the parties. Any agreement or resolution made in mediation or another form of alternative dispute resolution shall be voluntarily entered into by the parties. An individual trial court, an appellate court, or the Supreme Court on its own initiative may adopt rules of practice governing the procedures for referral of cases to mediation and other forms of dispute resolution. Such services may be provided by approved centers on a sliding scale of fees under the Dispute Resolution Act.

Sec. 10. Section 25-1129, Reissue Revised Statutes of Nebraska, is amended to read:

25-1129 All or any of the issues in the action, whether of fact or law, or both, may be referred~~,~~ to a referee upon the written consent of the parties~~,~~ or upon their oral consent in court entered upon the journal.

Sec. 11. Section 25-1130, Reissue Revised Statutes of Nebraska, is amended to read:

25-1130 When the parties do not consent, the court may, upon application of either, or of its own motion, direct a reference ~~(1) where the trial of an issue of fact shall require the examination of mutual accounts, or where the account is on one side only, and it shall be made to appear to the court that it is necessary that the party on the other side should be~~

~~examined as a witness to prove the account; in which cases the referees may be directed to hear and report upon the whole issue, or upon any specific question of fact involved therein; (2) where the taking of an account shall be necessary for the information of the court before a judgment, in cases which may be determined by the court or for carrying a judgment into effect; or (3) where a question of fact, other than upon the pleadings, shall arise upon motion or otherwise, in any state of an action.~~ in any equity matter to a referee appointed by the court. The court shall direct a reference to a referee only when caseload and time constraints require such reference, and a referee shall not be appointed to conduct any hearing involving an issue of law and not equity that could result in the exercise of the right to a trial before a jury.

Sec. 12. Section 25-2704, Revised Statutes Cumulative Supplement, 2006, is amended to read:

25-2704 (1) In any civil action in county court, the summons, pleadings, and time for filings shall be the same as provided for civil actions in district court. A case shall stand for trial at the earliest available time on the court docket after the issues therein are or, according to the times fixed for pleading, should have been made up.

(2) All nonevidentiary hearings, and any evidentiary hearings approved by the county court and by stipulation of all parties that have filed an appearance, may be heard by the court telephonically or by videoconferencing or similar equipment at any location within the judicial district as ordered by the court and in a manner that ensures the preservation of an accurate record. Such hearings shall not include trials before a jury. Hearings conducted in this manner shall be consistent with the public's access to the courts.

Sec. 13. Section 25-2733, Revised Statutes Cumulative Supplement, 2006, is amended to read:

25-2733 (1) In all cases ~~other than appeals from the Small Claims Court,~~ the district court shall review the case for error appearing on the record made in the county court. The district court shall render a judgment which may affirm, affirm but modify, or reverse the judgment or final order of the county court. If the district court reverses, it may enter judgment in accordance with its findings or remand the case to the county court for further proceedings consistent with the judgment of the district court. Within two judicial days after the decision of the district court becomes final, the clerk of the district court shall issue a mandate in appeals from the county court and transmit the mandate in appeals to the clerk of the county court on the form prescribed by the Supreme Court together with a copy of such decision.

(2) ~~The bill of exceptions, if filed with the clerk at or before the hearing, shall be considered admitted in evidence on the hearing of the appeal unless the court on objection by a party excludes all or part of it.~~ The ordering, preparing, signing, filing, correcting, and amending of the bill of exceptions shall be governed by the rules of practice prescribed by the Supreme Court.

(3) The judgment of the district court shall vacate the judgment in the county court. The taxation of costs in the district court shall include the costs in the county court. If a judgment of the county court is affirmed or affirmed but modified, interest on the amount of the judgment in the district court that does not exceed the amount of the judgment in the county court shall run from the date of entry of the judgment appealed from the county court.

Sec. 14. Section 25-2740, Revised Statutes Cumulative Supplement, 2006, is amended to read:

25-2740 (1) For purposes of this section:

(a) Domestic relations matters means proceedings under sections 28-311.09 and 28-311.10 (including harassment protection orders and valid foreign harassment protection orders), the Conciliation Court Law and sections 42-347 to 42-381 (including dissolution, separation, annulment, custody, and support), section 43-512.04 (including child support or medical support), section 42-924 (including domestic protection orders), sections 43-1401 to 43-1418 (including paternity determinations and parental support), and sections 43-1801 to 43-1803 (including grandparent visitation); and

(b) Paternity determinations means proceedings to establish the paternity of a child under sections 43-1411 to 43-1418.

(2) Except as provided in subsection ~~(4)~~ (3) of this section, in domestic relations matters, a party shall file his or her petition or complaint and all other court filings with the clerk of the district court. The party shall state in the petition or complaint whether such party requests that the proceeding be heard by a county court judge or by a district court

judge. If the party requests the case be heard by a county court judge, the county court judge assigned to hear cases in the county in which the matter is filed at the time of the hearing is deemed appointed by the district court and the consent of the county court judge is not required. Such proceeding is considered a district court proceeding, even if heard by a county court judge, and an order or judgment of the county court in a domestic relations matter has the force and effect of a district court judgment. The testimony in a domestic relations matter heard before a county court judge shall be preserved as provided in section 25-2732.

~~(3) Until January 1, 2000, upon motion of a party in a contested action brought under subsection (2) of this section, the proceeding shall be transferred from a county court judge to a district court judge.~~

~~(4)~~ (3) In addition to the jurisdiction provided for paternity determinations under subsection (2) of this section, a county court or separate juvenile court which already has jurisdiction over the child whose paternity is to be determined has jurisdiction over such paternity determination.

Sec. 15. There shall be no oral argument in an appeal to the district court in any criminal case where the sole allegation of error is that the sentence imposed was excessive or excessively lenient or the trial court refused to reduce the sentence upon application of the defendant.

Sec. 16. Section 29-1816, Reissue Revised Statutes of Nebraska, is amended to read:

29-1816 The accused shall be arraigned by reading to him or her the indictment or information, unless the reading is waived by the accused when the nature of the charge is made known to him or her. The accused shall then be asked whether he or she is guilty or not guilty of the offense charged. If the accused appears in person and by counsel and goes to trial before a jury regularly impaneled and sworn, he or she shall be deemed to have waived arraignment and a plea of not guilty shall be deemed to have been made.

At the time of the arraignment the court shall advise the defendant, if he or she was less than eighteen years of age at the time of the commitment of the alleged crime, that he or she may move the county or district court at any time not later than ~~fifteen days before trial~~ thirty days after arraignment, unless otherwise permitted by the court for good cause shown, to waive jurisdiction in such case to the juvenile court for further proceedings under the Nebraska Juvenile Code. The court shall schedule a hearing on such motion within fifteen days. The customary rules of evidence shall not be followed at such hearing. The county attorney shall present the evidence and reasons why such case should be retained, the defendant shall present the evidence and reasons why the case should be transferred, and both sides shall consider the criteria set forth in section 43-276. After considering all the evidence and reasons presented by both parties, pursuant to section 43-276, the case shall be transferred unless a sound basis exists for retaining the case.

In deciding such motion the court shall consider, among other matters, the matters set forth in section 43-276 for consideration by the county attorney when determining the type of case to file.

The court shall set forth findings for the reason for its decision, which shall not be a final order for the purpose of enabling an appeal. If the court determines that the child should be transferred to the juvenile court, the complete file in the district court shall be transferred to the juvenile court and the indictment or information may be used in place of a petition therein. The court making a transfer shall order the minor to be taken forthwith to the juvenile court and designate where the minor shall be kept pending determination by the juvenile court. The juvenile court shall then proceed as provided in the Nebraska Juvenile Code.

Sec. 17. (1) When sentencing a person convicted of a misdemeanor crime of domestic violence as defined in 18 U.S.C. 921(a)(33), as such section existed on the operative date of this section, the court shall provide written or oral notification to the defendant that it may be a violation of federal law for the individual: To ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(2) The State Court Administrator's Office shall create a standard notification that provides the information in subsection (1) of this section and shall provide a copy of such notification to all judges in this state.

Sec. 18. Section 29-2246, Revised Statutes Cumulative Supplement, 2006, is amended to read:

29-2246 For purposes of the Nebraska Probation Administration Act and sections 43-2,123.01 and 83-1,102 to 83-1,104, unless the context

otherwise requires:

(1) Association means the Nebraska District Court Judges Association;

(2) Court means a district court, county court, or juvenile court as defined in section 43-245;

(3) Office means the Office of Probation Administration;

(4) Probation means a sentence under which a person found guilty of a crime upon verdict or plea or adjudicated delinquent or in need of special supervision is released by a court subject to conditions imposed by the court and subject to supervision;

(5) Probationer means a person sentenced to probation;

(6) Probation officer means an employee of the system who supervises probationers and conducts presentence, predisposition, or other investigations as may be required by law or directed by a court in which he or she is serving or performs such other duties as authorized pursuant to section 29-2258, except unpaid volunteers from the community;

(7) Juvenile probation officer means any probation officer who supervises probationers of a separate juvenile court;

(8) Juvenile intake probation officer means an employee of the system who is called upon by a law enforcement officer in accordance with section 43-250 to make a decision regarding the furtherance of a juvenile's detention;

(9) Chief probation officer means the probation officer in charge of a probation district;

(10) System means the Nebraska Probation System;

(11) Administrator means the probation administrator; and

(12) Non-probation-based program or service means a program or service established within the district, county, or juvenile courts and provided to individuals not sentenced to probation who have been charged with or convicted of a crime for the purpose of diverting the individual from incarceration or to provide treatment for issues related to the individual's criminogenic needs. Non-probation-based programs or services include, but are not limited to, drug court programs and problem solving court programs established pursuant to section 24-1302 and the treatment of problems relating to substance abuse, mental health, sex offenses, or domestic violence.

Sec. 19. Sections 19 to 27 of this act shall be known and may be cited as the Legal Education for Public Service Loan Repayment Act.

Sec. 20. The Legislature finds that many attorneys graduate from law school with substantial educational debt that prohibits many from considering public legal service work. A need exists for public legal service entities to hire competent attorneys. The public is better served by competent and qualified attorneys working in the area of public legal service. Programs providing educational loan forgiveness will encourage law students and other attorneys to seek employment in the area of public legal service and will enable public legal service entities to attract and retain qualified attorneys.

Sec. 21. For purposes of the Legal Education for Public Service Loan Repayment Act:

(1) Board means the Legal Education for Public Service Loan Repayment Board;

(2) Educational loans means loans received as an educational benefit, scholarship, or stipend toward a juris doctorate degree and either (a) made, insured, or guaranteed by a governmental unit or (b) made under a program funded in whole or in part by a governmental unit or nonprofit institution; and

(3) Public legal service means providing legal service to indigent persons while employed by a tax-exempt charitable organization.

Sec. 22. The Legal Education for Public Service Loan Repayment Board is created. The board shall consist of the director of Legal Aid of Nebraska, the deans of Creighton School of Law and the University of Nebraska College of Law, a student from each law school selected by the dean of the law school, a member of the Nebraska State Bar Association selected by the president of the association, and the chief counsel of the Commission on Public Advocacy.

Sec. 23. The board shall select one of its members to be chairperson. The board shall meet as necessary to carry out its duties, but shall meet at least annually. The members shall serve without compensation but shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Sec. 24. The board shall develop and recommend to the Commission on Public Advocacy rules and regulations that will govern the legal education for public service loan repayment program. The rules and regulations shall include:

(1) Recipients shall be full-time, salaried attorneys working for a tax-exempt charitable organization and whose primary duties are public legal service;

(2) Loan applicants shall pay an application fee established by the rules and regulations at a level anticipated to cover all or most of the administrative costs of the program. All application fees shall be remitted to the State Treasurer for credit to the Legal Education for Public Service Loan Repayment Fund. Every effort shall be made to minimize administrative costs and the application fee;

(3) The maximum annual loan amount, which initially shall not exceed six thousand dollars per year per recipient, shall be an amount which is sufficient to fulfill the purposes of recruiting and retaining public legal service attorneys in occupations and areas with unmet needs, including attorneys to work in rural areas and attorneys with skills in languages other than English. The board may recommend adjustments of the loan amount annually to the commission to account for inflation and other relevant factors;

(4) Loans shall be made only to refinance existing educational loans;

(5) A general program structure of loan forgiveness shall be established that qualifies for the tax benefits provided in section 108(f) of the Internal Revenue Code, as defined in section 49-801.01; and

(6) Other criteria for loan eligibility, application, payment, and forgiveness necessary to carry out the purposes of the Legal Education for Public Service Loan Repayment Act.

Sec. 25. The Commission on Public Advocacy shall accept applications for loan forgiveness on an annual basis from qualified persons and shall present those applications to the board for its consideration. The board shall make recommendations for loans to the commission, and the commission shall certify the eligible recipients and the loan amount per recipient. The loans awarded to the recipients shall come from funds appropriated by the Legislature and any other funds that may be available from the Legal Education for Public Service Loan Repayment Fund.

Sec. 26. The Commission on Public Advocacy may solicit and receive donations from law schools, corporations, nonprofit organizations, bar associations, bar foundations, law firms, individuals, or other sources for purposes of the Legal Education for Public Service Loan Repayment Act. The donations shall be remitted to the State Treasurer for credit to the Legal Education for Public Service Loan Repayment Fund.

Sec. 27. The Legal Education for Public Service Loan Repayment Fund is created. The fund shall consist of funds donated to the legal education for public service loan repayment program pursuant to section 26 of this act and application fees collected under the Legal Education for Public Service Loan Repayment Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 28. Section 29-3927, Revised Statutes Cumulative Supplement, 2006, is amended to read:

29-3927 (1) With respect to its duties under section 29-3923, the commission shall:

(a) Adopt and promulgate rules and regulations for its organization and internal management and rules and regulations governing the exercise of its powers and the fulfillment of its purpose;

(b) Appoint and abolish such advisory committees as may be necessary for the performance of its functions and delegate appropriate powers and duties to them;

(c) Accept and administer loans, grants, and donations from the United States and its agencies, the State of Nebraska and its agencies, and other sources, public and private, for carrying out the functions of the commission;

(d) Enter into contracts, leases, and agreements necessary, convenient, or desirable for carrying out its purposes and the powers granted under this section with agencies of state or local government, corporations, or persons;

(e) Acquire, hold, and dispose of personal property in the exercise of its powers;

(f) Provide legal services to indigent persons through the divisions in section 29-3930; and

(g) Adopt guidelines and standards, which are recommended to the commission by the council, for county indigent defense systems, including, but not limited to, standards relating to the following: The use and expenditure of funds appropriated by the Legislature to reimburse counties which qualify for reimbursement; attorney eligibility and qualifications

for court appointments; compensation rates for salaried public defenders, contracting attorneys, and court-appointed attorneys and overall funding of the indigent defense system; maximum caseloads for all types of systems; systems administration, including rules for appointing counsel, awarding defense contracts, and reimbursing defense expenses; conflicts of interest; continuing legal education and training; and availability of supportive services and expert witnesses.

(2) The standards adopted by the commission under subdivision (1)(g) of this section are intended to be used as a guide for the proper methods of establishing and operating indigent defense systems. The standards are not intended to be used as criteria for the judicial evaluation of alleged misconduct of defense counsel to determine the validity of a conviction. They may or may not be relevant in such judicial evaluation, depending upon all the circumstances.

(3) With respect to its duties related to the provision of civil legal services to eligible low-income persons, the commission shall have such powers and duties as described in sections 25-3001 to 25-3004.

(4) The commission may adopt and promulgate rules and regulations governing the Legal Education for Public Service Loan Repayment Act which are recommended by the Legal Education for Public Service Loan Repayment Board pursuant to the act. The commission shall have the powers and duties provided in the act.

Sec. 29. Section 42-353, Revised Statutes Supplement, 2007, is amended to read:

42-353 The pleadings required by sections 42-347 to 42-381 shall be governed by the rules of pleading in civil actions promulgated under section 25-801.01. The complaint shall include the following:

(1) The name and address of the plaintiff and his or her attorney, except that ~~for~~ a plaintiff who is living in an undisclosed location because of safety concerns~~, only the county and state of the address are required;~~ is only required to disclose the county and state of his or her residence and, in such case, shall provide an alternative address for the mailing of notice;

(2) The name and address, if known, of the defendant;

(3) The date and place of marriage;

(4) The name and year of birth of each child whose custody or welfare may be affected by the proceedings and whether (a) a parenting plan as provided in the Parenting Act has been developed and (b) child custody, parenting time, visitation, or other access or child support is a contested issue;

(5) If the plaintiff is a party to any other pending action for divorce, separation, or dissolution of marriage, a statement as to where such action is pending;

(6) Reference to any existing restraining orders, protection orders, or criminal no-contact orders regarding any party to the proceedings;

~~(7) Financial statements if required by section 42-359;~~

~~(8)~~ (7) A statement of the relief sought by the plaintiff, including adjustment of custody, property, and support rights; and

~~(9)~~ (8) An allegation that the marriage is irretrievably broken.

Sec. 30. Section 42-357, Reissue Revised Statutes of Nebraska, is amended to read:

42-357 The court may order either party to pay to the clerk of the district court or to the State Disbursement Unit, as provided in section 42-369, a sum of money for the temporary support and maintenance of the other party and minor children if any are affected by the action and to enable such party to prosecute or defend the action. The court may make such order after service of process and claim for temporary allowances is made in the complaint or by motion by the plaintiff or by the defendant in a responsive pleading; but no such order shall be entered before three days after notice of hearing has been served on the other party or notice waived. During the pendency of any proceeding under sections 42-347 to 42-381 after the complaint is filed, upon application of either party and if the accompanying affidavit of the party or his or her agent shows to the court that the party is entitled thereto, the court may issue ex parte orders (1) restraining any person from transferring, encumbering, hypothecating, concealing, or in any way disposing of real or personal property except in the usual course of business or for the necessaries of life, and the party against whom such order is directed shall upon order of the court account for all unusual expenditures made after such order is served upon him or her, (2) enjoining any party from molesting or disturbing the peace of the other party or any minor children affected by the action, and (3) determining the temporary custody of any minor children of the marriage, except that no restraining order enjoining any party from molesting or disturbing the peace of any minor child shall issue unless, at

the same time, the court determines that the party requesting such order shall have temporary custody of such minor child. Ex parte orders issued pursuant to ~~subdivision (1) of~~ subdivisions (1) and (3) of this section shall remain in force for no more than ten days or until a hearing is held thereon, whichever is earlier. After motion, notice to the party, and hearing, the court may order either party excluded from the premises occupied by the other upon a showing that physical or emotional harm would otherwise result. Any restraining order issued excluding either party from the premises occupied by the other shall specifically set forth the location of the premises and shall be served upon the adverse party by the sheriff in the manner prescribed for serving a summons, and a return thereof shall be filed in the court. Any person who knowingly violates such an order after service shall be guilty of a Class II misdemeanor. In the event a restraining order enjoining any party from molesting or disturbing the peace of any minor children is issued, upon application and affidavit setting out the reason therefor, the court shall schedule a hearing within seventy-two hours to determine whether the order regarding the minor children shall remain in force. Section 25-1064 shall not apply to the issuance of ex parte orders pursuant to this section. Any judge of the county court or district court may grant a temporary ex parte order in accordance with this section.

Sec. 31. Section 42-359, Revised Statutes Supplement, 2007, is amended to read:

42-359 Applications ~~and complaints regarding spousal support, child support, medical support,~~ for spousal support or alimony shall be accompanied by a statement of the applicant's ~~or complainant's~~ financial condition and, to the best of his or her knowledge, a statement of the other party's financial condition. Such other party may file his or her statement, if he or she so desires, and shall do so if ordered by the court. Statements shall be under oath and shall show income from salary or other sources, assets, debts and payments thereon, living expenses, and other relevant information. Required forms for financial statements may be furnished by the court.

Sec. 32. Section 42-364, Revised Statutes Supplement, 2007, is amended to read:

42-364 (1) In an action under Chapter 42 involving child support, child custody, parenting time, visitation, or other access, the parties and their counsel, if represented, shall develop a parenting plan as provided in the Parenting Act. If the parties and counsel do not develop a parenting plan, the complaint shall so indicate as provided in section 42-353 and before July 1, 2010, the case may be referred to mediation, specialized alternative dispute resolution, or other alternative dispute resolution process and on or after such date the case shall be referred to mediation or specialized alternative dispute resolution as provided in the Parenting Act. The decree in an action involving the custody of a minor child shall include the determination of legal custody and physical custody based upon the best interests of the child, as defined in the Parenting Act, and child support. Such determinations shall be made by incorporation into the decree of (a) a parenting plan developed by the parties, if approved by the court, or (b) a parenting plan developed by the court based upon evidence produced after a hearing in open court if no parenting plan is developed by the parties or the plan developed by the parties is not approved by the court. The decree shall conform to the Parenting Act. The social security number of each parent and the minor child shall be furnished to the clerk of the district court but shall not be disclosed or considered a public record.

(2) In determining legal custody or physical custody, the court shall not give preference to either parent based on the sex of the parent and, except as provided in section 43-2933, no presumption shall exist that either parent is more fit or suitable than the other. Custody shall be determined on the basis of the best interests of the child, as defined in the Parenting Act. Unless parental rights are terminated, both parents shall continue to have the rights stated in section 42-381.

(3) Custody of a minor child may be placed with both parents on a joint legal custody or joint physical custody basis, or both, (a) when both parents agree to such an arrangement in the parenting plan and the court determines that such an arrangement is in the best interests of the child or (b) if the court specifically finds, after a hearing in open court, that joint physical custody or joint legal custody, or both, is in the best interests of the minor child regardless of any parental agreement or consent.

(4) In determining the amount of child support to be paid by a parent, the court shall consider ~~the child support calculations included in the separate financial plan submitted with the parenting plan,~~ the earning capacity of each parent~~,~~ and the guidelines provided by the Supreme Court pursuant to section 42-364.16 for the establishment of child support

obligations. Upon application, hearing, and presentation of evidence of an abusive disregard of the use of child support money paid by one party to the other, the court may require the party receiving such payment to file a verified report with the court, as often as the court requires, stating the manner in which such money is used. Child support paid to the party having custody of the minor child shall be the property of such party except as provided in section 43-512.07. The clerk of the district court shall maintain a record, separate from all other judgment dockets, of all decrees and orders in which the payment of child support or spousal support has been ordered, whether ordered by a district court, county court, separate juvenile court, or county court sitting as a juvenile court. Orders for child support in cases in which a party has applied for services under Title IV-D of the federal Social Security Act, as amended, shall be reviewed as provided in sections 43-512.12 to 43-512.18.

(5) Whenever termination of parental rights is placed in issue:

(a) The court shall transfer jurisdiction to a juvenile court established pursuant to the Nebraska Juvenile Code unless a showing is made that the county court or district court is a more appropriate forum. In making such determination, the court may consider such factors as cost to the parties, undue delay, congestion of dockets, and relative resources available for investigative and supervisory assistance. A determination that the county court or district court is a more appropriate forum shall not be a final order for the purpose of enabling an appeal. If no such transfer is made, the court shall appoint an attorney as guardian ad litem to protect the interests of any minor child. The court may terminate the parental rights of one or both parents after notice and hearing when the court finds such action to be in the best interests of the minor child, as defined in the Parenting Act, and it appears by the evidence that one or more of the grounds for termination of parental rights stated in section 43-292 exist; and

(b) The court shall inform a parent who does not have legal counsel of the parent's right to retain counsel and of the parent's right to retain legal counsel at county expense if such parent is unable to afford legal counsel. If such parent is unable to afford legal counsel and requests the court to appoint legal counsel, the court shall immediately appoint an attorney to represent the parent in the termination proceedings. The court shall order the county to pay the attorney's fees and all reasonable expenses incurred by the attorney in protecting the rights of the parent. At such hearing, the guardian ad litem shall take all action necessary to protect the interests of the minor child. The court shall fix the fees and expenses of the guardian ad litem and tax the same as costs but may order the county to pay on finding the responsible party indigent and unable to pay.

(6) Modification proceedings relating to support, custody, parenting time, visitation, other access, or removal of children from the jurisdiction of the court shall be commenced by filing a complaint to modify. Modification of a parenting plan is governed by the Parenting Act. Proceedings to modify a parenting plan shall be commenced by filing a complaint to modify. Such actions may be referred to mediation, specialized alternative dispute resolution, or other alternative dispute resolution process before July 1, 2010, and on and after such date shall be referred to mediation or specialized alternative dispute resolution as provided in the Parenting Act. Service of process and other procedure shall comply with the requirements for a dissolution action.

(7) In any proceeding under this section relating to custody of a child of school age, certified copies of school records relating to attendance and academic progress of such child are admissible in evidence.

Sec. 33. A decree of dissolution, legal separation, or order establishing paternity shall incorporate financial arrangements for each party's responsibility for reasonable and necessary medical, dental, and eye care, medical reimbursements, day care, extracurricular activity, education, and other extraordinary expenses of the child and calculation of child support obligations.

Sec. 34. Section 42-364.13, Revised Statutes Supplement, 2007, is amended to read:

42-364.13 (1) Any order for support entered by the court shall specifically provide that any person ordered to pay a judgment shall be required to furnish to the clerk of the district court his or her address, telephone number, and social security number, the name of his or her employer, whether or not such person has access to employer-related health insurance coverage and, if so, the health insurance policy information, and any other information the court deems relevant until such judgment is paid in full. The person shall also be required to advise the clerk of any changes in such information between the time of entry of the decree and the payment of the

judgment in full. If both parents are parties to the action, such order shall provide that each be required to furnish to the clerk of the district court all of the information required by this subsection. Failure to comply with this section shall be punishable by contempt.

(2) All support orders entered by the court shall include the ~~birthdate~~ year of birth of any child for whom the order requires the provision of support.

(3) Until the Title IV-D Division of the Department of Health and Human Services has operative the statewide automated data processing and retrieval system necessary for centralized collection and disbursement of support order payments:

(a) If any case contains an order or judgment for child, medical, or spousal support, the order shall include the following statements:

In the event that the (plaintiff or defendant) fails to pay any child, medical, or spousal support payment, as such failure is certified each month by the district court clerk in cases in which court-ordered support is delinquent in an amount equal to the support due and payable for a one-month period of time, he or she shall be subject to income withholding and may be required to appear in court on a date to be determined by the court and show cause why such payment was not made. In the event that the (plaintiff or defendant) fails to pay and appear as ordered, a warrant shall be issued for his or her arrest.

(b) If the court orders income withholding regardless of whether or not payments are in arrears pursuant to section 43-1718.01 or 43-1718.02, the statement in this subsection may be altered to read as follows:

In the event that the (plaintiff or defendant) fails to pay any child, medical, or spousal support payment, as such failure is certified each month by the district court clerk in cases in which court-ordered support is delinquent in an amount equal to the support due and payable for a one-month period of time, he or she may be required to appear in court on a date to be determined by the court and show cause why such payment was not made. In the event that the (plaintiff or defendant) fails to pay and appear as ordered, a warrant shall be issued for his or her arrest.

(4) When the Title IV-D Division of the Department of Health and Human Services has operative the statewide automated data processing and retrieval system necessary for centralized collection and disbursement of support order payments:

(a) If any case contains an order or judgment for child, medical, or spousal support, the order shall include the following statements:

In the event that the (plaintiff or defendant) fails to pay any child, medical, or spousal support payment, as such failure is certified each month by the State Disbursement Unit in cases in which court-ordered support is delinquent in an amount equal to the support due and payable for a one-month period of time, he or she shall be subject to income withholding and may be required to appear in court on a date to be determined by the court and show cause why such payment was not made. In the event that the (plaintiff or defendant) fails to pay and appear as ordered, a warrant shall be issued for his or her arrest.

(b) If the court orders income withholding regardless of whether or not payments are in arrears pursuant to section 43-1718.01 or 43-1718.02, the statement in this subsection may be altered to read as follows:

In the event that the (plaintiff or defendant) fails to pay any child, medical, or spousal support payment, as such failure is certified each month by the State Disbursement Unit in cases in which court-ordered support is delinquent in an amount equal to the support due and payable for a one-month period of time, he or she may be required to appear in court on a date to be determined by the court and show cause why such payment was not made. In the event that the (plaintiff or defendant) fails to pay and appear as ordered, a warrant shall be issued for his or her arrest.

Sec. 35. Section 42-371, Revised Statutes Supplement, 2007, is amended to read:

42-371 Under the Uniform Interstate Family Support Act and sections 42-347 to 42-381, 43-290, 43-512 to 43-512.10, and 43-1401 to 43-1418:

(1) All judgments and orders for payment of money shall be liens, as in other actions, upon real property and any personal property registered with any county office and may be enforced or collected by execution and the means authorized for collection of money judgments;

(2)(a) The judgment creditor may execute a partial or total release of the judgment or a document subordinating the lien of the judgment to any other lien, generally or on specific real or personal property.

(b) Release of a judgment for child support or spousal support or subordination of a lien of a judgment for child support or spousal support

may, if all such payments are current, be released or subordinated by a release or subordination document executed by the judgment creditor, and such document shall be sufficient to remove or subordinate the lien. A properly executed, notarized release or subordination document explicitly reciting that all child support payments or spousal support payments are current is prima facie evidence that such payments are in fact current.

(c) Release of a judgment for child support or spousal support or subordination of a lien of a judgment for child support or spousal support shall be approved by the court which rendered the judgment if all such payments are not current. The judgment debtor may file a motion in the court which rendered the original judgment for an order releasing or subordinating the lien as to specific real or personal property. The court shall grant such order upon a showing by the judgment debtor that sufficient real or personal property or property interests will remain subject to the lien or will maintain priority over other liens sufficient to cover all support due and which may become due;

(3) Whenever a judgment creditor refuses to execute a release of the judgment or subordination of a lien as provided in this section, the person desiring such release or subordination may file an application for the relief desired. A copy of the application and a notice of hearing shall be served on the judgment creditor either personally or by registered or certified mail no later than ten days before the date of hearing. If the court finds that the release or subordination is not requested for the purpose of avoiding payment and that the release or subordination will not unduly reduce the security, the court may issue an order releasing real or personal property from the judgment lien or issue an order subordinating the judgment lien. As a condition for such release or subordination, the court may require the posting of a bond with the clerk in an amount fixed by the court, guaranteeing payment of the judgment. For purposes of this section, a current certified copy of support order payment history from the Title IV-D Division of the Department of Health and Human Services setting forth evidence that all support payments are current is prima facie evidence that such payments are in fact current and is valid for thirty days after the date of certification;

~~(2)(a) If support order payments are current, a partial or total release of the judgment or subordination of a lien for a support order, generally or on specific real or personal property, may be accomplished by filing (i) a current certified copy of support order payment history from the Title IV-D Division explicitly reciting that all support order payments are current and (ii) a partial or total release of the judgment or subordination document in the county office where the lien is registered.~~

~~(b) If support order payments are not current, the person desiring such release or subordination may file an application for the relief desired in the court which rendered the original judgment or support order. A copy of the application and a notice of hearing shall be served on the judgment creditor either personally or by registered or certified mail no less than ten days before the date of hearing. If the court finds that the release or subordination is not requested for the purpose of avoiding payment and that the release or subordination will not unduly reduce the security, the court may issue an order for a total or partial release of all or specific real or personal property from the lien or issue an order subordinating the lien. As a condition for such release or subordination, the court may require the posting of a bond with the clerk in an amount fixed by the court, guaranteeing payment of the judgment.~~

~~(c) For purposes of this section, a current certified copy of support order payment history from the Title IV-D Division explicitly reciting that all support payments are current is valid for thirty days after the date of certification;~~

~~(3)~~ (4) Full faith and credit shall be accorded to a lien arising by operation of law against real and personal property for amounts overdue relating to a support order owed by an obligor who resides or owns property in this state when another state agency, party, or other entity seeking to enforce such lien complies with the procedural rules relating to the filing of the lien in this state. The state agency, party, or other entity seeking to enforce such lien shall send a certified copy of the support order with all modifications, the notice of lien prescribed by 42 U.S.C. 652(a)(11) and 42 U.S.C. 654(9)(E), and the appropriate fee to the clerk of the district court in the jurisdiction within this state in which the lien is sought. Upon receiving the appropriate documents and fee, the clerk of the district court shall accept the documents filed and such acceptance shall constitute entry of the foreign support order for purposes of this section only. Entry of a lien arising in another state pursuant to this section shall result in such lien being afforded the same treatment as liens arising in this

state. The filing process required by this section shall not be construed as requiring an application, complaint, answer, and hearing as might be required for the filing or registration of foreign judgments under the Nebraska Uniform Enforcement of Foreign Judgments Act or the Uniform Interstate Family Support Act;

~~(4)~~ (5) Support order judgments shall cease to be liens on real or registered personal property ten years from the date (a) the youngest child becomes of age or dies or (b) the most recent execution was issued to collect the judgment, whichever is later, and such lien shall not be reinstated;

~~(5)~~ (6) Alimony and property settlement award judgments, if not covered by subdivision ~~(4)~~ (5) of this section, shall cease to be a lien on real or registered personal property ten years from the date (a) the judgment was entered, (b) the most recent payment was made, or (c) the most recent execution was issued to collect the judgment, whichever is latest, and such lien shall not be reinstated;

~~(6)~~ (7) The court may in any case, upon application or its own motion, after notice and hearing, order a person required to make payments to post sufficient security, bond, or other guarantee with the clerk to insure payment of both current and any delinquent amounts. Upon failure to comply with the order, the court may also appoint a receiver to take charge of the debtor's property to insure payment. Any bond, security, or other guarantee paid in cash may, when the court deems it appropriate, be applied either to current payments or to reduce any accumulated arrearage;

~~(7)(a)~~ (8)(a) The lien of a mortgage or deed of trust which secures a loan, the proceeds of which are used to purchase real property, and (b) any lien given priority pursuant to a subordination document under this section shall attach prior to any lien authorized by this section. Any mortgage or deed of trust which secures the refinancing, renewal, or extension of a real property purchase money mortgage or deed of trust shall have the same lien priority with respect to any lien authorized by this section as the original real property purchase money mortgage or deed of trust to the extent that the amount of the loan refinanced, renewed, or extended does not exceed the amount used to pay the principal and interest on the existing real property purchase money mortgage or deed of trust, plus the costs of the refinancing, renewal, or extension; and

~~(8)~~ (9) Any lien authorized by this section against personal property registered with any county consisting of a motor vehicle or mobile home shall attach upon notation of the lien against the motor vehicle or mobile home certificate of title and shall have its priority established pursuant to the terms of section 60-164 or a subordination document executed under this section.

Sec. 36. Section 42-925, Reissue Revised Statutes of Nebraska, is amended to read:

42-925 ~~Any~~ (1) An order issued under subsection (1) of section 42-924 may be issued ex parte to the respondent if it reasonably appears from the specific facts included in the affidavit that the petitioner will be in immediate danger of abuse before the matter can be heard on notice. If an order is issued ex parte, the court shall immediately schedule an evidentiary hearing to be held within thirty days after service of such order, and the court shall cause notice of the hearing to be given to the petitioner and the respondent. If the respondent appears at the hearing and shows cause why such order should not remain in effect, the court shall rescind the order. If the respondent does not so appear and show cause, the order shall be affirmed.

(2) If an order under subsection (1) of section 42-924 is not issued ex parte, the court shall immediately schedule an evidentiary hearing to be held within fourteen days after the filing of the petition, and the court shall cause notice of the hearing to be given to the petitioner and the respondent. If the respondent does not appear at the hearing and show cause why such order should not be issued, the court shall issue such order.

(3) The court may by rule or order refer or assign all matters regarding orders issued under subsection (1) of section 42-924 to a referee for findings and recommendations.

(4) An order issued under subsection (1) of section 42-924 shall remain in effect for a period of one year from the date of issuance, unless vacated by the court prior to such date. If the order grants temporary custody, such custody shall not exceed the number of days specified by the court unless the respondent shows cause why the order should not remain in effect.

(5) The court shall also cause the notice created under section 17 of this act to be served upon the respondent notifying the respondent that it may be unlawful under federal law for a person who is subject to a protection order to possess or receive any firearm or ammunition.~~(1) If the specific~~

~~facts included in the affidavit do not show that the petitioner will be in immediate danger of abuse or (2) if the court does not issue an ex parte order or grants only part of the relief sought, the court or judge may forthwith cause notice of the petition to be given to the respondent stating that he or she may show cause, not more than fourteen days after service upon him or her, why such order should not be entered. If such ex parte order is issued to the respondent, the court shall forthwith cause notice of the petition and order to be given the respondent stating that, upon service on the respondent, the order shall remain in effect for a period of one year and, if the order grants temporary custody, that such custody shall not exceed the number of days specified by the court unless the respondent shows cause why the order should not remain in effect. The court shall also cause to be served upon the respondent a form with which to request a show-cause hearing. If the respondent wishes to appear and show cause why the order should not remain in effect, he or she shall affix his or her current address, telephone number, and signature to the form and return it to the clerk of the district court within five days after service upon him or her. Upon receipt of the request for a show-cause hearing, the court shall immediately schedule a show-cause hearing to be held within thirty days after the receipt of the request for a show-cause hearing and shall notify the petitioner and respondent of the hearing date.~~

Sec. 37. Section 43-247, Revised Statutes Cumulative Supplement, 2006, is amended to read:

43-247 The juvenile court shall have exclusive original jurisdiction as to any juvenile defined in subdivision (1) of this section who is under the age of sixteen, as to any juvenile defined in subdivision (3) of this section, and as to the parties and proceedings provided in subdivisions (5), (6), and (8) of this section. As used in this section, all references to the juvenile's age shall be the age at the time the act which occasioned the juvenile court action occurred. The juvenile court shall have concurrent original jurisdiction with the district court as to any juvenile defined in subdivision (2) of this section. The juvenile court shall have concurrent original jurisdiction with the district court and county court as to any juvenile defined in subdivision (1) of this section who is age sixteen or seventeen, any juvenile defined in subdivision (4) of this section, and any proceeding under subdivision (7) or (11) of this section. The juvenile court shall have concurrent original jurisdiction with the county court as to any proceeding under subdivision (9) or (10) of this section. Notwithstanding any disposition entered by the juvenile court under the Nebraska Juvenile Code, the juvenile court's jurisdiction over any individual adjudged to be within the provisions of this section shall continue until the individual reaches the age of majority or the court otherwise discharges the individual from its jurisdiction.

The juvenile court in each county as herein provided shall have jurisdiction of:

(1) Any juvenile who has committed an act other than a traffic offense which would constitute a misdemeanor or an infraction under the laws of this state, or violation of a city or village ordinance;

(2) Any juvenile who has committed an act which would constitute a felony under the laws of this state;

(3) Any juvenile (a) who is homeless or destitute, or without proper support through no fault of his or her parent, guardian, or custodian; who is abandoned by his or her parent, guardian, or custodian; who lacks proper parental care by reason of the fault or habits of his or her parent, guardian, or custodian; whose parent, guardian, or custodian neglects or refuses to provide proper or necessary subsistence, education, or other care necessary for the health, morals, or well-being of such juvenile; whose parent, guardian, or custodian is unable to provide or neglects or refuses to provide special care made necessary by the mental condition of the juvenile; or who is in a situation or engages in an occupation dangerous to life or limb or injurious to the health or morals of such juvenile, (b) who, by reason of being wayward or habitually disobedient, is uncontrolled by his or her parent, guardian, or custodian; who deports himself or herself so as to injure or endanger seriously the morals or health of himself, herself, or others; or who is habitually truant from home or school, or (c) who is mentally ill and dangerous as defined in section 71-908;

(4) Any juvenile who has committed an act which would constitute a traffic offense as defined in section 43-245;

(5) The parent, guardian, or custodian ~~who has custody~~ of any juvenile described in this section;

(6) The proceedings for termination of parental rights as provided in the Nebraska Juvenile Code;

(7) The proceedings for termination of parental rights as provided in section 42-364;

(8) Any juvenile who has been voluntarily relinquished, pursuant to section 43-106.01, to the Department of Health and Human Services or any child placement agency licensed by the Department of Health and Human Services;

(9) Any juvenile who was a ward of the juvenile court at the inception of his or her guardianship and whose guardianship has been disrupted or terminated;

(10) The adoption or guardianship proceedings for a child over which the juvenile court already has jurisdiction under another provision of the Nebraska Juvenile Code; and

(11) The paternity determination for a child over which the juvenile court already has jurisdiction.

Notwithstanding the provisions of the Nebraska Juvenile Code, the determination of jurisdiction over any Indian child as defined in section 43-1503 shall be subject to the Nebraska Indian Child Welfare Act; and the district court shall have exclusive jurisdiction in proceedings brought pursuant to section 71-510.

Sec. 38. (1) Pending the adjudication of any case, the court may provide the parties the opportunity to address issues involving the child's care and placement, services to the family, and other concerns through facilitated conferencing. Facilitated conferencing may include prehearing conferences and family group conferences. All discussions taking place during such facilitated conferences, including plea negotiations, shall be considered confidential and privileged communications, except communications required by mandatory reporting under section 28-711 for new allegations of child abuse or neglect which were not previously known or reported.

(2) For purposes of this section:

(a) Prehearing conference means a facilitated meeting prior to appearing in court and held to gain the cooperation of the parties, to offer services and treatment, and to develop a problem-solving atmosphere in the best interests of children involved in the juvenile court system; and

(b) Family group conference means a facilitated collaborative process in which families work with extended family members and others to make decisions and develop plans for the best interests of children who are under the jurisdiction of the court.

Sec. 39. Section 43-272.01, Reissue Revised Statutes of Nebraska, is amended to read:

43-272.01 (1) A guardian ad litem as provided for in subsections (2) and (3) of section 43-272 shall be appointed when a child is removed from his or her surroundings pursuant to subdivision (3) or (4) of section 43-248, subdivision (4) of section 43-250, or section 43-251. If removal has not occurred, a guardian ad litem shall be appointed at the commencement of all cases brought under subdivision (3)(a) or (8) of section 43-247 and section 28-707.

(2) In the course of discharging duties as guardian ad litem, the person so appointed shall consider, but not be limited to, the criteria provided in this subsection. The guardian ad litem:

(a) Is appointed to stand in lieu of a parent for a protected juvenile who is the subject of a juvenile court petition, shall be present at all hearings before the court in such matter unless expressly excused by the court, and may enter into such stipulations and agreements concerning adjudication and disposition deemed by him or her to be in the juvenile's best interests;

(b) Is not appointed to defend the parents or other custodian of the protected juvenile but shall defend the legal and social interests of such juvenile. Social interests shall be defined generally as the usual and reasonable expectations of society for the appropriate parental custody and protection and quality of life for juveniles without regard to the socioeconomic status of the parents or other custodians of the juvenile;

(c) May at any time after the filing of the petition move the court of jurisdiction to provide medical or psychological treatment or evaluation as set out in section 43-258. The guardian ad litem shall have access to all reports resulting from any examination ordered under section 43-258, and such reports shall be used for evaluating the status of the protected juvenile;

(d) Shall make every reasonable effort to become familiar with the needs of the protected juvenile which (i) shall include consultation with the juvenile within two weeks after the appointment and once every six months thereafter and inquiry of the most current caseworker, foster parent, or other custodian and (ii) may include inquiry of others directly involved with the juvenile or who may have information or knowledge about the circumstances which brought the juvenile court action or related cases and the development

of the juvenile, including biological parents, physicians, psychologists, teachers, and clergy members;

(e) May present evidence and witnesses and cross-examine witnesses at all evidentiary hearings. In any proceeding under this section relating to a child of school age, certified copies of school records relating to attendance and academic progress of such child are admissible in evidence;

(f) Shall be responsible for making recommendations to the court regarding the temporary and permanent placement of the protected juvenile and shall submit a written report to the court at every dispositional or review hearing, or in the alternative, the court may provide the guardian ad litem with a checklist that shall be completed and presented to the court at every dispositional or review hearing;

(g) Shall consider such other information as is warranted by the nature and circumstances of a particular case; and

(h) May file a petition in the juvenile court on behalf of the juvenile, including a supplemental petition as provided in section 43-291.

(3) Nothing in this section shall operate to limit the discretion of the juvenile court in protecting the best interests of a juvenile who is the subject of a juvenile court petition.

(4) For purposes of subdivision (2)(d) of this section, the court may order the expense of such consultation, if any, to be paid by the county in which the juvenile court action is brought or the court may, after notice and hearing, assess the cost of such consultation, if any, in whole or in part to the parents of the juvenile. The ability of the parents to pay and the amount of the payment shall be determined by the court by appropriate examination.

Sec. 40. Section 43-276, Reissue Revised Statutes of Nebraska, is amended to read:

43-276 In cases coming within subdivision (1) of section 43-247, when there is concurrent jurisdiction, or subdivision (2) or (4) of section 43-247, when the juvenile is under the age of sixteen years, the county attorney shall, in making the determination whether to file a criminal charge, file a juvenile court petition, offer juvenile pretrial diversion, or offer mediation, consider: (1) The type of treatment such juvenile would most likely be amenable to; (2) whether there is evidence that the alleged offense included violence or was committed in an aggressive and premeditated manner; (3) the motivation for the commission of the offense; (4) the age of the juvenile and the ages and circumstances of any others involved in the offense; (5) the previous history of the juvenile, including whether he or she had been convicted of any previous offenses or adjudicated in juvenile court, and, if so, whether such offenses were crimes against the person or relating to property, and other previous history of antisocial behavior, if any, including any patterns of physical violence; (6) the sophistication and maturity of the juvenile as determined by consideration of his or her home, school activities, emotional attitude and desire to be treated as an adult, pattern of living, and whether he or she has had previous contact with law enforcement agencies and courts and the nature thereof; (7) whether there are facilities particularly available to the juvenile court for treatment and rehabilitation of the juvenile; (8) whether the best interests of the juvenile and the security of the public may require that the juvenile continue in secure detention or under supervision for a period extending beyond his or her minority and, if so, the available alternatives best suited to this purpose; (9) whether the victim agrees to participate in mediation; (10) whether there is a juvenile pretrial diversion program established pursuant to sections 43-260.02 to 43-260.07; ~~and~~ (11) whether the juvenile has been convicted of or has acknowledged unauthorized use or possession of a firearm; (12) whether a juvenile court order has been issued for the juvenile pursuant to section 41 of this act; and (13) such other matters as the county attorney deems relevant to his or her decision.

Sec. 41. Any time after the disposition of a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247, upon the motion of any party or the court on its own motion, a hearing may be held regarding the amenability of the juvenile to the rehabilitative services that can be provided under the Nebraska Juvenile Code. The court may enter an order, based upon evidence presented at the hearing, finding that a juvenile is not amenable to rehabilitative services that can be provided under the Nebraska Juvenile Code. The reasons for such a finding shall be stated in the order. Such an order shall be considered by the county attorney in making a future determination under section 43-276 regarding such juvenile and by the court when considering a future transfer motion under section 29-1816 or any future charge or petition regarding such juvenile.

Sec. 42. Section 43-2,129, Revised Statutes Cumulative Supplement,

2006, is amended to read:

43-2,129 Sections 43-245 to 43-2,129 and sections 38 and 41 of this act shall be known and may be cited as the Nebraska Juvenile Code.

Sec. 43. Section 43-512.15, Revised Statutes Supplement, 2007, is amended to read:

43-512.15 (1) The county attorney or authorized attorney, upon referral from the Department of Health and Human Services, shall file a complaint to modify a child support order unless the attorney determines in the exercise of independent professional judgment that:

(a) The variation from the Supreme Court child support guidelines pursuant to section 42-364.16 is based on material misrepresentation of fact concerning any financial information submitted to the attorney;

(b) The variation from the guidelines is due to a voluntary reduction in net monthly income. For purposes of this section, a person who has been incarcerated for a period of one year or more in a county or city jail or a federal or state correctional facility shall be considered to have an involuntary reduction of income unless (i) the incarceration is a result of a conviction for criminal nonsupport pursuant to section 28-706 or a conviction for a violation of any federal law or law of another state substantially similar to section 28-706 or (ii) the incarcerated individual has a documented record of willfully failing or neglecting to provide proper support which he or she knew or reasonably should have known he or she was legally obligated to provide when he or she had sufficient resources to provide such support; or

(c) When the amount of the order is considered with all the other undisputed facts in the case, no variation from the criteria set forth in subdivisions (1) and (2) of section 43-512.12 exists.

(2) The department, a county attorney, or an authorized attorney shall not in any case be responsible for reviewing or filing an application to modify child support for individuals incarcerated as described in subdivision (1)(b) of this section.

~~(2)~~ (3) The proceedings to modify a child support order shall comply with section 42-364, and the county attorney or authorized attorney shall represent the state in the proceedings.

~~(3)~~ (4) After a complaint to modify a child support order is filed, any party may choose to be represented personally by private counsel. Any party who retains private counsel shall so notify the county attorney or authorized attorney in writing.

Sec. 44. Section 43-1311, Reissue Revised Statutes of Nebraska, is amended to read:

43-1311 Except as otherwise provided in the Nebraska Indian Child Welfare Act, immediately following removal of a child from his or her home pursuant to section 43-284, the person or court in charge of the child shall:

(1) Conduct or cause to be conducted an investigation of the child's circumstances designed to establish a safe and appropriate plan for the rehabilitation of the foster child and family unit or permanent placement of the child;

(2) Require that the child receive a medical examination within two weeks of his or her removal from his or her home; ~~and~~

(3) Subject the child to such further diagnosis and evaluation as is necessary; and~~.~~

(4) Require that the child attend the same school as prior to the foster care placement unless the person or court in charge determines that attending such school would not be in the best interests of the child.

Sec. 45. Section 43-1312, Reissue Revised Statutes of Nebraska, is amended to read:

43-1312 (1) Following the investigation conducted pursuant to section 43-1311 and immediately following the initial placement of the child, the person or court in charge of the child shall cause to be established a safe and appropriate plan for the child. The plan shall contain at least the following:

(a) The purpose for which the child has been placed in foster care;

(b) The estimated length of time necessary to achieve the purposes of the foster care placement;

(c) A description of the services which are to be provided in order to accomplish the purposes of the foster care placement;

(d) The person or persons who are directly responsible for the implementation of such plan; ~~and~~

(e) A complete record of the previous placements of the foster child; and~~.~~

(f) The name of the school the child shall attend as provided in section 43-1311.

(2) If the return of the child to his or her parents is not likely based upon facts developed as a result of the investigation, the Department of Health and Human Services shall recommend termination of parental rights and referral for adoption, guardianship, placement with a relative, or, as a last resort, another planned permanent living arrangement.

(3) Each child in foster care under the supervision of the state shall have a permanency hearing by a court, no later than twelve months after the date the child enters foster care and annually thereafter during the continuation of foster care. The court's order shall include a finding regarding the appropriateness of the permanency plan determined for the child and shall include whether, and if applicable when, the child will be:

(a) Returned to the parent;

(b) Referred to the state for filing of a petition for termination of parental rights;

(c) Placed for adoption;

(d) Referred for guardianship; or

(e) In cases where the state agency has documented to the court a compelling reason for determining that it would not be in the best interests of the child to return home, (i) referred for termination of parental rights, (ii) placed for adoption with a fit and willing relative, or (iii) placed with a guardian.

Sec. 46. Section 43-1411.01, Reissue Revised Statutes of Nebraska, is amended to read:

43-1411.01 (1) An action for paternity or parental support under sections 43-1401 to 43-1418 may be initiated by filing a complaint with the clerk of the district court as provided in section 25-2740. Such proceeding may be heard by the county court or the district court as provided in section 25-2740. A paternity determination under sections 43-1411 to 43-1418 may also be decided in a county court or separate juvenile court if the county court or separate juvenile court already has jurisdiction over the child whose paternity is to be determined.

(2) Whenever termination of parental rights is placed in issue in any case arising under sections 43-1401 to 43-1418, subsection (5) of section 42-364 and the Parenting Act shall apply to such proceedings.

Sec. 47. An individual may file a complaint for relief and the court may set aside a final judgment, court order, administrative order, obligation to pay child support, or any other legal determination of paternity if a scientifically reliable genetic test performed in accordance with sections 43-1401 to 43-1418 establishes the exclusion of the individual named as a father in the legal determination. The court shall appoint a guardian ad litem to represent the interest of the child. The filing party shall pay the costs of such test. A court that sets aside a determination of paternity in accordance with this section shall order completion of a new birth record and may order any other appropriate relief, including setting aside an obligation to pay child support. No support order may be retroactively modified, but may be modified with respect to any period during which there is a pending complaint for relief from a determination of paternity under this section, but only from the date that notice of the complaint was served on the nonfiling party. A court shall not grant relief from determination of paternity if the individual named as father (1) completed a notarized acknowledgment of paternity pursuant to section 43-1408.01, (2) adopted the child, or (3) knew that the child was conceived through artificial insemination.

Sec. 48. Section 43-1608, Reissue Revised Statutes of Nebraska, is amended to read:

43-1608 The Legislature finds that matters relating to the establishment, modification, and enforcement of child, spousal, or medical support should be handled by the district courts, separate juvenile courts, and county courts in an expeditious manner so that parties may obtain needed orders and other action as quickly as possible.

Sec. 49. Section 43-1609, Reissue Revised Statutes of Nebraska, is amended to read:

43-1609 (1) ~~The Supreme Court shall direct the district courts to appoint one or more child~~ Child support referees ~~if the Supreme Court determines that child support referees are necessary in order for~~ shall be appointed when necessary by the district courts, separate juvenile courts, and county courts to meet the requirements of federal law relating to expediting the establishment, modification, enforcement, and collection of child, spousal, or medical support and orders issued under subsection (1) of section 42-924.

(2) Child support referees shall be appointed by order of the district court, separate juvenile court, or county court. ~~if it is determined by the Supreme Court that a child support referee is necessary.~~ The Supreme

Court shall appoint child support referees to serve more than one judicial district if the Supreme Court determines it is necessary.

(3) To be qualified for appointment as a child support referee, a person shall be an attorney in good standing admitted to the practice of law in the State of Nebraska and shall meet any other requirements imposed by the Supreme Court. A child support referee shall be sworn or affirmed to well and faithfully hear and examine the cause and to make a just and true report according to the best of his or her understanding. The oath or affirmation may be administered by a district, county, or separate juvenile court judge. A child support referee may be removed at any time by the appointing court.

(4) The Supreme Court may contract with an attorney to perform the duties of a referee for a specific case or for a specific amount of time or may direct a judge of the county court to perform such duties.

Sec. 50. Section 43-1610, Reissue Revised Statutes of Nebraska, is amended to read:

43-1610 Salaries, offices, support staff, equipment, furnishings, and supplies for a child support referee shall be provided by the county and state through funds appropriated by the county and state to the district court, separate juvenile court, and county court. If the Supreme Court ~~determines that~~ appoints a referee ~~shall be appointed~~ to serve in more than one judicial district pursuant to section 43-1609, the salary and necessary travel expenses of the referee shall be paid by funds appropriated by the state to the Supreme Court.

Sec. 51. Section 43-1611, Reissue Revised Statutes of Nebraska, is amended to read:

43-1611 A district court, separate juvenile court, or county court may by rule or order refer or assign any and all matters regarding the establishment, modification, enforcement, and collection of child, spousal, or medical support, ~~and~~ paternity matters, and orders issued under subsection (1) of section 42-924 to a child support referee for findings and recommendations.

Sec. 52. Section 43-1612, Reissue Revised Statutes of Nebraska, is amended to read:

43-1612 (1) A hearing before a child support referee shall be conducted in the same manner as a hearing before the district court, separate juvenile court, or county court. A child support referee shall have the power to summon and enforce the attendance of parties and witnesses, administer all necessary oaths, supervise pretrial preparation pursuant to the rules of discovery adopted pursuant to section 25-1273.01, grant continuations and adjournments, recommend the appointment of counsel for indigent parties, and carry out any other duties permitted by law and assigned by the district court, separate juvenile court, or county court.

(2) Testimony in matters heard by a child support referee shall be preserved by tape recording or other prescribed measures and in accordance with prescribed standards. Transcripts of all hearings shall be available upon request and all costs of preparing the transcript shall be paid by the party for whom it is prepared.

(3) A child support referee shall, in all cases, announce orally his or her findings and recommendations to the parties or their attorneys and submit a written report to the district court, separate juvenile court, or county court containing findings of fact and recommendations and any and all exceptions.

Sec. 53. Section 43-1613, Reissue Revised Statutes of Nebraska, is amended to read:

43-1613 In any and all cases referred to a child support referee by the district court, separate juvenile court, or county court, the parties shall have the right to take exceptions to the findings and recommendations made by the referee and to have a further hearing before ~~the district~~ such court for final disposition. The ~~district~~ court upon receipt of the findings, recommendations, and exceptions shall review the child support referee's report and may accept or reject all or any part of the report and enter judgment based on the ~~district~~ court's own determination.

Sec. 54. Section 43-2404.02, Revised Statutes Cumulative Supplement, 2006, is amended to read:

43-2404.02 (1) There is created a separate and distinct budgetary program within the commission to be known as the County Juvenile Services Aid Program. Funding acquired from participation in the federal act, state General Funds, and funding acquired from other sources which may be used for purposes consistent with the Juvenile Services Act and the federal act shall be used to aid counties in the establishment and provision of community-based services for accused and adjudicated juvenile offenders and to increase capacity for community-based services to juveniles.

(2) The annual General Fund appropriation to the County Juvenile

Services Aid Program shall be apportioned to the counties as aid in accordance with a formula established in rules and regulations adopted and promulgated by the commission. The formula shall be based on the total number of residents per county who are twelve years of age through eighteen years of age and other relevant factors as determined by the commission. The commission may require a local match of up to forty percent from counties receiving aid under such program. Any local expenditures for community-based programs for juveniles may be applied toward such match requirement.

(3) Funds provided to counties under the County Juvenile Services Aid Program shall be used exclusively to assist counties in implementation and operation of programs or services identified in their comprehensive juvenile services plan, including, but not limited to, programs for assessment and evaluation, prevention of delinquent behavior, diversion, shelter care, intensive juvenile probation services, restitution, family support services, and family group conferencing. No funds appropriated or distributed under the County Juvenile Services Aid Program shall be used for construction of secure detention facilities, secure youth treatment facilities, or secure youth confinement facilities. Aid received under this section shall not be used for capital construction or the lease or acquisition of facilities and shall not be used to replace existing funding for programs or services. Any funds not distributed to counties under this subsection shall be retained by the commission to be distributed on a competitive basis under the County Juvenile Services Aid Program.

(4) Any county receiving funding under the County Juvenile Services Aid Program shall file an annual report as required by rules and regulations adopted and promulgated by the commission. The report shall include, but not be limited to, information on the total number of juveniles served, the units of service provided, a listing of the county's annual juvenile justice budgeted and actual expenditures, and a listing of expenditures for detention, residential treatment, and nonresidential treatment.

(5) The commission shall report annually to the Governor and the Legislature on the distribution and use of funds appropriated under the County Juvenile Services Aid Program.

(6) The commission shall adopt and promulgate rules and regulations to implement this section.

Sec. 55. Section 43-2922, Revised Statutes Supplement, 2007, is amended to read:

43-2922 For purposes of the Parenting Act:

(1) Appropriate means reflective of the developmental abilities of the child taking into account any cultural traditions that are within the boundaries of state and federal law;

(2) Approved mediation center means a mediation center approved by the Office of Dispute Resolution;

(3) Best interests of the child means the determination made taking into account the requirements stated in section 43-2923;

(4) Child means a minor under nineteen years of age;

(5) Child abuse or neglect has the same meaning as in section 28-710;

(6) Court conciliation program means a court-based conciliation program under the Conciliation Court Law;

(7) Custody includes legal custody and physical custody;

(8) Domestic intimate partner abuse means: an act of abuse as defined in section 42-903 and a pattern or history of abuse evidenced by one or more of the following acts: Physical or sexual assault, threats of physical assault or sexual assault, stalking, harassment, mental cruelty, emotional abuse, intimidation, isolation, economic abuse, or coercion against any current or past intimate partner, or an abuser using a child to establish or maintain power and control over any current or past intimate partner, and, when they contribute to the coercion or intimidation of an intimate partner, acts of child abuse or neglect or threats of such acts, cruel mistreatment or cruel neglect of an animal as defined in section 28-1008, or threats of such acts, and other acts of abuse, assault, or harassment, or threats of such acts against other family or household members. A finding by a child protection agency shall not be considered res judicata or collateral estoppel regarding an act of child abuse or neglect or a threat of such act, and shall not be considered by the court unless each parent is afforded the opportunity to challenge any such determination;

~~(a) An act of abuse, as defined in section 42-903, and the existence of a pattern or history of such an act without any recency or frequency requirement, including, but not limited to, one or more of the following: Physical assault or sexual assault, threats of physical assault or sexual assault, stalking, harassment, mental cruelty, emotional abuse, intimidation,~~

~~isolation, economic abuse, or coercion against any current or past intimate partner or an abuser using a child to establish or maintain power and control over any current or past intimate partner. The following acts shall be included within the definition of domestic intimate partner abuse if the acts contributed to coercion or intimidation of the intimate partner:~~

~~(i) An act of child abuse or neglect or a threat of such act. A finding by a child protection agency shall not be considered res judicata or collateral estoppel regarding such issue and shall not be considered by the court unless each parent is afforded the opportunity to challenge any such determination;~~

~~(ii) Cruel mistreatment or cruel neglect of an animal, as defined in section 28-1008, or a threat of such act; or~~

~~(iii) Other acts of abuse, assault, or harassment, or threats of such acts, against other family or household members; or~~

~~(b) One act of physical violence resulting in serious bodily injury against any current or past intimate partner, excluding any act of self-defense;~~

(9) Economic abuse means causing or attempting to cause an individual to be financially dependent by maintaining total control over the individual's financial resources, including, but not limited to, withholding access to money or credit cards, forbidding attendance at school or employment, stealing from or defrauding of money or assets, exploiting the victim's resources for personal gain of the abuser, or withholding physical resources such as food, clothing, necessary medications, or shelter;

(10) Emotional abuse means a pattern of acts, threats of acts, or coercive tactics, including, but not limited to, threatening or intimidating to gain compliance, destruction of the victim's personal property or threats to do so, violence to an animal or object in the presence of the victim as a way to instill fear, yelling, screaming, name-calling, shaming, mocking, or criticizing the victim, possessiveness, or isolation from friends and family. Emotional abuse can be verbal or nonverbal;

(11) Joint legal custody means mutual authority and responsibility of the parents for making mutual fundamental decisions regarding the child's welfare, including choices regarding education and health;

(12) Joint physical custody means mutual authority and responsibility of the parents regarding the child's place of residence and the exertion of continuous blocks of parenting time by both parents over the child for significant periods of time;

(13) Legal custody means the authority and responsibility for making fundamental decisions regarding the child's welfare, including choices regarding education and health;

(14) Mediation means a method of nonjudicial intervention in which a trained, neutral third-party mediator, who has no decisionmaking authority, provides a structured process in which individuals and families in conflict work through parenting and other related family issues with the goal of achieving a voluntary, mutually agreeable parenting plan or related resolution;

(15) Mediator means a mediator meeting the qualifications of section 43-2938 and acting in accordance with the Parenting Act;

~~(15)~~ (16) Office of Dispute Resolution means the office established under section 25-2904;

~~(16)~~ (17) Parenting functions means those aspects of the relationship in which a parent or person in the parenting role makes fundamental decisions and performs fundamental functions necessary for the care and development of a child. Parenting functions include, but are not limited to:

(a) Maintaining a safe, stable, consistent, and nurturing relationship with the child;

(b) Attending to the ongoing developmental needs of the child, including feeding, clothing, physical care and grooming, health and medical needs, emotional stability, supervision, and appropriate conflict resolution skills and engaging in other activities appropriate to the healthy development of the child within the social and economic circumstances of the family;

(c) Attending to adequate education for the child, including remedial or other special education essential to the best interests of the child;

(d) Assisting the child in maintaining a safe, positive, and appropriate relationship with each parent and other family members, including establishing and maintaining the authority and responsibilities of each party with respect to the child and honoring the parenting plan duties and responsibilities;

(e) Minimizing the child's exposure to harmful parental conflict;

(f) Assisting the child in developing skills to maintain safe, positive, and appropriate interpersonal relationships; and

(g) Exercising appropriate support for social, academic, athletic, or other special interests and abilities of the child within the social and economic circumstances of the family;

~~(17)~~ (18) Parenting plan means a plan for parenting the child that takes into account parenting functions;

~~(18)~~ (19) Parenting time, visitation, or other access means communication or time spent between the child and parent, the child and a court-appointed guardian, or the child and another family member or members;

~~(19)~~ (20) Physical custody means authority and responsibility regarding the child's place of residence and the exertion of continuous parenting time for significant periods of time;

~~(20)~~ (21) Provisions for safety means a plan developed to reduce risks of harm to children and adults who are victims of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict;

~~(21)~~ (22) Remediation process means the method established in the parenting plan which maintains the best interests of the child and provides a means to identify, discuss, and attempt to resolve future circumstantial changes or conflicts regarding the parenting functions and which minimizes repeated litigation and utilizes judicial intervention as a last resort;

~~(22)~~ (23) Specialized alternative dispute resolution means a method of nonjudicial intervention in high conflict or domestic intimate partner abuse cases in which an approved specialized mediator facilitates voluntary mutual development of and agreement to a structured parenting plan, provisions for safety, a transition plan, or other related resolution between the parties;

~~(23)~~ (24) Transition plan means a plan developed to reduce exposure of the child and the adult to ongoing unresolved parental conflict during parenting time, visitation, or other access for the exercise of parental functions; and

~~(24)~~ (25) Unresolved parental conflict means persistent conflict in which parents are unable to resolve disputes about parenting functions which has a potentially harmful impact on a child.

Sec. 56. Section 43-2923, Revised Statutes Supplement, 2007, is amended to read:

43-2923 ~~(1)~~ The best interests of the child require:

~~(a)~~ (1) A parenting arrangement and parenting plan or other court-ordered arrangement which provides for a child's safety, emotional growth, health, stability, and physical care and regular and continuous school attendance and progress for school-age children;

~~(b)~~ (2) When a preponderance of the evidence indicates domestic intimate partner abuse, a parenting and visitation arrangement that provides for the safety of a victim parent;

~~(c)~~ (3) That the child's families and those serving in parenting roles remain appropriately active and involved in parenting with safe, appropriate, continuing quality contact between children and their families when they have shown the ability to act in the best interests of the child and have shared in the responsibilities of raising the child;

~~(d)~~ (4) That even when parents have voluntarily negotiated or mutually mediated and agreed upon a parenting plan, the court shall determine whether it is in the best interests of the child for parents to maintain continued communications with each other and to make joint decisions in performing parenting functions as are necessary for the care and healthy development of the child. If the court rejects a parenting plan, the court shall provide written findings as to why the parenting plan is not in the best interests of the child; and

~~(e)~~ (5) That certain principles provide a basis upon which education of parents is delivered and upon which negotiation and mediation of parenting plans are conducted. Such principles shall include: To minimize the potentially negative impact of parental conflict on children; to provide parents the tools they need to reach parenting decisions that are in the best interests of a child; to provide alternative dispute resolution or specialized alternative dispute resolution options that are less adversarial for the child and the family; to ensure that the child's voice is heard and considered in parenting decisions; to maximize the safety of family members through the justice process; and, in cases of domestic intimate partner abuse or child abuse or neglect, to incorporate the principles of victim safety and sensitivity, offender accountability, and community safety in parenting plan decisions.

~~(2)(a) If a party is absent or relocates from the family residence, the court shall not consider the absence or relocation as a factor in~~

~~determining the best interests of the child if:~~

~~(i) The absence or relocation is of short duration or by agreement of the parties and the court finds that, during the period of absence or relocation, the party has demonstrated an interest in maintaining custody, parenting time, visitation, or other access, the party maintains, or makes reasonable efforts to maintain, regular contact with the child, and the party's behavior demonstrates no intent to abandon the child;~~

~~(ii) The party is absent or relocates because of an act or acts of actual or threatened abuse by the other party; or~~

~~(iii) The party is absent or relocates because there is a protection order, restraining order, or criminal no-contact order issued that excludes the party from the dwelling of the other party or the child or otherwise enjoins the party from assault or harassment against the other party or the child.~~

~~(b) This subsection does not apply to a party who abandons a child as provided in section 28-705.~~

~~(3) A party's absence, relocation, or failure to comply with custody, parenting time, visitation, or other access orders shall not, by itself, be sufficient to justify a modification of an order if the reason for the absence, relocation, or failure to comply is the party's activation to military service and deployment out of state.~~

Sec. 57. Section 43-2924, Revised Statutes Supplement, 2007, is amended to read:

43-2924 (1) The Parenting Act shall apply to proceedings or modifications filed on or after January 1, 2008, in which parenting functions for a child are at issue (a) under Chapter 42, including, but not limited to, proceedings or modification of orders for dissolution of marriage and child custody and (b) under sections 43-1401 to 43-1418. The Parenting Act may apply to proceedings or modifications in which parenting functions for a child are at issue under Chapter 30 or 43.

(2) The Parenting Act does not apply in any action filed by a county attorney or authorized attorney pursuant to his or her duties under section 42-358, 43-512 to 43-512.18, or 43-1401 to 43-1418, the Income Withholding for Child Support Act, the Revised Uniform Reciprocal Enforcement of Support Act before January 1, 1994, or the Uniform Interstate Family Support Act for purposes of the establishment of paternity and the establishment and enforcement of child and medical support. A county attorney or authorized attorney shall not participate in the development of or court review of a parenting plan under the Parenting Act. If both parents are parties to a paternity or support action filed by a county attorney or authorized attorney, the parents may proceed with a parenting plan.

Sec. 58. Section 43-2927, Revised Statutes Supplement, 2007, is amended to read:

43-2927 (1) ~~Judges, attorneys, court-appointed attorneys, court-appointed guardians, and mediators~~ Mediators involved in proceedings under the Parenting Act shall participate in training approved by the State Court Administrator to recognize child abuse or neglect, domestic intimate partner abuse, and unresolved parental conflict and its potential impact upon children and families.

(2) Screening guidelines and safety procedures for cases involving conditions identified in subsection (1) of section 43-2939 shall be devised by the State Court Administrator. Such screening shall be conducted by mediators using State Court Administrator-approved screening tools.

(3) Such screening shall be conducted as a part of the individual initial screening session for each case referred to mediation under the Parenting Act prior to setting the case for mediation to determine whether or not it is appropriate to proceed in mediation or to proceed in a form of specialized alternative dispute resolution.

~~(4) Screening for domestic intimate partner abuse shall be conducted by each attorney representing a party or child in any proceeding under the act to determine the existence of domestic intimate partner abuse or other issues in regard to coercion, intimidation, and barriers to safety and full and informed decisionmaking.~~

~~(5)~~ (4) The State Court Administrator's office, in collaboration with professionals in the fields of domestic abuse services, child and family services, mediation, and law, shall develop and approve curricula for the training required under subsection (1) of this section, as well as develop and approve rules, procedures, and forms for training and screening for child abuse or neglect, domestic intimate partner abuse, and unresolved parental conflict.

Sec. 59. Section 43-2928, Revised Statutes Supplement, 2007, is amended to read:

43-2928 (1) The court shall order all parties to a proceeding under the Parenting Act to attend a basic level parenting education course. Participation in the course may be delayed or waived by the court for good cause shown. Failure or refusal by any party to participate in such a course as ordered by the court shall not delay the entry of a final judgment or an order modifying a final judgment in such action by more than six months and shall in no case be punished by incarceration.

(2) The court may order parties under the act to attend a second-level parenting education course subsequent to completion of the basic level course when screening or a factual determination of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict has been identified.

~~(3) The court may order a child of parties to a proceeding under the act to attend a child of divorce education course which may include, but is not limited to, information about adjustment of a child to parental separation, family and emotional well-being, conflict management, problem solving, and resiliency skills.~~

~~(4)~~ (3) The State Court Administrator shall approve all parenting ~~and child of divorce~~ education courses under the act.

~~(5)~~ (4) The basic level parenting education course pursuant to this section shall be designed to educate the parties about the impact of the pending court action upon the child and appropriate application of parenting functions. The course shall include, but not be limited to, information on the developmental stages of children, adjustment of a child to parental separation, the litigation and court process, alternative dispute resolution, conflict management, stress reduction, guidelines for parenting time, visitation, or other access, provisions for safety and transition plans, and information about parents and children affected by child abuse or neglect, domestic intimate partner abuse, and unresolved parental conflict.

~~(6)~~ (5) The second-level parenting education course pursuant to this section shall include, but not be limited to, information about development of provisions for safety and transition plans, the potentially harmful impact of domestic intimate partner abuse and unresolved parental conflict on the child, use of effective communication techniques and protocols, resource and referral information for victim and perpetrator services, batterer intervention programs, and referrals for mental health services, substance abuse services, and other community resources.

~~(7)~~ (6) Each party shall be responsible for the costs, if any, of attending any court-ordered parenting ~~or child of divorce~~ education course. ~~The court may waive or specifically allocate costs between the parties for their required participation in the course.~~ At the request of any party, or based upon screening or recommendation of a mediator, the parties shall be allowed to attend separate courses or to attend the same course at different times, particularly if child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict is or has been present in the relationship or one party has threatened the other party.

Sec. 60. Section 43-2929, Revised Statutes Supplement, 2007, is amended to read:

43-2929 (1) In any proceeding in which parenting functions for a child are at issue under Chapter 42, a parenting plan shall be developed and shall be approved by the court. Court rule may provide for the parenting plan to be developed by the parties or their counsel, a court conciliation program, an approved mediation center, or a private mediator. When a parenting plan has not been developed and submitted to the court, the court shall create the parenting plan in accordance with the Parenting Act. A parenting plan shall serve the best interests of the child pursuant to sections 42-364 and 43-2923 and shall:

(a) Assist in developing a restructured family that serves the best interests of the child by accomplishing the parenting functions; and

(b) Include, but not be limited to, determinations of the following:

(i) Legal custody and physical custody of each child;

(ii) Apportionment of parenting time, visitation, or other access for each child, including, but not limited to, specified religious and secular holidays, birthdays, Mother's Day, Father's Day, school and family vacations, and other special occasions, specifying dates and times for the same, or a formula or method for determining such a schedule in sufficient detail that, if necessary, the schedule can be enforced in subsequent proceedings by the court, and set out appropriate times and numbers for telephone access;

(iii) Location of the child during the week, weekend, and given days during the year;

(iv) A transition plan, including the time and places for transfer of the child, method of communication or amount and type of contact between

the parties during transfers, and duties related to transportation of the child during transfers;

(v) Procedures for making decisions regarding the day-to-day care and control of the child consistent with the major decisions made by the person or persons who have legal custody and responsibility for parenting functions;

(vi) Provisions for a remediation process regarding future modifications to such plan;

(vii) Arrangements to maximize the safety of all parties and the child; ~~and~~

(viii) Provisions to ensure regular and continuous school attendance and progress for school-age children of the parties; and

~~(viii)~~ (ix) Provisions for safety when a preponderance of the evidence establishes child abuse or neglect, domestic intimate partner abuse, unresolved parental conflict, or criminal activity which is directly harmful to a child.

(2) A parenting plan shall require that the parties notify each other of a change of address, ~~a party provide notification if the party plans to change the residence of the child for more than thirty days and the change would affect any other party's custody, parenting time, visitation, or other access. The notice shall be given before the contemplated move, by mail, return receipt requested, postage prepaid, to the last-known address of the party to be notified;~~ except that the address or return address shall only include the county and state for a party who is living or moving to an undisclosed location because of safety concerns. ~~A copy of the notice shall also be sent to the affected party's counsel of record. To the extent feasible, the notice shall be provided within a minimum of forty-five days before the proposed change of residence so as to allow time for mediation of a new agreement concerning custody, parenting time, visitation, or other access.~~

(3) When safe and appropriate for the best interests of the child, the parenting plan may encourage mutual discussion of major decisions regarding parenting functions including the child's education, health care, and spiritual or religious upbringing. However, when a prior factual determination of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict has been made, then consideration shall be given to inclusion of provisions for safety and a transition plan that restrict communication or the amount and type of contact between the parties during transfers.

(4) Regardless of the custody determinations in the parenting plan, unless parental rights are terminated, both parents shall continue to have the rights stated in section 42-381.

~~(5) The parenting plan shall be accompanied by a financial plan which shall provide for apportionment of the expenses for medical support, including provisions for medical, dental, and eye care, medical reimbursements, day care, extracurricular activity, education, and other extraordinary expenses of the child and calculation of child support obligations.~~

~~(6)~~ (5) In the development of a parenting plan, consideration shall be given to the child's age, the child's developmental needs, and the child's perspective, as well as consideration of enhancing healthy relationships between the child and each party.

Sec. 61. Section 43-2930, Revised Statutes Supplement, 2007, is amended to read:

43-2930 (1) ~~Every party seeking~~ Each party to a contested proceeding for a temporary order relating to parenting functions or custody, parenting time, visitation, or other access shall ~~file and serve~~ offer a child information affidavit as an exhibit at the hearing before the court. The child information affidavit shall be verified to the extent known or reasonably discoverable by the filing party or parties and ~~shall state, at a minimum,~~ may include the following:

(a) The name, address, and length of residence with any adults with whom each child has lived for the preceding twelve months; except that the address shall only include the county and state for a parent who is living in an undisclosed location because of safety concerns;

(b) The performance by each parent or person acting as parent for the preceding twelve months of the parenting functions relating to the daily needs of the child;

(c) A description of the work and child care schedules for the preceding twelve months of any person seeking custody, parenting time, visitation, or other access and any expected changes to these schedules in the near future;

(d) A description of the current proposed work and child care

schedules; and

(e) A description of the child's school and extracurricular activities, including who is responsible for transportation of the child.~~;~~ ~~and~~

~~(f)~~ ~~Any~~ The child information affidavit may also state any circumstances of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict that are likely to pose a risk to the child and that warrant limitation on the award of temporary custody, parenting time, visitation, or other access to the child pending entry of a permanent parenting plan, including any restraining orders, protection orders, or criminal no-contact orders against either parent or a person acting as a parent by case number and jurisdiction.

(2) After a contested hearing by live testimony or affidavit, the court shall enter a temporary parenting order that includes:

(a) Provision for temporary legal custody;

(b) Provisions for temporary physical custody, which shall include either:

(i) A parenting time, visitation, or other access schedule that designates in which home each child will reside on given days of the year; or

(ii) A formula or method for determining such a schedule in sufficient detail that, if necessary, the schedule can be enforced in subsequent proceedings by the court;

(c) Designation of a temporary residence for the child; ~~and~~

(d) Reference to any existing restraining orders, protection orders, or criminal no-contact orders as well as provisions for safety and a transition plan, consistent with any court's finding of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict in order to provide for the safety of a child and custodial parent necessary for the best interests of the child; and~~.~~

(e) If appropriate, a requirement that a parent complete a program of intervention for perpetrators of domestic violence, a program for drug or alcohol abuse, or a program designed to correct another factor as a condition of parenting time.

(3) A party may move for an order to show cause, and the court may enter a modified temporary parenting order.

(4) The State Court Administrator's office shall create a form ~~for~~ that may be used by the parties to ~~file~~ create a child information affidavit setting forth the elements identified in this section.

(5) Provisions for temporary support for the child and other financial matters may be included in the temporary parenting order.

Sec. 62. Section 43-2932, Revised Statutes Supplement, 2007, is amended to read:

43-2932 (1) ~~In developing~~ When the court is required to develop a parenting plan:

(a) If ~~any party requests, or if~~ a preponderance of the evidence demonstrates, the court shall determine whether a parent who would otherwise be allocated custody, parenting time, visitation, or other access to the child under a parenting plan:

(i) Has committed child abuse or neglect;

(ii) Has committed child abandonment under section 28-705;

(iii) Has committed domestic intimate partner abuse; or

(iv) Has interfered persistently with the other parent's access to the child, except in the case of actions taken for the purpose of protecting the safety of the child or the interfering parent or another family member, pending adjudication of the facts underlying that belief; and

(b) If a parent is found to have engaged in any activity specified by subdivision (1)(a) of this section, limits shall be imposed that are reasonably calculated to protect the child or child's parent from harm. The limitations may include, but are not limited to:

(i) An adjustment of the custody of the child, including the allocation of sole legal custody or physical custody to one parent;

(ii) Supervision of the parenting time, visitation, or other access between a parent and the child;

(iii) Exchange of the child between parents through an intermediary or in a protected setting;

(iv) Restraints on the parent from communication with or proximity to the other parent or the child;

(v) A requirement that the parent abstain from possession or consumption of alcohol or nonprescribed drugs while exercising custodial responsibility and in a prescribed period immediately preceding such exercise;

(vi) Denial of overnight physical custodial ~~responsibility;~~ parenting time;

(vii) Restrictions on the presence of specific persons while the

parent is with the child;

(viii) A requirement that the parent post a bond to secure return of the child following a period in which the parent is exercising physical custodial ~~responsibility~~ parenting time or to secure other performance required by the court; or

~~(ix) A requirement that the parent complete a program of intervention for perpetrators of domestic violence, a program for drug or alcohol abuse, or a program designed to correct another factor; or~~

~~(x)~~ (ix) Any other constraints or conditions deemed necessary to provide for the safety of the child, a child's parent, or any person whose safety immediately affects the child's welfare.

(2) A court determination under this section shall not be considered a report for purposes of inclusion in the central register of child protection cases pursuant to the Child Protection Act.

(3) If a parent is found to have engaged in any activity specified in subsection (1) of this section, the court shall not order legal or physical custody to be given to that parent without making special written findings that the child and other parent can be adequately protected from harm by such limits as it may impose under such subsection. The parent found to have engaged in the behavior specified in subsection (1) of this section has the burden of proving that legal or physical custody, parenting time, visitation, or other access to that parent will not endanger the child or the other parent.

Sec. 63. Section 43-2934, Revised Statutes Supplement, 2007, is amended to read:

43-2934 ~~(1) The court shall not make a custody, parenting time, visitation, or other access order and the parenting plan shall not require anything that is inconsistent with any restraining order, protection order, or criminal no-contact order regarding any party to the proceeding, unless the court finds that:~~

~~(a) The custody, parenting time, visitation, or other access order cannot be made consistent with the restraining order, protection order, or criminal no-contact order; and~~

~~(b) The custody, parenting time, visitation, or other access order is in the best interests of the minor.~~

~~(2)~~ (1) Whenever custody, parenting time, visitation, or other access is granted to a parent in a case in which domestic intimate partner abuse is alleged and a restraining order, protection order, or criminal no-contact order has been issued, the custody, parenting time, visitation, or other access order shall specify the time, day, place, and manner of transfer of the child for custody, parenting time, visitation, or other access to limit the child's exposure to potential domestic conflict or violence and to ensure the safety of all family members. If the court finds that a party is staying in a place designated as a shelter for victims of domestic abuse or other confidential location, the time, day, place, and manner of transfer of the child for custody, parenting time, visitation, or other access shall be designed to prevent disclosure of the location of the shelter or other confidential location.

~~(3)~~ (2) When making an order or parenting plan for custody, parenting time, visitation, or other access in a case in which domestic abuse is alleged and a restraining order, protection order, or criminal no-contact order has been issued, the court shall consider whether the best interests of the child, based upon the circumstances of the case, require that any custody, parenting time, visitation, or other access arrangement be limited to situations in which a third person, specified by the court, is present, or whether custody, parenting time, visitation, or other access should be suspended or denied.

(3) When required by the best interests of the child, the court may enter a custody, parenting time, visitation, or other access order that is inconsistent with an existing restraining order, protection order, or criminal no-contact order. However, it may do so only if it has jurisdiction and authority to do so.

(4) If the court lacks jurisdiction or is otherwise unable to modify the restraining order, protection order, or criminal no-contact order, the court shall require that a certified copy of the custody, parenting time, visitation, or other access order be placed in the court file containing the restraining order, protection order, or criminal no-contact order.

Sec. 64. Section 43-2936, Revised Statutes Supplement, 2007, is amended to read:

43-2936 An individual party, ~~a party's attorney,~~ a guardian ad litem, or a social service agency~~, a court, an entity providing domestic violence services, or another interested entity~~ may ~~refer~~ request that a

custody, parenting time, visitation, other access, or related matter proceed to mediation, specialized alternative dispute resolution, or other alternative dispute resolution process at any time prior to the filing or after the filing of an action with a court. Upon receipt of such ~~referral,~~ request, each mediator, court conciliation program, or approved mediation center shall provide information about mediation and specialized alternative dispute resolution to each party.

Sec. 65. Section 43-2937, Revised Statutes Supplement, 2007, is amended to read:

43-2937 (1) ~~At any time in the proceedings, a court may~~ In addition to those cases that are mandatorily referred to mediation or specialized alternative dispute resolution under subsection (3) of this section, a court may, at any time in the proceedings upon its own motion or upon the motion of either party, refer a case to mediation or specialized alternative dispute resolution in order to attempt resolution of any relevant matter. The court may state a date for the case to return to court, and the court shall not grant an extension of such date except for cause. If the court refers a case to mediation or specialized alternative dispute resolution, the court may, if appropriate, order temporary relief, including necessary support and provision for payment of mediation costs. Court referral shall be to a mediator agreed to by the parties and approved by the court, an approved mediation center, or a court conciliation program. The State Court Administrator's office shall develop a process to approve mediators under the Parenting Act.

(2) Prior to July 1, 2010, if there are allegations of domestic intimate partner abuse or unresolved parental conflict between the parties in any proceeding, mediation shall not be required pursuant to the Parenting Act or by local court rule, unless the court has established a specialized alternative dispute resolution rule approved by the State Court Administrator. The specialized alternative dispute resolution process shall include a method for court consideration of precluding or disqualifying parties from participating; provide an opportunity to educate both parties about the process; require informed consent from both parties in order to proceed; provide safety protocols, including separate individual sessions for each participant, informing each party about the process, and obtaining informed consent from each party to continue the process; allow support persons to attend sessions; and establish opt-out-for-cause provisions. On and after July 1, 2010, all trial courts shall have a mediation and specialized alternative dispute resolution rule in accordance with the act.

(3) ~~On and~~ For cases filed on or after July 1, 2010, all parties who have not submitted a parenting plan to the court within the time specified by the court shall be ordered to participate in mediation or specialized alternative dispute resolution ~~at~~ with a mediator, a court conciliation program, or an approved mediation center as provided in section 43-2939.

Sec. 66. Section 43-2943, Revised Statutes Supplement, 2007, is amended to read:

43-2943 (1) The State Court Administrator ~~shall~~ may develop rules to implement the Parenting Act.

(2) The Parenting Act Fund is created. The State Court Administrator, through the Office of Dispute Resolution, approved mediation centers, and court conciliation programs, shall use the fund to carry out the Parenting Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 67. Section 43-3001, Revised Statutes Cumulative Supplement, 2006, is amended to read:

43-3001 (1) Notwithstanding any other provision of law regarding the confidentiality of records and when not prohibited by the federal Privacy Act of 1974, as amended, juvenile court records and any other pertinent information that may be in the possession of school districts, county attorneys, the Attorney General, law enforcement agencies, child advocacy centers, state probation personnel, state parole personnel, youth detention facilities, medical personnel, treatment or placement programs, the Department of Health and Human Services, the Department of Correctional Services, the State Foster Care Review Board, child abuse and neglect investigation teams, child abuse and neglect treatment teams, or other multidisciplinary teams for abuse, neglect, or delinquency concerning a child who is in the custody of the state may be shared with individuals and agencies who have been identified in a court order authorized by this section.

(2) In any judicial proceeding concerning a child who is currently, or who may become at the conclusion of the proceeding, a ward of the court or state or under the supervision of the court, an order may be issued which identifies individuals and agencies who shall be allowed to receive

otherwise confidential information concerning the child for legitimate and official purposes. The individuals and agencies who may be identified in the court order are the child's attorney or guardian ad litem, the parents' attorney, foster parents, appropriate school personnel, county attorneys, the Attorney General, authorized court personnel, law enforcement agencies, state probation personnel, state parole personnel, youth detention facilities, medical personnel, treatment or placement programs, the Department of Health and Human Services, the Office of Juvenile Services, the Department of Correctional Services, the State Foster Care Review Board, child abuse and neglect investigation teams, child abuse and neglect treatment teams, and other multidisciplinary teams for abuse, neglect, or delinquency. Unless the order otherwise states, the order shall be effective until the child leaves the custody of the state or until a new order is issued.

(3) All information acquired by an individual or agency pursuant to this section shall be confidential and shall not be disclosed except to other persons who have a legitimate and official interest in the information and are identified in the court order issued pursuant to this section with respect to the child in question. A person who receives such information or who cooperates in good faith with other individuals and agencies identified in the appropriate court order by providing information or records about a child shall be immune from any civil or criminal liability. The provisions of this section granting immunity from liability shall not be extended to any person alleged to have committed an act of child abuse or neglect.

(4) ~~Any~~ In any proceeding under this section relating to a child of school age, certified copies of school records relating to attendance and academic progress of such child are admissible in evidence.

(5) Except as provided in subsection (4) of this section, any person who publicly discloses information received pursuant to this section shall be guilty of a Class III misdemeanor.

Sec. 68. Section 79-215, Revised Statutes Cumulative Supplement, 2006, is amended to read:

79-215 (1) Except as otherwise provided in this section, a student is a resident of the school district where he or she resides or any school district where at least one of his or her parents reside and shall be admitted to any such school district upon request without charge.

(2) A school board shall admit any homeless student that requests admission without charge.

(3) A school board may allow a student whose residency in the district ceases during a school year to continue attending school in such district for the remainder of that school year.

(4) A school board may admit nonresident students to the school district pursuant to a contract with the district where the student is a resident and shall collect tuition pursuant to the contract.

(5) A school board may admit nonresident students to the school district pursuant to the enrollment option program as authorized by sections 79-232 to 79-246, and such admission shall be without charge.

(6) A school board may admit a student who is a resident of another state to the school district and collect tuition in advance at a rate determined by the school board.

(7) When a student as a ward of the state or as a ward of any court (a) has been placed in a school district other than the district in which he or she resided at the time he or she became a ward and such ward does not reside in a foster family home licensed or approved by the Department of Health and Human Services or a foster home maintained or used pursuant to section 83-108.04 or (b) has been placed in any institution which maintains a special education program which has been approved by the State Department of Education and such institution is not owned or operated by the district in which he or she resided at the time he or she became a ward, the cost of his or her education and the required transportation costs associated with the student's education shall be paid by the state, but not in advance, to the receiving school district or approved institution under rules and regulations prescribed by the Department of Health and Human Services and the student shall remain a resident of the district in which he or she resided at the time he or she became a ward. Any student who is a ward of the state or a ward of any court who resides in a foster family home licensed or approved by the Department of Health and Human Services or a foster home maintained or used pursuant to section 83-108.04 shall be deemed a resident of the district in which he or she resided at the time he or she became a foster child, unless it is determined under section 43-1311 or 43-1312 that he or she will not attend such district in which case he or she shall be deemed a resident of the district in which the foster family home or foster home is located.

(8) When a student is not a ward of the state or a ward of any

court and is residing in a residential setting located in Nebraska for reasons other than to receive an education and the residential setting is operated by a service provider which is certified or licensed by the Department of Health and Human Services or is enrolled in the medical assistance program established pursuant to the Medical Assistance Act and Title XIX or XXI of the federal Social Security Act, as amended, the student shall remain a resident of the district in which he or she resided immediately prior to residing in such residential setting. Upon request by a parent or legal guardian, the resident school district shall contract with the district in which such residential setting is located for the provision of all educational services, including all special education services. If the parent or legal guardian has requested that the resident school district contract with the district in which such residential setting is located, the district in which such residential setting is located shall contract with the resident district and provide all educational services, including all special education services, to the student. If the two districts cannot agree on the amount of the contract, the State Department of Education shall determine the amount to be paid by the resident district to the district in which such residential setting is located based on the needs of the student, approved special education rates, the department's general experience with special education budgets, and the cost per student in the district in which such residential setting is located. Once the contract has been entered into, all legal responsibility for special education and related services shall be transferred to the school district in which the residential setting is located. The resident district for a student who is not a ward of the state or a ward of any court does not change when the student moves from one residential setting to another.

(9) In the case of any individual eighteen years of age or younger who is a ward of the state or any court and who is placed in a county detention home established under section 43-2,110, the cost of his or her education shall be paid by the state, regardless of the district in which he or she resided at the time he or she became a ward, to the agency or institution which: (a) Is selected by the county board with jurisdiction over such detention home; (b) has agreed or contracted with such county board to provide educational services; and (c) has been approved by the State Department of Education pursuant to rules and regulations prescribed by the State Board of Education.

(10) No tuition shall be charged for students who may be by law allowed to attend the school without charge.

(11) On a form prescribed by the State Department of Education, an adult with legal or actual charge or control of a student shall provide the name of the student, the name of the adult with legal or actual charge or control of the student, the address where the student is residing, and the telephone number and address where the adult may generally be reached during the school day. If the student is homeless or if the adult does not have a telephone number and address where he or she may generally be reached during the school day, those parts of the form may be left blank and a box may be marked acknowledging that these are the reasons these parts of the form were left blank. The adult with legal or actual charge or control of the student shall also sign the form.

(12) The department shall adopt and promulgate rules and regulations to carry out the department's responsibilities under this section.

Sec. 69. Section 84-917, Revised Statutes Cumulative Supplement, 2006, is amended to read:

84-917 (1) Any person aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, shall be entitled to judicial review under the Administrative Procedure Act. Nothing in this section shall be deemed to prevent resort to other means of review, redress, or relief provided by law.

(2)(a) Proceedings for review shall be instituted by filing a petition in the district court of the county where the action is taken within thirty days after the service of the final decision by the agency. All parties of record shall be made parties to the proceedings for review. If an agency's only role in a contested case is to act as a neutral factfinding body, the agency shall not be a party of record. In all other cases, the agency shall be a party of record. Summons shall be served within thirty days of the filing of the petition in the manner provided for service of a summons in section 25-510.02. If the agency whose decision is appealed from is not a party of record, the petitioner shall serve a copy of the petition and a request for preparation of the official record upon the agency within thirty days of the filing of the petition. The court, in its discretion, may permit other interested persons to intervene.

(b) A petition for review shall set forth: (i) The name and mailing

address of the petitioner; (ii) the name and mailing address of the agency whose action is at issue; (iii) identification of the final decision at issue together with a duplicate copy of the final decision; (iv) identification of the parties in the contested case that led to the final decision; (v) facts to demonstrate proper venue; (vi) the petitioner's reasons for believing that relief should be granted; and (vii) a request for relief, specifying the type and extent of the relief requested.

(3) The filing of the petition or the service of summons upon such agency shall not stay enforcement of a decision. The agency may order a stay. The court may order a stay after notice of the application therefor to such agency and to all parties of record. If the agency has found that its action on an application for stay or other temporary remedies is justified to protect against a substantial threat to the public health, safety, or welfare, the court may not grant relief unless the court finds that: (a) The applicant is likely to prevail when the court finally disposes of the matter; (b) without relief, the applicant will suffer irreparable injuries; (c) the grant of relief to the applicant will not substantially harm other parties to the proceedings; and (d) the threat to the public health, safety, or welfare relied on by the agency is not sufficiently serious to justify the agency's action in the circumstances. The court may require the party requesting such stay to give bond in such amount and conditioned as the court may direct.

(4) Within thirty days after service of the petition or within such further time as the court for good cause shown may allow, the agency shall prepare and transmit to the court a certified copy of the official record of the proceedings had before the agency. Such official record shall include: (a) Notice of all proceedings; (b) any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the agency pertaining to the contested case; (c) the transcribed record of the hearing before the agency, including all exhibits and evidence introduced during such hearing, a statement of matters officially noticed by the agency during the proceeding, and all proffers of proof and objections and rulings thereon; and (d) the final order appealed from. The agency shall charge the petitioner with the reasonable direct cost or require the petitioner to pay the cost for preparing the official record for transmittal to the court in all cases except when the petitioner is not required to pay a filing fee. The agency may require payment or bond prior to the transmittal of the record.

(5)(a) When the petition instituting proceedings for review was filed in the district court before July 1, 1989, the review shall be conducted by the court without a jury on the record of the agency, and review may not be obtained of any issue that was not raised before the agency unless such issue involves one of the grounds for reversal or modification enumerated in subdivision (6)(a) of this section. When the petition instituting proceedings for review is filed in the district court on or after July 1, 1989, the review shall be conducted by the court without a jury de novo on the record of the agency.

(b)(i) If the court determines that the interest of justice would be served by the resolution of any other issue not raised before the agency, the court may remand the case to the agency for further proceedings.

(ii) The agency shall affirm, modify, or reverse its findings and decision in the case by reason of the additional proceedings and shall file the decision following remand with the reviewing court. The agency shall serve a copy of the decision following remand upon all parties to the district court proceedings. The agency decision following remand shall become final unless a petition for further review is filed with the reviewing court within thirty days after the decision following remand being filed with the district court. The party filing the petition for further review shall serve a copy of the petition for further review upon all parties to the district court proceeding in accordance with ~~section 25-534~~ the rules of pleading in civil actions promulgated by the Supreme Court pursuant to section 25-801.01 within thirty days after the petition for further review is filed. Within thirty days after service of the petition for further review or within such further time as the court for good cause shown may allow, the agency shall prepare and transmit to the court a certified copy of the official record of the additional proceedings had before the agency following remand.

(6)(a) When the petition instituting proceedings for review was filed in the district court before July 1, 1989, the court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the agency decision is:

(i) In violation of constitutional provisions;

(ii) In excess of the statutory authority or jurisdiction of the agency;

(iii) Made upon unlawful procedure;

(iv) Affected by other error of law;

(v) Unsupported by competent, material, and substantial evidence in view of the entire record as made on review; or

(vi) Arbitrary or capricious.

(b) When the petition instituting proceedings for review is filed in the district court on or after July 1, 1989, the court may affirm, reverse, or modify the decision of the agency or remand the case for further proceedings.

(7) The review provided by this section shall not be available in any case where other provisions of law prescribe the method of appeal.

Sec. 70. Section 86-2,107, Revised Statutes Cumulative Supplement, 2006, is amended to read:

86-2,107 (1)(a) A governmental entity acting under subsection (2) of section 86-2,106 may include in its subpoena or court order a requirement that the provider to whom the request is directed create a backup copy of the contents of the electronic communications sought in order to preserve those communications. Without notifying the subscriber or customer of such subpoena or court order, such provider shall create such backup copy as soon as practicable consistent with its regular business practices and shall confirm to the governmental entity that such backup copy has been made. Such backup copy shall be created within two business days after receipt by the provider of the subpoena or court order.

(b) Notice to the subscriber or customer shall be made by the governmental entity within three days after receipt of such confirmation unless such notice is delayed pursuant to section 86-2,108.

(c) The provider shall not destroy such backup copy until the later of (i) the delivery of the information or (ii) the resolution of any proceedings including appeals of any proceeding concerning the subpoena or court order.

(d) The provider shall release such backup copy to the requesting governmental entity no sooner than fourteen days after the governmental entity's notice to the subscriber or customer if such provider (i) has not received notice from the subscriber or customer that the subscriber or customer has challenged the governmental entity's request and (ii) has not initiated proceedings to challenge the request of the governmental entity.

(e) A governmental entity may seek to require the creation of a backup copy under subdivision (a) of this subsection if in its sole discretion such entity determines that there is reason to believe that notification under this section and section 86-2,106 of the existence of the subpoena or court order may result in destruction of or tampering with evidence. This determination shall not be subject to challenge by the subscriber, customer, or provider.

(2)(a) Within fourteen days after notice by the governmental entity to the subscriber or customer under subdivision (1)(b) of this section, such subscriber or customer may file a motion to quash such subpoena or vacate such court order, with copies served upon the governmental entity and with written notice of such challenge to the provider. A motion to vacate a court order shall be filed in the court which issued such order. A motion to quash a subpoena shall be filed in the appropriate court. Such motion or application shall contain an affidavit or sworn statement (i) stating that the applicant is a subscriber to or customer of the service from which the contents of electronic communications maintained for him or her have been sought and (ii) stating the applicant's reasons for believing that the records sought are not relevant to a legitimate law enforcement inquiry or that there has not been substantial compliance with sections 86-2,104 to 86-2,110 in some other respect.

(b) Service shall be made under this section upon a governmental entity by delivering or mailing by registered or certified mail a copy of the papers to the person, office, or department specified in the notice which the subscriber or customer has received pursuant to sections 86-2,106 to 86-2,108. For purposes of this section, delivery ~~has the same meaning as in section 25-534.~~ means (i) handing a copy to the attorney or to the party or (ii) leaving a copy at the attorney's or party's office with a clerk or other person in charge of the office, or if the office is closed or the attorney or party to be served has no office, leaving it at the attorney's or the party's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

(c) If the court finds that the subscriber or customer has complied with subdivisions (a) and (b) of this subsection, the court shall order the governmental entity to file a sworn response, which may be filed in camera if the governmental entity includes in its response the reasons which make in camera review appropriate. If the court is unable to determine the motion

or application on the basis of the parties' initial allegations and response, the court may conduct such additional proceedings as it deems appropriate. All such proceedings shall be completed and the motion or application decided as soon as practicable after the filing of the governmental entity's response.

(d) If the court finds that the applicant is not the subscriber or customer for whom the communications sought by the governmental entity are maintained or that there is reason to believe that the law enforcement inquiry is legitimate and that the communications sought are relevant to that inquiry, it shall deny the motion or application and order such process enforced. If the court finds that the applicant is the subscriber or customer for whom the communications sought by the governmental entity are maintained and that there is not reason to believe that the communications sought are relevant to a legitimate law enforcement inquiry or that there has not been substantial compliance with sections 86-2,104 to 86-2,110, it shall order the process quashed.

(e) A court order denying a motion or application under this section shall not be deemed a final order and no interlocutory appeal may be taken therefrom by the subscriber or customer.

Sec. 71. Jurors shall be permitted, but not required, to take notes. The notes may be used during the jury's deliberations, but not preserved for review on appeal. The notes shall be treated as confidential between the juror making them and the other jurors. The trial judge shall ensure the confidentiality of the notes during the course of the trial and the jury's deliberations and shall cause the notes to be destroyed immediately upon return of the verdict.

Sec. 72. Jurors shall be permitted, but not required, to take notes. The notes may be used during the jury's deliberations, but not preserved for review on appeal. The notes shall be treated as confidential between the juror making them and the other jurors. The trial judge shall ensure the confidentiality of the notes during the course of the trial and the jury's deliberations and shall cause the notes to be destroyed immediately upon return of the verdict.

Sec. 73. The Revisor of Statutes shall assign section 15 of this act to Chapter 29, article 23; section 33 of this act to Chapter 42, article 3; section 47 of this act within sections 43-1401 to 43-1418 and any reference to such sections shall be deemed to include section 47 of this act; section 71 of this act within sections 25-1106 to 25-1118; and section 72 of this act to Chapter 29, article 20.

Sec. 74. Sections 1, 2, 4, 5, 10, 11, 12, 13, 14, 15, 48, 49, 50, 51, 52, 53, 76, and 80 of this act become operative on January 1, 2009. Sections 3, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 36, 37, 38, 39, 40, 41, 42, 44, 45, 54, 67, 68, 69, 70, 79, and 82 of this act become operative three calendar months after the adjournment of this legislative session. Sections 43 and 77 of this act become operative on July 1, 2008. The other sections of this act become operative on their effective date.

Sec. 75. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 76. Original sections 24-303, 24-730, 25-1129, 25-1130, 43-1608, 43-1609, 43-1610, 43-1611, 43-1612, and 43-1613, Reissue Revised Statutes of Nebraska, and sections 24-312, 24-517, 25-2704, 25-2733, and 25-2740, Revised Statutes Cumulative Supplement, 2006, are repealed.

Sec. 77. Original section 43-512.15, Revised Statutes Supplement, 2007, is repealed.

Sec. 78. Original sections 42-357 and 43-1411.01, Reissue Revised Statutes of Nebraska, and sections 42-353, 42-359, 42-364, 42-364.13, 42-371, 43-2922, 43-2923, 43-2924, 43-2927, 43-2928, 43-2929, 43-2930, 43-2932, 43-2934, 43-2936, 43-2937, and 43-2943, Revised Statutes Supplement, 2007, are repealed.

Sec. 79. Original sections 24-508, 25-534, 29-1816, 42-925, 43-272.01, 43-276, 43-1311, and 43-1312, Reissue Revised Statutes of Nebraska, and sections 24-1301, 24-1302, 29-2246, 29-3927, 43-247, 43-2,129, 43-2404.02, 43-3001, 79-215, 84-917, and 86-2,107, Revised Statutes Cumulative Supplement, 2006, are repealed.

Sec. 80. The following sections are outright repealed: Sections 25-1133 and 25-2734, Reissue Revised Statutes of Nebraska.

Sec. 81. The following section is outright repealed: Section 43-2931, Revised Statutes Supplement, 2007.

Sec. 82. The following section is outright repealed: Section 43-261, Reissue Revised Statutes of Nebraska.

Sec. 83. Since an emergency exists, this act takes effect when

passed and approved according to law.