

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 120

Introduced by Crosby, 29

Read first time January 7, 1999

Committee: Judiciary

A BILL

1 FOR AN ACT relating to divorce; to amend sections 42-364 and
2 43-2,113, Reissue Revised Statutes of Nebraska; to change
3 child custody determination provisions; to harmonize
4 provisions; and to repeal the original sections.
5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 42-364, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 42-364. (1) When dissolution of a marriage or legal
4 separation is decreed, the court may include a parenting plan
5 developed under the Parenting Act, if a parenting plan has been so
6 developed, and such orders in relation to any minor child and the
7 child's maintenance as are justified, including placing the minor
8 child in the custody of the court or third parties or terminating
9 parental rights pursuant to this section if the best interests of
10 the minor child require such orders. Custody and time spent with
11 each parent shall be determined on the basis of the best interests
12 of the minor child with the objective of maintaining the ongoing
13 involvement of both parents in the minor child's life and first
14 consideration shall be given to placing custody of the minor child
15 with both parents on a shared or joint custody basis. Subsequent
16 changes may be made by the court after hearing on such notice as
17 prescribed by the court. A decree of dissolution of a marriage or
18 legal separation shall include the social security number of each
19 party.

20 (2) In determining custody arrangements and the time to
21 be spent with each parent, the court shall consider the best
22 interests of the minor child which shall include, but not be
23 limited to:

24 (a) The relationship of the minor child to each parent
25 prior to the commencement of the action or any subsequent hearing;

26 (b) The desires and wishes of the minor child if of an
27 age of comprehension regardless of chronological age, when such
28 desires and wishes are based on sound reasoning;

1 (c) The general health, welfare, and social behavior of
2 the minor child; and

3 (d) Credible evidence of abuse inflicted on any family or
4 household member. For purposes of this subdivision, abuse and
5 family or household member shall have the meanings prescribed in
6 section 42-903.

7 (3) In determining custody arrangements and the time to
8 be spent with each parent:

9 (a) The court may place the minor child in joint custody
10 after conducting a hearing in open court and specifically finding
11 that joint custody is in the best interests of the minor child. If
12 joint custody is ordered, each parent shall have equal rights to
13 make decisions in the best interests of the minor child in his or
14 her custody; and

15 (b) The ~~7 the~~ court shall not give preference to either
16 parent based on the sex of the parent and no presumption shall
17 exist that either parent is more fit or suitable than the other.

18 (4) Regardless of the custody determination of the court,
19 (a) each parent shall continue to have full and equal access to the
20 education and medical records of his or her child unless the court
21 orders to the contrary and (b) either parent may make emergency
22 decisions affecting the health or safety of his or her child while
23 the child is in the physical custody of such parent pursuant to a
24 visitation order entered by the court.

25 (5) ~~After a hearing in open court, the court may place~~
26 ~~the custody of a minor child with both parents on a shared or joint~~
27 ~~custody basis when both parents agree to such an arrangement. In~~
28 ~~that event, each parent shall have equal rights to make decisions~~

1 ~~in the best interests of the minor child in his or her custody.~~
2 ~~The court may place a minor child in joint custody after conducting~~
3 ~~a hearing in open court and specifically finding that joint custody~~
4 ~~is in the best interests of the minor child regardless of any~~
5 ~~parental agreement or consent.~~

6 ~~(6)~~ In determining the amount of child support to be paid
7 by a parent, the court shall consider the earning capacity of each
8 parent and the guidelines provided by the Supreme Court pursuant to
9 section 42-364.16 for the establishment of child support
10 obligations. Upon application, hearing, and presentation of
11 evidence of an abusive disregard of the use of child support money
12 paid by one party to the other, the court may require the party
13 receiving such payment to file a verified report with the court, as
14 often as the court requires, stating the manner in which such money
15 is used. Child support paid to the party having custody of the
16 minor child shall be the property of such party except as provided
17 in section 43-512.07. The clerk of the district court shall
18 maintain a record, separate from all other judgment dockets, of all
19 decrees and orders in which the payment of child support or spousal
20 support has been ordered, whether ordered by a district court,
21 county court, separate juvenile court, or county court sitting as a
22 juvenile court. Orders for child support in cases in which a party
23 has applied for services under Title IV-D of the federal Social
24 Security Act, as amended, shall be reviewed as provided in sections
25 43-512.12 to 43-512.18.

26 ~~(7)~~ (6) Whenever termination of parental rights is placed
27 in issue by the pleadings or evidence, the court shall transfer
28 jurisdiction to a juvenile court established pursuant to the

1 Nebraska Juvenile Code unless a showing is made that the county
2 court or district court is a more appropriate forum. In making
3 such determination, the court may consider such factors as cost to
4 the parties, undue delay, congestion of dockets, and relative
5 resources available for investigative and supervisory assistance.
6 A determination that the county court or district court is a more
7 appropriate forum shall not be a final order for the purpose of
8 enabling an appeal. If no such transfer is made, the court shall
9 appoint an attorney as guardian ad litem to protect the interests
10 of any minor child. The court may terminate the parental rights of
11 one or both parents after notice and hearing when the court finds
12 such action to be in the best interests of the minor child and it
13 appears by the evidence that one or more of the following
14 conditions exist:

15 (a) The minor child has been abandoned by one or both
16 parents;

17 (b) One parent has or both parents have substantially and
18 continuously or repeatedly neglected the minor child and refused to
19 give such minor child necessary parental care and protection;

20 (c) One parent is or both parents are unfit by reason of
21 debauchery, habitual use of intoxicating liquor or narcotic drugs,
22 illegal possession or sale of illegal substances, or repeated lewd
23 and lascivious behavior, which conduct is found by the court to be
24 seriously detrimental to the health, morals, or well-being of the
25 minor child; or

26 (d) One parent is or both parents are unable to discharge
27 parental responsibilities because of mental illness or mental
28 deficiency and there are reasonable grounds to believe that such

1 condition will continue for a prolonged indeterminate period.

2 ~~(8)~~ (7) Whenever termination of parental rights is placed
3 in issue, the court shall inform a parent who does not have legal
4 counsel of the parent's right to retain counsel and of the parent's
5 right to retain legal counsel at county expense if such parent is
6 unable to afford legal counsel. If such parent is unable to afford
7 legal counsel and requests the court to appoint legal counsel, the
8 court shall immediately appoint an attorney to represent the parent
9 in the termination proceedings. The court shall order the county
10 to pay the attorney's fees and all reasonable expenses incurred by
11 the attorney in protecting the rights of the parent. At such
12 hearing, the guardian ad litem shall take all action necessary to
13 protect the interests of the minor child. The court shall fix the
14 fees and expenses of the guardian ad litem and tax the same as
15 costs but may order the county to pay on finding the responsible
16 party indigent and unable to pay.

17 Sec. 2. Section 43-2,113, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 43-2,113. (1) In counties where a separate juvenile
20 court is established, the county board of the county shall provide
21 suitable rooms and offices for the accommodation of the judge of
22 the separate juvenile court and the officers and employees
23 appointed by such judge or by the probation administrator pursuant
24 to subsection (4) of section 29-2253. Such separate juvenile court
25 and the judge, officers, and employees of such court shall have the
26 same and exclusive jurisdiction, powers, and duties that are
27 prescribed in the Nebraska Juvenile Code, concurrent jurisdiction
28 under section 83-223, and such other jurisdiction, powers, and

1 duties as specifically provided by law.

2 (2) A juvenile court created in a separate juvenile court
3 judicial district or a county court sitting as a juvenile court in
4 all other counties shall have and exercise jurisdiction within such
5 juvenile court judicial district or county court judicial district
6 with the county court and district court in all matters arising
7 under Chapter 42, article 3, when the care, support, custody, or
8 control of minor children under the age of eighteen years is
9 involved. Such cases shall be filed in the county court and
10 district court and may, with the consent of the juvenile judge, be
11 transferred to the docket of the separate juvenile court or county
12 court.

13 (3) All orders issued by a separate juvenile court or a
14 county court which provide for child support or spousal support as
15 defined in section 42-347 shall be governed by sections 42-347 to
16 42-381 and 43-290 relating to such support. Certified copies of
17 such orders shall be filed by the clerk of the separate juvenile or
18 county court with the clerk of the district court who shall
19 maintain a record as provided in subsection ~~(6)~~ (5) of section
20 42-364. There shall be no fee charged for the filing of such
21 certified copies.

22 Sec. 3. Original sections 42-364 and 43-2,113, Reissue
23 Revised Statutes of Nebraska, are repealed.