

LEGISLATURE OF NEBRASKA  
NINETY-EIGHTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 316**

Introduced by Brashear, 4; Beutler, 28; Brown, 6

Read first time January 14, 2003

Committee: Judiciary

A BILL

1 FOR AN ACT relating to divorce; to amend sections 42-364,  
2 43-1214.01, and 43-2911, Reissue Revised Statutes of  
3 Nebraska; to change child custody determination,  
4 parenting plan, and mediation and remediation costs  
5 provisions; to harmonize provisions; and to repeal the  
6 original sections.  
7 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) For purposes of this section:

4                   (a) Abuse has the same meaning as in section 42-903;

5                   (b) Family or household member has the same meaning as in  
6 section 42-903;

7                   (c) Joint legal custody means shared authority and  
8 responsibility of the parents for making fundamental decisions  
9 regarding the child's welfare, including choices regarding  
10 education and health; and

11                   (d) Joint physical custody means shared authority and  
12 responsibility of the parents regarding the child's place of  
13 residence and the exertion of continuous physical custody by both  
14 parents over the child for significant periods of time.

15                   (2) When dissolution of a marriage or legal separation is  
16 decreed, the court may include a parenting plan developed under the  
17 Parenting Act, if a parenting plan has been so developed, and such  
18 orders in relation to any minor child and the child's maintenance  
19 as are justified, including placing the minor child in the custody  
20 of the court or third parties or terminating parental rights  
21 pursuant to this section if the best interests of the minor child  
22 require such orders. Custody and time spent with each parent shall  
23 be determined on the basis of the best interests of the minor child  
24 with the objective of maintaining the ongoing substantial  
25 involvement of both parents in the minor child's life, and first  
26 consideration shall be given to placing the minor child in joint  
27 legal custody. The custody determination of the court shall  
28 include both the determination of legal custody of the child and

1 the determination of physical custody of the child as separate and  
 2 independent issues. Subsequent changes may be made by the court  
 3 after hearing on such notice as prescribed by the court. A decree  
 4 of dissolution of a marriage or legal separation shall include the  
 5 social security number of each party.

6 ~~(2)~~ (3) In determining custody and visitation  
 7 arrangements and the time to be spent with each parent, the court  
 8 shall consider the best interests of the minor child which shall  
 9 include, but not be limited to:

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

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

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

17 (d) Credible evidence of abuse inflicted on any family or  
 18 household member. ~~For purposes of this subdivision, abuse and~~  
 19 ~~family or household member shall have the meanings prescribed in~~  
 20 ~~section 42-903.~~

21 ~~(3)~~ (4) In determining custody and visitation  
 22 arrangements and the time to be spent with each parent:

23 (a) The court may place the minor child in joint legal  
 24 custody only after conducting a hearing in open court and  
 25 specifically finding that such joint custody is in the best  
 26 interest of the minor child, regardless of any parental agreement  
 27 or consent. If joint legal custody is ordered, each parent shall  
 28 have the right to make decisions in the best interests of the minor

1 child in accordance with the parenting plan developed under the  
2 Parenting Act. The court need not consider joint legal custody if  
3 it finds credible evidence of abuse inflicted upon any family or  
4 household member;

5 (b) The  ~~,~~ the court shall not give preference to either  
6 parent based on the sex of the parent and no presumption shall  
7 exist that either parent is more fit or suitable than the other;  
8 and

9 (c) A decree ordering joint legal custody or joint  
10 physical custody shall include a parenting plan which specifies  
11 each parent's separate or shared role and responsibility to make  
12 decisions regarding the minor child.

13 ~~(4)~~ (5) Regardless of the custody determination of the  
14 court, (a) each parent shall continue to have full and equal access  
15 to the education and medical records of his or her child unless the  
16 court orders to the contrary and (b) either parent may make  
17 emergency decisions affecting the health or safety of his or her  
18 child while the child is in the physical custody of with such  
19 parent. ~~pursuant to a visitation order entered by the court.~~

20 (5) After a hearing in open court, the court may place  
21 the custody of a minor child with both parents on a shared or joint  
22 custody basis when both parents agree to such an arrangement. In  
23 that event, each parent shall have equal rights to make decisions  
24 in the best interests of the minor child in his or her custody.  
25 The court may place a minor child in joint custody after conducting  
26 a hearing in open court and specifically finding that joint custody  
27 is in the best interests of the minor child regardless of any  
28 parental agreement or consent.

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

22           (7) Whenever termination of parental rights is placed in  
23 issue by the pleadings or evidence, the court shall transfer  
24 jurisdiction to a juvenile court established pursuant to the  
25 Nebraska Juvenile Code unless a showing is made that the county  
26 court or district court is a more appropriate forum. In making  
27 such determination, the court may consider such factors as cost to  
28 the parties, undue delay, congestion of dockets, and relative

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

11 (a) The minor child has been abandoned by one or both  
12 parents;

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

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

22 (d) One parent is or both parents are unable to discharge  
23 parental responsibilities because of mental illness or mental  
24 deficiency and there are reasonable grounds to believe that such  
25 condition will continue for a prolonged indeterminate period.

26 (8) Whenever termination of parental rights is placed in  
27 issue, the court shall inform a parent who does not have legal  
28 counsel of the parent's right to retain counsel and of the parent's

1 right to retain legal counsel at county expense if such parent is  
2 unable to afford legal counsel. If such parent is unable to afford  
3 legal counsel and requests the court to appoint legal counsel, the  
4 court shall immediately appoint an attorney to represent the parent  
5 in the termination proceedings. The court shall order the county  
6 to pay the attorney's fees and all reasonable expenses incurred by  
7 the attorney in protecting the rights of the parent. At such  
8 hearing, the guardian ad litem shall take all action necessary to  
9 protect the interests of the minor child. The court shall fix the  
10 fees and expenses of the guardian ad litem and tax the same as  
11 costs but may order the county to pay on finding the responsible  
12 party indigent and unable to pay.

13           Sec. 2. Section 43-1214.01, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15           43-1214.01. In any custody proceedings heard in this  
16 state, the court shall consider, in addition to other factors, the  
17 factors prescribed in ~~subsection (2) of~~ section 42-364 to determine  
18 the best interests of the children.

19           Sec. 3. Section 43-2911, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21           43-2911. The costs of the mediation or remediation  
22 process shall be paid by the parties on an equal-share basis  
23 according to each party's ability to pay or on a sliding fee scale.  
24 If a court refers a case to court-based mediation or remediation,  
25 there shall be no fee.

26           Sec. 4. Original sections 42-364, 43-1214.01, and  
27 43-2911, Reissue Revised Statutes of Nebraska, are repealed.