

AMENDMENTS TO LB 322

1 1. Strike the original sections and insert the following
2 sections:

3 "Section 1. Section 42-347, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 42-347. For purposes of sections 42-347 to 42-381 and
6 sections 3 to 6 of this act: ~~, unless the context otherwise~~
7 ~~requires.~~

8 (1) Authorized attorney ~~shall mean~~ means an attorney (a)
9 employed by the county subject to the approval of the county board,
10 (b) employed by the Department of Health and Human Services, or (c)
11 appointed by the court, who is authorized to investigate and
12 prosecute child and spousal support cases. An authorized attorney
13 shall represent the state as provided in section 43-512.03;

14 (2) Batterer intervention program means a program that is
15 part of a community strategy to hold offenders accountable,
16 challenge their beliefs of entitlement to use abuse, and teach
17 skills that will facilitate changes in their behavior. Anger
18 management classes, anger control classes, couples counseling,
19 marriage enhancement seminars, stress management therapy,
20 psychotherapy, mediation with the non-abusive parent, or similar
21 programs or interventions are not a substitute for a batterer
22 intervention program;

23 (3) Dissolution of marriage ~~shall mean~~ means the
24 termination of a marriage by decree of a court of competent

1 jurisdiction upon a finding that the marriage is irretrievably
2 broken. The term dissolution of marriage ~~shall be considered is~~
3 synonymous with divorce, and whenever the term divorce appears in
4 the statutes it ~~shall mean~~ means dissolution of marriage pursuant
5 to sections 42-347 to 42-381 and sections 3 to 6 of this act;

6 (4) Domestic abuse means an act of abuse as defined in
7 section 42-903 and the existence of a pattern or history of acts,
8 including, but not limited to, one or more of the following acts:
9 Threats of physical violence or sexual violence, stalking,
10 harassment, mental cruelty, emotional abuse, intimidation,
11 isolation, economic abuse, or coercion against any current or past
12 intimate partner; abuse of children; or cruel mistreatment or
13 neglect of an animal as defined in section 28-1008;

14 (5) Intimate partner has the same meaning as in section
15 28-323;

16 ~~(3)~~ (6) Legal separation shall mean means a decree of a
17 court of competent jurisdiction providing that two persons who have
18 been legally married shall thereafter live separate and apart and
19 providing for any necessary adjustment of property, support, and
20 custody rights between the parties but not dissolving the marriage;

21 ~~(4)~~ (7) Spousal support, when used in the context of
22 income withholding or any provisions of law which might lead to
23 income withholding, shall mean means alimony or maintenance support
24 for a spouse or former spouse when ordered as a part of an order,
25 decree, or judgment which provides for child support and the child
26 and spouse or former spouse are living in the same household;

27 ~~(5)~~ (8) State Disbursement Unit has the same meaning as

1 in section 43-3341; and

2 ~~(6)~~ (9) Support order has the same meaning as in section
3 43-1717.

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

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

1 desires and wishes are based on sound reasoning,

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

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

8 (3) In determining custody arrangements and the time to
9 be spent with each parent, the court shall not give preference to
10 either parent based on the sex of the parent and no presumption
11 shall exist that either parent is more fit or suitable than the
12 other.

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

1 ~~parental agreement or consent.~~

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

23 ~~(7)~~ (3) Whenever termination of parental rights is placed
24 in issue by the pleadings or evidence, the court shall transfer
25 jurisdiction to a juvenile court established pursuant to the
26 Nebraska Juvenile Code unless a showing is made that the county
27 court or district court is a more appropriate forum. In making

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

13 (a) The minor child has been abandoned by one or both
14 parents;

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

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

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

1 ~~(8)~~ (4) Whenever termination of parental rights is placed
2 in issue, the court shall inform a parent who does not have legal
3 counsel of the parent's right to retain counsel and of the parent's
4 right to retain legal counsel at county expense if such parent is
5 unable to afford legal counsel. If such parent is unable to afford
6 legal counsel and requests the court to appoint legal counsel, the
7 court shall immediately appoint an attorney to represent the parent
8 in the termination proceedings. The court shall order the county
9 to pay the attorney's fees and all reasonable expenses incurred by
10 the attorney in protecting the rights of the parent. At such
11 hearing, the guardian ad litem shall take all action necessary to
12 protect the interests of the minor child. The court shall fix the
13 fees and expenses of the guardian ad litem and tax the same as
14 costs but may order the county to pay on finding the responsible
15 party indigent and unable to pay.

16 ~~(9) Modification proceedings relating to support,~~
17 ~~custody, visitation, or removal of children from the jurisdiction~~
18 ~~of the court shall be commenced by filing a complaint to modify.~~
19 ~~Modification of a parenting plan is governed by the Parenting Act.~~
20 ~~Proceedings to modify a parenting plan shall be commenced by filing~~
21 ~~a complaint to modify. Service of process and other procedure~~
22 ~~shall comply with the requirements for a dissolution action.~~

23 Sec. 3. (1) When determining custody and visitation
24 arrangements of a minor child, the court shall consider the best
25 interests of the minor child. Best interest factors include, but
26 are not limited to:

27 (a) The relationship of the minor child to each parent

1 prior to the commencement of the dissolution or legal separation
2 action or any subsequent hearing;

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

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

8 (d) Evidence of domestic abuse inflicted on an intimate
9 partner or child. If the court finds such domestic abuse by a
10 preponderance of the evidence, the court shall consider the primary
11 best interest factor for the child to be the safety and well-being
12 of the child.

13 (2) No person shall be granted custody of, or
14 unsupervised visitation with, a child if the person is required to
15 be registered as a sex offender under the Sex Offender Registration
16 Act and the victim was a minor or if the person has been convicted
17 of child abuse under section 28-707, unless the court finds that
18 there is no significant risk to the child and states its reasons in
19 writing or on the record.

20 (3) No person shall be granted custody of, or visitation
21 with, a child if the person has been convicted of sexual assault
22 under section 28-319, 28-320, or 28-320.01 and the child was
23 conceived as a result of that violation.

24 (4) In determining custody and visitation arrangements of
25 a minor child, the court shall not give preference to either parent
26 based on the sex of the parent and no presumption shall exist that
27 either parent is more fit or suitable than the other.

1 (5) Regardless of the custody determination of the
2 court:

3 (a) Each parent shall continue to have full and equal
4 access to the education and medical records of his or her child
5 unless the court orders to the contrary;

6 (b) Either parent may make emergency decisions affecting
7 the health or safety of his or her child while the child is with
8 such parent; and

9 (c) Whether or not visitation is allowed, the court may
10 order the address of the child and the parent who is a victim of
11 domestic abuse to be kept confidential pursuant to the Address
12 Confidentiality Act.

13 (6) The court may place a minor child in joint custody
14 after conducting a hearing in open court and specifically finding
15 that joint custody is in the best interests of the minor child
16 regardless of any parental agreement or consent. In that event,
17 each parent shall have equal rights to make decisions in the best
18 interests of the minor child in his or her custody.

19 Sec. 4. (1) The Legislature finds that domestic abuse is
20 a serious and widespread problem and can have a negative ongoing
21 impact on children. It is not in the best interest of a minor child
22 to be placed in the custody of an abusive parent.

23 (2) Whenever a party introduces evidence of domestic
24 abuse against an intimate partner or child in a custody proceeding,
25 the court shall proceed to make a determination of whether one or
26 both parents are an abusive parent. An agency-substantiated entry
27 in the Department of Health and Human Services child abuse central

1 registry or tracking system shall not be used as evidence of
2 domestic abuse in a custody or visitation proceeding.

3 (3) If, after examining the evidence submitted by the
4 parties, the court finds clear and convincing evidence that a
5 parent has committed domestic abuse against an intimate partner or
6 child, the court shall designate the parent as an abusive parent.

7 (4) In every proceeding in which the court makes a
8 finding that a parent is an abusive parent, the court shall set
9 forth the specific facts in writing or on the record regarding why
10 and how the finding of domestic abuse was established.

11 (5) If the court finds that both parents are abusive
12 parents, the court shall determine the predominant aggressor as
13 defined in section 29-439. A presumption against custody shall
14 apply to the predominant aggressor.

15 (6) If a parent who is a domestic abuse victim is absent
16 or relocates because of an act of domestic abuse by the other
17 parent, the absence or relocation is not a factor that weighs
18 against the parent who is a victim in determining custody or
19 visitation.

20 (7) The court shall provide the parent who is a victim
21 with written information about available community resources
22 related to domestic abuse.

23 (8) The court shall not order a parent who is a domestic
24 abuse victim and his or her abuser to jointly attend counseling,
25 mediation, or other programs designed to repair the relationship or
26 parenting or life skills classes.

27 Sec. 5. A court may award custody or visitation to an

1 abusive parent only if the court finds adequate provisions can be
2 made for the safety of the child and the parent who is a victim of
3 domestic abuse. In an order granting custody or visitation to an
4 abusive parent, a court may:

5 (1) Order an exchange of a child to occur in a protected
6 setting;

7 (2) Order the visitation to be supervised by another
8 person or agency. The court shall establish conditions for the
9 safety of the child or children and the parent who is a victim of
10 domestic abuse to be followed during visitation;

11 (3) Order the abusive parent to attend and complete a
12 batterer intervention program. A victim shall not be compelled to
13 participate in any aspect of a batterer's intervention program;

14 (4) Order the abusive parent to abstain from possession
15 or consumption of alcohol or controlled substances while the child
16 is in the physical custody of such parent;

17 (5) Order the abusive parent to pay a fee to defray the
18 costs of supervised visitation;

19 (6) Prohibit overnight visitation;

20 (7) Require a bond from the abusive parent for the return
21 and safety of the child;

22 (8) Impose any other condition upon the abusive parent
23 that is deemed necessary to provide for the safety of the child,
24 the parent who is a victim of domestic abuse, and other family or
25 household members; or

26 (9) Require the abusive parent to submit documentation of
27 attendance and completion to the court of any court-ordered program

1 within the time period determined by the court. This documentation
2 shall become part of the court file.

3 Sec. 6. (1) Modification proceedings relating to
4 support, custody, visitation, or removal of children from the
5 jurisdiction of the court shall be commenced by filing a complaint
6 to modify. Modification of a parenting plan is governed by the
7 Parenting Act. Proceedings to modify a parenting plan shall be
8 commenced by filing a complaint to modify. Service of process and
9 other procedures shall comply with the requirements for a
10 dissolution action.

11 (2) In every proceeding for modification of an order for
12 custody and visitation arrangements of a minor child, the finding
13 that a parent has become an abusive parent since the last custody
14 or visitation determination constitutes a factor in the court's
15 determination of a material change of circumstances. A parent's
16 violation of any laws in subsection (2) or (3) of section 3 of this
17 act also constitutes a factor in the court's determination of a
18 material change of circumstances.

19 Sec. 7. Section 43-2,113, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 43-2,113. (1) In counties where a separate juvenile
22 court is established, the county board of the county shall provide
23 suitable rooms and offices for the accommodation of the judge of
24 the separate juvenile court and the officers and employees
25 appointed by such judge or by the probation administrator pursuant
26 to subsection (4) of section 29-2253. Such separate juvenile court
27 and the judge, officers, and employees of such court shall have the

1 same and exclusive jurisdiction, powers, and duties that are
2 prescribed in the Nebraska Juvenile Code, concurrent jurisdiction
3 under section 83-223, and such other jurisdiction, powers, and
4 duties as specifically provided by law.

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

16 (3) All orders issued by a separate juvenile court or a
17 county court which provide for child support or spousal support as
18 defined in section 42-347 shall be governed by sections 42-347 to
19 42-381 and 43-290 and sections 3 to 6 of this act relating to such
20 support. Certified copies of such orders shall be filed by the
21 clerk of the separate juvenile or county court with the clerk of
22 the district court who shall maintain a record as provided in
23 subsection ~~(6)~~ (2) of section 42-364. There shall be no fee
24 charged for the filing of such certified copies.

25 Sec. 8. Section 43-512.15, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 43-512.15. (1) The county attorney or authorized

1 attorney, upon referral from the Department of Health and Human
2 Services, shall file a complaint to modify a child support order
3 unless the attorney determines in the exercise of independent
4 professional judgment that:

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

9 (b) The variation from the guidelines is due to a
10 voluntary reduction in net monthly income; or

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

15 (2) The proceedings to modify a child support order shall
16 comply with section 42-364 and section 6 of this act, and the
17 county attorney or authorized attorney shall represent the state in
18 the proceedings.

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

23 Sec. 9. The Revisor of Statutes shall assign sections 3
24 to 6 of this act within sections 42-347 to 42-381, and references
25 to sections 42-347 to 42-381 or 42-347 to 42-380 shall be deemed to
26 include sections 3 to 6 of this act.

27 Sec. 10. Original sections 42-347, 42-364, 43-2,113, and

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- 1 43-512.15, Reissue Revised Statutes of Nebraska, are repealed.".