

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 589

Introduced by Dierks, 40.

Read first time January 21, 2009

Committee: Judiciary

A BILL

1 FOR AN ACT relating to child custody; to amend sections 42-364
2 and 43-2929, Reissue Revised Statutes of Nebraska; to
3 designate both parents as joint custodians unless there
4 is proof otherwise; 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) In an action under Chapter 42 involving
4 child support, child custody, parenting time, visitation, or other
5 access, the parties and their counsel, if represented, shall
6 develop a parenting plan as provided in the Parenting Act. If
7 the parties and counsel do not develop a parenting plan, the
8 complaint shall so indicate as provided in section 42-353 and
9 before July 1, 2010, the case may be referred to mediation,
10 specialized alternative dispute resolution, or other alternative
11 dispute resolution process and on or after such date the case
12 shall be referred to mediation or specialized alternative dispute
13 resolution as provided in the Parenting Act. The decree in an
14 action involving the custody of a minor child shall include the
15 determination of legal custody and physical custody based upon the
16 best interests of the child, as defined in the Parenting Act, and
17 child support. Such determinations shall be made by incorporation
18 into the decree of (a) a parenting plan developed by the parties,
19 if approved by the court, or (b) a parenting plan developed by the
20 court based upon evidence produced after a hearing in open court if
21 no parenting plan is developed by the parties or the plan developed
22 by the parties is not approved by the court. The decree shall
23 conform to the Parenting Act. The social security number of each
24 parent and the minor child shall be furnished to the clerk of the
25 district court but shall not be disclosed or considered a public

1 record.

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

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

18 (3) Unless there is medical or legal proof to rebut
19 the presumption of suitability of a parent to have legal custody
20 and physical custody of his or her child, the court shall place
21 the custody of a minor child on a joint legal custody and joint
22 physical custody basis with both parents.

23 (4) In determining the amount of child support to be
24 paid by a parent, the court shall consider the earning capacity
25 of each parent and the guidelines provided by the Supreme Court

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

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

20 (a) The court shall transfer jurisdiction to a juvenile
21 court established pursuant to the Nebraska Juvenile Code unless
22 a showing is made that the county court or district court
23 is a more appropriate forum. In making such determination, the
24 court may consider such factors as cost to the parties, undue
25 delay, congestion of dockets, and relative resources available for

1 investigative and supervisory assistance. A determination that the
2 county court or district court is a more appropriate forum shall
3 not be a final order for the purpose of enabling an appeal. If
4 no such transfer is made, the court shall appoint an attorney as
5 guardian ad litem to protect the interests of any minor child.
6 The court may terminate the parental rights of one or both parents
7 after notice and hearing when the court finds such action to be in
8 the best interests of the minor child, as defined in the Parenting
9 Act, and it appears by the evidence that one or more of the grounds
10 for termination of parental rights stated in section 43-292 exist;
11 and

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

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

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

18 Sec. 2. Section 43-2929, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 43-2929 (1) In any proceeding in which parenting
21 functions for a child are at issue under Chapter 42, a parenting
22 plan shall be developed and shall be approved by the court. Court
23 rule may provide for the parenting plan to be developed by the
24 parties or their counsel, a court conciliation program, an approved
25 mediation center, or a private mediator. When a parenting plan has

1 not been developed and submitted to the court, the court shall
2 create the parenting plan in accordance with the Parenting Act. A
3 parenting plan shall serve the best interests of the child pursuant
4 to sections 42-364 and 43-2923 and shall:

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

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

10 (i) Legal custody and physical custody of each child if
11 joint legal custody and joint physical custody will not be ordered
12 because there is medical or legal proof that a parent is not
13 suitable to be awarded legal custody or physical custody;

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

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

25 (iv) A transition plan, including the time and places for

1 transfer of the child, method of communication or amount and type
2 of contact between the parties during transfers, and duties related
3 to transportation of the child during transfers;

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

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

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

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

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

18 (2) A parenting plan shall require that the parties
19 notify each other of a change of address, except that the address
20 or return address shall only include the county and state for a
21 party who is living or moving to an undisclosed location because of
22 safety concerns.

23 (3) When safe and appropriate for the best interests of
24 the child, the parenting plan may encourage mutual discussion of
25 major decisions regarding parenting functions including the child's

1 education, health care, and spiritual or religious upbringing.
2 However, when a prior factual determination of child abuse or
3 neglect, domestic intimate partner abuse, or unresolved parental
4 conflict has been made, then consideration shall be given to
5 inclusion of provisions for safety and a transition plan that
6 restrict communication or the amount and type of contact between
7 the parties during transfers.

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

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

15 Sec. 3. Original sections 42-364 and 43-2929, Reissue
16 Revised Statutes of Nebraska, are repealed.