

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1000

Introduced by Karpisek, 32.

Read first time January 21, 2014

Committee: Judiciary

A BILL

1 FOR AN ACT relating to the Parenting Act; to amend section 43-2921,
2 Reissue Revised Statutes of Nebraska, and section
3 43-2929, Revised Statutes Cumulative Supplement, 2012; to
4 state intent; to change provisions relating to parenting
5 plans as prescribed; and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-2921, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 43-2921 The Legislature finds that it is in the best
4 interests of a child that a parenting plan be developed in any
5 proceeding under Chapter 42 involving custody, parenting time,
6 visitation, or other access with a child and that the parenting plan
7 establish specific individual responsibility for performing such
8 parenting functions as are necessary and appropriate for the care and
9 healthy development of each child affected by the parenting plan.

10 The Legislature further finds that it is in the best
11 interests of a child to have a safe, stable, and nurturing
12 environment. The best interests of each child shall be paramount and
13 consideration shall be given to the desires and wishes of the child
14 if of an age of comprehension regardless of chronological age, when
15 such desires and wishes are based on sound reasoning.

16 In any proceeding involving a child, the best interests
17 of the child shall be the standard by which the court adjudicates and
18 establishes the individual responsibilities, including consideration
19 in any custody, parenting time, visitation, or other access
20 determinations as well as resolution of conflicts affecting each
21 child. The state presumes the critical importance of the parent-child
22 relationship in the welfare and development of the child and that the
23 relationship between the child and each parent should be equally
24 considered unless it is contrary to the best interests of the child.

25 The Legislature recognizes the potential profound effects

1 on children of insufficient parenting time with either parent.
2 Children are more likely to finish school, less likely to engage in
3 high-risk activities, and less likely to be involved in criminal
4 behavior when two parents are involved in their lives, regardless of
5 whether they live in the same household. It is the public policy of
6 this state that each minor child have frequent and continuing contact
7 with both parents after the child's parents separate or the marriage
8 of the parents is dissolved, and to encourage parents to share the
9 rights and responsibilities of parenthood.

10 The Legislature recognizes that each parent and child has
11 a unique and legal interest in, and a constitutionally protected
12 right to, the parent-child relationship. Each parent and child has
13 substantive due process rights to the parent-child relationship.

14 Given the potential profound effects on children from
15 witnessing child abuse or neglect or domestic intimate partner abuse,
16 as well as being directly abused, the courts shall recognize the duty
17 and responsibility to keep the child or children safe when presented
18 with a preponderance of the evidence of child abuse or neglect or
19 domestic intimate partner abuse, including evidence of a child being
20 used by the abuser to establish or maintain power and control over
21 the victim. In domestic intimate partner abuse cases, the best
22 interests of each child are often served by keeping the child and the
23 victimized partner safe and not allowing the abuser to continue the
24 abuse. When child abuse or neglect, domestic intimate partner abuse,
25 or unresolved parental conflict prevents the best interests of the

1 child from being served in the parenting arrangement, then the safety
2 and welfare of the child is paramount in the resolution of those
3 conflicts.

4 Sec. 2. Section 43-2929, Revised Statutes Cumulative
5 Supplement, 2012, is amended to read:

6 43-2929 (1) In any proceeding in which parenting
7 functions for a child are at issue under Chapter 42, an order of
8 joint legal custody and equal parenting time is favored. In any such
9 proceeding, a parenting plan shall be developed and shall be approved
10 by the court. Court rule may provide for the parenting plan to be
11 developed by the parties or their counsel, a court conciliation
12 program, an approved mediation center, or a private mediator. When a
13 parenting plan has not been developed and submitted to the court, or
14 agreed to by the parents, each parent shall submit a proposed
15 parenting plan pursuant to subsection (6) of this section and the
16 court shall create the parenting plan in accordance with the
17 Parenting Act. A parenting plan shall serve the best interests of the
18 child pursuant to sections 42-364, 43-2923, and 43-2929.01 and shall:

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

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

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

25 (ii) Apportionment of parenting time, visitation, or

1 other access for each child, including, but not limited to, specified
2 religious and secular holidays, birthdays, Mother's Day, Father's
3 Day, school and family vacations, and other special occasions,
4 specifying dates and times for the same, or a formula or method for
5 determining such a schedule in sufficient detail that, if necessary,
6 the schedule can be enforced in subsequent proceedings by the court,
7 and set out appropriate times and numbers for telephone access;

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

10 (iv) A transition plan, including the time and places for
11 transfer of the child, method of communication or amount and type of
12 contact between the parties during transfers, and duties related to
13 transportation of the child during transfers;

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

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

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

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

24 (ix) Provisions for safety when a preponderance of the
25 evidence establishes child abuse or neglect, domestic intimate

1 partner abuse, unresolved parental conflict, or criminal activity
2 which is directly harmful to a child.

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

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

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

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

25 (6) If the parents cannot agree on a parenting plan, each

1 parent shall submit a proposed parenting plan to the court. The court
2 is encouraged to adopt a parenting plan that provides for joint legal
3 custody and that maximizes the parenting time of each parent. The
4 court shall not prefer a parent's proposed plan because of the
5 parent's or child's sex.

6 (7) In ordering joint legal custody, the court is
7 encouraged to require the parents to consult with one another and
8 attempt to reach agreement on major decisions regarding parenting
9 functions. If the parents are unable to reach agreement, the
10 parenting plan shall assign to one parent final decisionmaking
11 responsibility over particular categories of major decisions. The
12 court is encouraged to divide such final decisionmaking
13 responsibility between the parents so each parent has final
14 decisionmaking responsibility over certain categories of major
15 decisions which may include religious upbringing, education, health
16 care, participation in extracurricular activities, and any other
17 categories the court finds unique to a particular family.

18 (8) If at any time during a proceeding in which parenting
19 functions for a child are at issue under Chapter 42 the court finds
20 by a preponderance of the evidence that a parent has engaged in a
21 pattern of willfully creating conflict, interfering with access to
22 the child, interfering with the child's relationship with the other
23 parent, or taking other action in an attempt to manipulate such
24 proceeding, the court shall consider such behavior in its decision
25 and sanction such behavior, including, but not limited to, awarding

1 attorney's fees to the nonoffending parent, imposing other monetary
2 sanctions on the offending parent, deeming such behavior a material
3 change of circumstances, or changing a joint custody order to an
4 order of primary custody with the nonoffending parent.

5 (9) When rendering decisions regarding court-created
6 parenting plans, the court shall provide written findings of fact and
7 conclusions of law regarding its decision if the court-created
8 parenting plan does not provide for joint legal custody and does not
9 maximize the parties' respective parenting time.

10 (10) The provisions of subsection (6) of this section
11 that encourage parenting plans to maximize parenting time and provide
12 for joint legal custody does not, in and of itself, constitute a
13 material change in circumstances affecting the best interests of a
14 child or children requiring modification of parenting plans entered
15 prior to July 1, 2014.

16 (11) All legal custody and parenting time presumptions or
17 guidelines existing as of July 1, 2014, whether adopted by judicial
18 decision or court rule and whether written or unwritten, that are
19 inconsistent with this section are hereby superseded.

20 Sec. 3. Original section 43-2921, Reissue Revised
21 Statutes of Nebraska, and section 43-2929, Revised Statutes
22 Cumulative Supplement, 2012, are repealed.