

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 437

Introduced by Ebke, 32.

Read first time January 20, 2015

Committee: Judiciary

1 A BILL FOR AN ACT relating to the Parenting Act; to amend section
2 43-2921, Reissue Revised Statutes of Nebraska, and sections 43-2923
3 and 43-2929, Revised Statutes Cumulative Supplement, 2014; to
4 provide for legislative findings; to codify provisions relating to
5 best interests of the child; to change provisions relating to
6 parenting plans created by the court; and to repeal the original
7 sections.
8 Be it enacted by the people of the State of Nebraska,

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

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

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

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

25 The Legislature finds it is the public policy of this state that
26 each minor child have frequent and continuing contact with both parents
27 after the child's parents separate or the marriage of the parents is
28 dissolved or annulled, and to encourage parents to share the rights and
29 responsibilities of parenthood. It is the right of each child to have as
30 full and complete a relationship with both parents as possible.

31 Given the potential profound effects on children from witnessing

1 child abuse or neglect or domestic intimate partner abuse, as well as
2 being directly abused, the courts shall recognize the duty and
3 responsibility to keep the child or children safe when presented with a
4 preponderance of the evidence of child abuse or neglect or domestic
5 intimate partner abuse, including evidence of a child being used by the
6 abuser to establish or maintain power and control over the victim. In
7 domestic intimate partner abuse cases, the best interests of each child
8 are often served by keeping the child and the victimized partner safe and
9 not allowing the abuser to continue the abuse. When child abuse or
10 neglect, domestic intimate partner abuse, or unresolved parental conflict
11 prevents the best interests of the child from being served in the
12 parenting arrangement, then the safety and welfare of the child is
13 paramount in the resolution of those conflicts.

14 Sec. 2. Section 43-2923, Revised Statutes Cumulative Supplement,
15 2014, is amended to read:

16 43-2923 The best interests of the child require:

17 (1) A parenting arrangement and parenting plan or other court-
18 ordered arrangement which provides for a child's safety, emotional
19 growth, health, stability, and physical care and regular and continuous
20 school attendance and progress for school-age children;

21 (2) When a preponderance of the evidence indicates domestic intimate
22 partner abuse, a parenting and visitation arrangement that provides for
23 the safety of a victim parent;

24 (3) That the child's families and those serving in parenting roles
25 remain appropriately active and involved in parenting with safe,
26 appropriate, continuing quality contact between children and their
27 families when they have shown the ability to act in the best interests of
28 the child and have shared in the responsibilities of raising the child;

29 (4) That even when parents have voluntarily negotiated or mutually
30 mediated and agreed upon a parenting plan, the court shall determine
31 whether it is in the best interests of the child for parents to maintain

1 continued communications with each other and to make joint decisions in
2 performing parenting functions as are necessary for the care and healthy
3 development of the child. If the court rejects a parenting plan, the
4 court shall provide written findings as to why the parenting plan is not
5 in the best interests of the child;

6 (5) That certain principles provide a basis upon which education of
7 parents is delivered and upon which negotiation and mediation of
8 parenting plans are conducted. Such principles shall include: To minimize
9 the potentially negative impact of parental conflict on children; to
10 provide parents the tools they need to reach parenting decisions that are
11 in the best interests of a child; to provide alternative dispute
12 resolution or specialized alternative dispute resolution options that are
13 less adversarial for the child and the family; to ensure that the child's
14 voice is heard and considered in parenting decisions; to maximize the
15 safety of family members through the justice process; and, in cases of
16 domestic intimate partner abuse or child abuse or neglect, to incorporate
17 the principles of victim safety and sensitivity, offender accountability,
18 and community safety in parenting plan decisions; ~~and~~

19 (6) That parents understand the needs of each child may change as
20 the child develops and that they interpret and apply the parenting plan
21 in a way that best serves the evolving interests of each child;

22 (7) That each parent encourage the sharing of love, affection, and
23 contact between the child and the other parent;

24 (8) That each parent facilitate and encourage a close and continuing
25 parent-child relationship with the other parent, to honor the parenting
26 plan, to allow frequent contact with the other parent, and to be
27 reasonable when changes are required;

28 (9) That each parent allow the other parent to provide care without
29 intrusion, and respect the other parent's rights and responsibilities,
30 including the right to privacy; and

31 (10) (6) In determining custody and parenting arrangements, the court

1 shall consider the best interests of the minor child, which shall
2 include, but not be limited to, consideration of the foregoing factors
3 and:

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

6 (b) The desires and wishes of the minor child, if of an age of
7 comprehension but regardless of chronological age, when such desires and
8 wishes are based on sound reasoning;

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

11 (d) The respective environments offered by each parent, taking into
12 account whether a negative environment was caused by the action or
13 inaction of a parent;

14 (e) The past, present, and potential future relationship between the
15 parent and the child;

16 (f) The age, development, and health of the child and parents;

17 (g) The effect on the child as a result of continuing or disrupting
18 an existing relationship;

19 (h) The parental capacity to provide physical care and satisfy
20 educational needs of the child;

21 (i) The time a parent is willing and able to devote to a child;

22 (j) The demonstrated capacity and disposition of each parent to
23 provide a consistent routine for the child, such as discipline and daily
24 schedules for homework, meals, and bedtime;

25 (k) The ability of either parent to minimize disruption of the
26 child's education, daily routine, and association with friends;

27 (l) The geographic proximity of the parents;

28 (m) The mental or physical health of a child or other person living
29 in a proposed custodial household that negatively affects the child's
30 intellectual, physical, or emotional well-being, taking into account the
31 impact domestic intimate partner abuse has had on the child's mental or

1 physical health;

2 (n d) Credible evidence of abuse inflicted against the child, a
3 parent of the child, or any other person residing within the child's
4 household on any family or household member. For purposes of this
5 subdivision, abuse has and family or household member shall have the
6 meaning ~~meanings~~ prescribed in section 42-903; ~~and~~

7 (o e) Credible evidence of child abuse or neglect or domestic
8 intimate partner abuse. For purposes of this subdivision, the definitions
9 in section 43-2922 shall be used; ~~and~~

10 (p) Credible evidence that a parent has knowingly made a false
11 allegation of abuse, child abuse or neglect, or domestic intimate partner
12 abuse;

13 (q) Credible evidence that the parent has interfered with the other
14 parent's access to the child or interfered with the child's relationship
15 with the other parent; and

16 (r) Each parent's willingness to encourage a positive and continuous
17 relationship between the child and the other parent.

18 Sec. 3. Section 43-2929, Revised Statutes Cumulative Supplement,
19 2014, is amended to read:

20 43-2929 (1) In any proceeding in which parenting functions for a
21 child are at issue under Chapter 42, a parenting plan shall be developed
22 and shall be approved by the court. Court rule may provide for the
23 parenting plan to be developed by the parties or their counsel, a court
24 conciliation program, an approved mediation center, or a private
25 mediator. When a parenting plan has not been developed and submitted to
26 the court, or if the parties cannot agree on a parenting plan, each
27 parent shall submit a parenting plan and the court shall create the
28 parenting plan in accordance with the Parenting Act. A parenting plan
29 shall serve the best interests of the child pursuant to sections 42-364,
30 43-2923, and 43-2929.01 and shall:

31 (a) Assist in developing a restructured family that serves the best

1 interests of the child by accomplishing the parenting functions; and

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

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

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

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

14 (iv) A transition plan, including the time and places for transfer
15 of the child, method of communication or amount and type of contact
16 between the parties during transfers, and duties related to
17 transportation of the child during transfers;

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

22 (vi) Provisions for a remediation process regarding future
23 modifications to such plan;

24 (vii) Arrangements to maximize the safety of all parties and the
25 child;

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

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

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

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

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

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

21 (6) If the parents cannot agree on a parenting plan, each parent
22 shall submit a proposed parenting plan to the court. The court is
23 encouraged to adopt a parenting plan that provides for joint legal
24 custody and maximizes the parenting time for each parent. The court shall
25 not prefer a parent's proposed plan because of the parent's or child's
26 gender. In no event shall the court adopt a parenting plan in which one
27 parent has less than thirty-five percent of the total annual parenting
28 time, unless:

29 (a) The parent consents to less parenting time;

30 (b) The court finds grounds exist to terminate a parent's rights
31 pursuant to section 43-292;

1 (c) The court finds that a parent has engaged in (i) a pattern of
2 child abuse or neglect involving the child, or (ii) domestic intimate
3 partner abuse as defined in section 43-2922 involving the child or
4 members of the child's immediate household;

5 (d) A parent has been convicted of (i) a physical assault against a
6 family or household member under any state or tribal law, (ii) violating
7 a harassment protection order under section 28-311.09 or similar order
8 issued by another state or tribal court, or (iii) violating a domestic
9 violence abuse protection order under section 42-924 or similar order
10 issued by another state or tribal court;

11 (e) The court finds the parent has persistently failed to exercise
12 parenting time previously awarded to such parent;

13 (f) The court finds there is a pattern of substantial parental
14 unfitness by the parent; or

15 (g) The court finds that geographic separation of the parents makes
16 such an award impractical.

17 (7) Regardless of the type of legal custody awarded, the parenting
18 plan shall require the parents to engage in meaningful consultation with
19 one another regarding fundamental decisions about the child's welfare and
20 make a good faith attempt to reach mutual decisions. If (a) the court
21 finds the parent has engaged in (i) a pattern of child abuse or neglect
22 involving the child or (ii) domestic intimate partner abuse as defined in
23 section 43-2922 involving the child or members of the child's immediate
24 household or (b) a parent has been convicted of (i) an assault against a
25 family or household member under any state or tribal law, (ii) the
26 violation of a harassment protection order under section 28-311.09 or a
27 similar order issued by another state or tribal court, or (iii) the
28 violation of a domestic abuse protection order under 42-924 or a similar
29 order issued by another state or tribal court, the parenting plan shall
30 include a high conflict communication protocol.

31 (8) When a court awards joint legal custody, the parenting plan may

1 assign to one parent final decisionmaking responsibility over certain
2 categories of fundamental decisions if the parents cannot reach a mutual
3 decision. The parenting plan may also divide legal custody between the
4 parents, granting one parent the authority and responsibility for making
5 fundamental decisions regarding certain categories of the child's welfare
6 and granting the other parent the authority and responsibility for making
7 fundamental decisions regarding other categories of the child's welfare.
8 The categories may include religion, education, health care,
9 extracurricular activities, and any other category the court finds
10 applicable.

11 (9) If, at any time during a proceeding in which parenting time is
12 at issue, the court finds by a preponderance of the evidence that a
13 parent has engaged in a pattern of willfully creating conflict to
14 manipulate such proceeding; knowingly made false allegations of abuse,
15 child abuse or neglect, or domestic intimate partner abuse; or willfully
16 interfered with the child's relationship with the other parent, the court
17 shall consider such behavior in such proceeding.

18 (10) When rendering decisions regarding parenting plans created by
19 the court, the court shall provide written findings of fact and
20 conclusions of law regarding its decision unless waived by both parents.

21 (11) When rendering decisions regarding parenting plans created by
22 the court, the court shall not consider the effect a custody or parenting
23 time award may have on child support obligations.

24 Sec. 4. Original section 43-2921, Reissue Revised Statutes of
25 Nebraska, and sections 43-2923 and 43-2929, Revised Statutes Cumulative
26 Supplement, 2014, are repealed.