



Ninety-Ninth Legislature - First Session - 2005
Committee Statement
LB 322

Hearing Date: February 17, 2005
Committee On: Judiciary

Introducer(s): (Schimek, Aguilar, Bourne, Combs, Connealy, Howard, Johnson, Kruse, Dw. Pedersen, Price, Synowiecki, Thompson)
Title: Provide additional requirements for child custody, visitation, and modification proceedings

Roll Call Vote – Final Committee Action:

- Advanced to General File
 - X Advanced to General File with Amendments
 - Indefinitely Postponed
-

Vote Results:

7	Yes	Senators Aguilar, Bourne, Combs, Flood, Foley, Friend, Pedersen
	No	
	Present, not voting	
1	Absent	Senator Chambers

Proponents:

Senator DiAnna Schimek
Tara Muir

Anonymous Testifier
Bob Moyer
Pam McCarthy
Shauna Shimmin
Kasey Pendergast
JoDee Pendergast
Tracey Latture
Tracy Grinstead-Everly
Sue Ellen Wall
Jim Gordon
Erin Fox
Susan Ann Koenig

Representing:

Introducer
Nebraska Domestic Violence Sexual Assault Coalition
Self
Family Violence Council of Lancaster County
YWCA Omaha
Self
Self
Self
Self
Domestic Violence Council
Self
Self
Self
Self

Opponents:

Gerald Morehouse
Robert Watson
Les Veskrna

Representing:

Fathers’ Rights of Nebraska
Fathers’ Rights of Nebraska
Children’s Rights Council

Mark Hanner	Self
Ernest Kubr	Self
Ken Hugo	Self

Neutral:	Representing:
Neal Rauhauser	Self

Summary of purpose and/or changes:

Legislative Bill 322 provides domestic violence considerations when determining child custody, visitation and modifications.

The bill defines batterer’s intervention program, joint legal custody, and joint physical custody. The bill would mandate the court to determine both legal and physical custody of the child as separate and independent issues. It also adds sex offenses or crimes that require registry under the Sex Offender Registration Act as factors when determining custody and visitation in the best interest of the minor child. Address confidentiality protection pursuant to the Address Confidentiality Act for the child and non-abusive parent is provided in the bill.

Legislative Bill 322 provides for a rebuttable presumption that it is in the best interest of the child to reside with the parent who is not abusive. The presumption can be overcome by clear and convincing evidence that the child should have custody and visitation with the abusive parent. If the court finds that both of the parents are abusive, the court shall determine the predominant aggressor and the presumption shall apply against the predominant aggressor.

The court shall consider additional factors in determining if the presumption has been rebutted to include whether the abusive parent has committed any further abusive acts; whether the abusive parent is on probation, parole or subject to a protection order; and whether the abusive parent has completed a batterer’s intervention program.

Visitation shall only be awarded to an abusive parent if adequate provisions can be made for the safety of the child and the non-abusive parent. The court may consider numerous factors in granting visitation including an order to exchange the child in a protected setting, supervised visitation, a batterer intervention program for the abusive parent, requiring the abusive parent to abstain from alcohol/drugs during visitation, prohibiting overnight visitation, and requiring a bond from the abusive parent for the safe return of the child.

In modification proceedings, if there is a finding that a parent has become an abusive parent since the last custody or visitation determination, the court can consider that a material change of circumstances and modify the court order.

Explanation of amendments, if any:

The committee amendment to LB 322 replaces the green copy of the bill and makes the following changes:

- Strikes language on Page 10, lines 13-21 pertaining to joint legal or joint physical custody being ordered when the parents agree to the arrangement and the custody arrangement serves the best interest of the child.
- Provides that the court shall consider evidence of domestic abuse when determining the best interest of a minor child for custody and visitation by a preponderance of evidence standard;
- Strikes language pertaining to the rebuttable presumption that an abusive parent shall not be granted any form of custody;
- Allows the court to make a finding on the record that a person has been established an abusive parent by clear and convincing evidence;
- Clarifies domestic abuse definition from ‘domestic abuse includes’ to ‘domestic abuse means’;
- Removes language on Page 8, line 27, ‘except when a finding of an abusive parent is made by the court under section 4 of this act’;
- Strikes ‘After a hearing in open court, the court may place the custody of a minor child with both parents on a shared or joint custody basis’;
- Provides that an agency-substantiated designation of child abuse in the HHS central registry or tracking system shall not be used as evidence of domestic abuse in a custody or visitation proceeding;
- Adds ‘custody’ to Section 5 so that a court may award custody or visitation to an abusive parent if adequate provision can be made for the safety of the child and the non-abusive parent;
- Clarifies that an abusive parent cannot consume alcohol or controlled substances while the child is in the physical custody of such parent; and
- Makes internal references and renumbers accordingly.

Senator Patrick J. Bourne, Chairperson