

## LEGISLATIVE BILL 215

Approved by the Governor March 15, 1982

Introduced by Chronister, 18

AN ACT to amend section 42-364, Reissue Revised Statutes of Nebraska, 1943, and section 43-247, Revised Statutes Supplement, 1981, relating to divorce; to change procedures for termination of parental rights as prescribed; to change provisions relating to juvenile court as prescribed; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 42-364, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

42-364. When dissolution of a marriage or legal separation is decreed, the court may include such orders in relation to any minor children and their maintenance as shall be justified, including placing the minor children in the custody of the court or third parties, or terminating parental rights pursuant to subdivision (4) of this section if the welfare of the children so requires. Custody and visitation of minor children shall be determined on the basis of their best interests. Subsequent changes may be made by the court after hearing on such notice as prescribed by the court.

(1) In determining with which of the parents the children, or any of them, shall remain, the court shall consider the best interests of the children, which shall include, but not be limited to:

(a) The relationship of the children to each parent prior to the commencement of the action or any subsequent hearing;

(b) The desires and wishes of the children if of an age of comprehension regardless of their chronological age, when such desires and wishes are based on sound reasoning; and

(c) The general health, welfare, and social behavior of the children.

(2) In determining with which of the parents the children, or any of them, shall remain, the court shall not give preference to either parent based on the sex of the parent and no presumption shall exist that either

parent is more fit to have custody of the children than the other.

(3) In determining the amount of child support to be paid by a parent, the court shall consider the earning capacity of each parent. Upon application, hearing, and presentation of evidence of an abusive disregard of the use of child support money paid by one party to the other, the court may require the party receiving such payment to file a verified report with the court as often as the court shall require stating the manner in which such money is used. The clerk of the district, county, or separate juvenile court shall maintain a record, separate from all other judgment dockets, of all decrees in which the payment of child support has been ordered.

(4) Whenever termination of parental rights is placed in issue by the pleadings or evidence, the court shall transfer jurisdiction to a juvenile court established pursuant to Chapter 43, article 2, unless a showing is made that the district court is a more appropriate forum. In making such determination the court may consider such factors as cost to the parties, undue delay, congestion of dockets, and relative resources available for investigative and supervisory assistance. A determination that the district court is a more appropriate forum shall not be a final order for the purpose of enabling an appeal. If no such transfer is made the court shall forthwith appoint an attorney as guardian ad litem to protect the interests of any minor children. Such guardian ad litem shall forthwith personally investigate the facts and circumstances on all matters pertinent to the best interests and welfare of the children. If it appears to the guardian ad litem that the best interests and welfare of the children may require the termination of the parental rights of one or both parents, he shall apply to the court in writing or orally on the record for such termination. The court may then terminate the parental rights of one or both parents after notice and hearing and shall serve notice thereof upon the parents. Whenever a guardian ad litem applies for termination of parental rights, when the court finds such action to be in the best interests of the children and it appears by the evidence that one or more of the following conditions exist:

(a) Such children have been abandoned by one or both parents;

(b) One or both parents have substantially and continuously or repeatedly neglected the children and have refused to give such children necessary parental care and protection;

(c) One or both parents are unfit by reason of debauchery, habitual use of intoxicating liquor or narcotic drugs, or repeated lewd and lascivious behavior, which conduct is found by the court to be seriously detrimental to the health, morals, or well-being of the children; or

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

Whenever termination of parental rights is placed in issue, the court shall forthwith inform a parent who does not have legal counsel of that parent's right to retain counsel and shall further inform such parent of the parent's right to retain legal counsel at county expense if such parent is unable to afford legal counsel. If such parent is unable to afford legal counsel and requests the court to appoint legal counsel, the court shall immediately appoint an attorney to represent the parent in the termination proceedings. The court shall order the county to pay the attorney fee and all reasonable expenses incurred by the attorney in protecting the rights of the parent. At such hearing the guardian ad litem shall ~~present evidence in support of the application to terminate and~~ take all action necessary to protect the interests of the minor children. The court shall fix the fee and expenses of the guardian ad litem and tax the same as costs, but may order the county to pay on finding the responsible party indigent and unable to pay.

Sec. 2. That section 43-247, Revised Statutes Supplement, 1981, be amended to read as follows:

43-247. The separate juvenile courts and county courts sitting as juvenile courts shall have exclusive original jurisdiction as to any juvenile defined in subdivision (1) of this section who is under the age of sixteen and, as to any juvenile defined in subdivision (3) of this section, and as to the parties and proceedings provided in subdivisions (5) and (6) of this section. The separate juvenile courts and county courts sitting as juvenile courts or otherwise shall have concurrent original jurisdiction with the district court and municipal courts as to any juvenile defined in subdivision (2) of this section, any juvenile defined in subdivision (1) of this section who is age sixteen or seventeen, and any juvenile defined in subdivision (4) of this section. Notwithstanding any disposition entered by the juvenile court under the provisions of sections

43-245 to 43-2,129, the juvenile court's jurisdiction over any individual adjudged to be within the provisions of this section shall continue until the individual reaches the age of majority or the court otherwise discharges the individual from its jurisdiction.

The juvenile court in each county as herein provided shall have jurisdiction of:

(1) Any juvenile who has committed an act which would constitute a misdemeanor or an infraction other than a traffic offense infraction under the laws of this state, or violation of a city or village ordinance;

(2) Any juvenile who has committed an act which would constitute a felony under the laws of this state;

(3) Any juvenile (a) who is homeless or destitute, or without proper support through no fault of his or her parent, guardian, or custodian; or who is abandoned by his or her parent, guardian, or custodian; who lacks proper parental care by reason of the fault or habits of his or her parent, guardian, or custodian; whose parent, guardian, or custodian neglects or refuses to provide proper or necessary subsistence, education, or other care necessary for the health, morals, or well-being of such juvenile; whose parent, guardian, or custodian neglects or refuses to provide special care made necessary by the mental condition of the juvenile; who is in a situation or engages in an occupation dangerous to life or limb or injurious to the health or morals of such juvenile; or (b) who, by reason of being wayward or habitually disobedient, is uncontrolled by his or her parent, guardian, or custodian; who departs himself or herself so as to injure or endanger seriously the morals or health of himself, herself, or others; or who is habitually truant from home or school;

(4) Any juvenile who has committed an act which would constitute a traffic offense as defined in section 43-245;

(5) The parent, guardian, or custodian who has custody of any juvenile described in this section; and

(6) The proceedings for termination of parental rights as provided in sections 43-245 to 43-2,129; and -

(7) The proceedings for termination of parental rights as provided in section 42-364.

Sec. 3. That original section 42-364, Reissue Revised Statutes of Nebraska, 1943, and section 43-247,

Revised Statutes Supplement, 1981, are repealed.

Sec. 4. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.