

LEGISLATIVE BILL 629

Approved by the Governor May 25, 1993

Introduced by Ashford, 6; Abboud, 12; Bohlke, 33; Bromm, 23;
Hillman, 48; Landis, 46; Rasmussen, 20; Will, 8;
Preister, 5

AN ACT relating to families; to amend section 42-120, Reissue Revised Statutes of Nebraska, 1943, and section 42-364, Revised Statutes Supplement, 1992; to adopt the Parenting Act; to change provisions relating to decrees concerning marriage validity, divorce, and legal separation; to harmonize provisions; to provide an operative date; and to repeal the original sections.

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

Section 1. Sections 1 to 19 of this act shall be known and may be cited as the Parenting Act.

Sec. 2. The Legislature finds it is in the best interests of a minor child to maintain, to the greatest extent possible, the ongoing involvement of both parents in the life of the minor child. The Legislature further finds that parents should maintain continued communications to make as many joint decisions in performing such parenting functions as are necessary for the care and healthy development of the minor child.

In any proceeding between parents under Chapter 42 involving a minor child, the best interests of the minor child shall be the standard by which the court adjudicates and establishes the individual parental responsibilities. The state presumes the critical importance of the parent-child relationship and the child-parent relationship in the welfare and development of the minor child and that the relationship between the minor child and both parents should be fostered unless otherwise inconsistent with the best interests of the minor child. The best interests of the minor child are served by a parenting arrangement which best serves a minor child's emotional growth, health, stability, and physical care.

The Legislature further finds that the best interests of the minor child are ordinarily addressed when both parents remain active and involved in parenting. It is the policy of this state to assure the right of children, when it is in their best interests, to frequent and continuing contact with parents who have shown the ability to act in the best interests of the children and to encourage parents to share in the rights and responsibilities of raising their children after divorce or separation.

Sec. 3. For purposes of the Parenting Act:

(1) Minor child shall mean a child under the age of nineteen years;

(2) Parenting functions shall mean those aspects of the parent-child relationship in which the parent makes fundamental decisions

and performs fundamental functions necessary for the care and development of the minor child. Parenting functions shall include, but not be limited to:

(a) Maintaining a loving, stable, consistent, and nurturing relationship with the minor child;

(b) Attending to the ongoing needs of the minor child, including feeding, clothing, physical care and grooming, supervision, and engaging in other activities appropriate to the healthy development of the minor child within the social and economic circumstances of the family;

(c) Attending to adequate education for the minor child, including remedial or other special education essential to the best interests of the minor child;

(d) Assisting the minor child in maintaining a positive relationship with both parents and other family members;

(e) Assisting the minor child in developing and maintaining appropriate interpersonal relationships; and

(f) Exercising appropriate support for social, academic, athletic, or other special interests and abilities of the minor child within the social and economic circumstances of the family;

(3) Parenting plan shall mean a plan for parenting the minor child in consideration of the parenting functions, which plan may be incorporated into any final decree or decree of modification in an action (a) for dissolution of marriage, (b) concerning the validity of a marriage, or (c) for legal separation; and

(4) Remediation process shall mean the method established in the parenting plan which provides each parent a means to resolve future circumstantial changes or conflicts regarding the parenting functions or the parenting plan and which minimizes relitigation and utilizes judicial intervention as a last resort.

Sec. 4. (1) In any proceeding under Chapter 30, 42, or 43 in which the parenting of minor children is in issue except any proceeding under the Revised Uniform Reciprocal Enforcement of Support Act, subsequent to the initial filing or upon filing of an application for modification of a decree, the parties shall receive from the clerk of the district court information regarding the divorce process, a divorce time-line, parenting during and after divorce, the parenting plan, the mediation process, and resource materials, as well as the availability of mediation through the conciliation office, other court-based programs, or the state mediation centers as established through the Office of Dispute Resolution. Development of these informational materials and the implementation of this subsection shall be accomplished through the State Court Administrator.

(2) Mediators shall be trained to recognize domestic violence. Screening guidelines and safety procedures for cases involving child abuse, spouse abuse, or both shall be devised by the State Court Administrator. If the case is determined not to involve child abuse, spouse abuse, or both and both parties voluntarily agree to mediation, the case may be scheduled for future mediation sessions.

Sec. 5. (1) A mediator under the Parenting Act may be a court-based conciliation court counselor, a court-based mediator, a state mediation center mediator as established by the Office of Dispute Resolution, or a mediator in private practice. To qualify as a mediator, a person shall have a minimum of thirty hours of basic mediation training and thirty hours of family mediation training and shall have served as an apprentice to an experienced mediator as defined in section 25-2903.

(2) A mediator who performs mediation in family matters shall also meet the following standards:

(a) Knowledge of the court system and procedures used in contested family matters;

(b) General knowledge of Nebraska family law, especially regarding custody, visitation, and support;

(c) Knowledge of other resources in the state to which parties and children can be referred for assistance; and

(d) General knowledge of child development, clinical issues relating to children, the effects of marriage dissolution on children, parents, and extended families, and the psychology of families.

(3) No mediator who represents or has represented one or both of the parties or has had either of the parties as a client may mediate the case. If such services have been provided to both participants, mediation shall not proceed unless the prior relationship has been discussed, the role of the mediator has been made distinct from the earlier relationship, and the participants have been given the opportunity to fully choose to proceed. All other potential conflicts of interest shall be disclosed and discussed before the parties decide whether to proceed with that mediator.

Sec. 6. With the consent of both parties, a court may refer a case to court-based mediation, at no cost to the parties, and may state a date for the case to return to court, but such date shall be no longer than ninety days from the date the order is signed unless the court grants an extension. If the court refers a case to such mediation, the court may, if appropriate, order temporary support in order to meet the Nebraska Supreme Court rules for expedited process or case progression.

Sec. 7. The mediator shall facilitate the mediation process. The mediator shall inform the parties of the factors the court will consider. The mediator shall be impartial and shall use his or her best efforts to assist both parties in the development of a parenting plan. The mediator shall assist the parties in assessing their needs and those of the minor child involved in the proceeding and may include the minor child in the mediation process if necessary or appropriate.

Sec. 8. Mediation under the Parenting Act shall be conducted in private. The mediator shall advise the parties that they should consult with an attorney. Any disclosure of abuse made during the mediation process shall be confidential, except that reports of abuse or neglect as defined in section 28-710 made during the mediation process shall be timely reported to the district judge and an in camera hearing shall be held to determine whether a report should be made pursuant to

section 28-711 and if further investigation is merited.

No records, notes, or other documentation, written or electronic, of the mediation process, except the contents of a final agreement between the parties, shall be examined in any judicial or administrative proceeding. Any communications made confidential by the act which become subject to judicial or administrative process requiring the disclosure of such communications shall not be disclosed.

Sec. 9. (1) The mediator may terminate mediation if one or more of the following conditions exist:

(a) There is no reasonable possibility that mediation will promote the development of an effective parenting plan;

(b) Allegations are made of direct physical or significant emotional harm to a party or to a minor child that have not been heard and ruled upon by the court. Prior to the commencement of mediation, the parties to mediation shall be notified by the mediator that evidence of abuse or neglect as defined in section 28-710 shall be reported to the district judge who shall hold an in camera hearing to determine whether a report should be made pursuant to section 28-711 and if further investigation is merited; or

(c) Mediation will otherwise fail to serve the best interests of the minor child.

(2) If mediation is not appropriate pursuant to subsection (1) of this section, the mediator shall so inform the court. Any additional statements shall not be prejudicial to either party.

(3) Either party may terminate mediation at any point in the process.

Sec. 10. Any agreement reached by the parties as a result of mediation shall be reported to the court and to counsel for the parties by the mediator prior to the day set for hearing or at such time as is designated by the court. If the parties do not reach agreement as a result of mediation, the mediator shall report that fact to the court on or before the reporting date established by the court.

Sec. 11. The costs of the mediation process shall be paid by the parties on an equal-share basis according to each party's ability to pay or on a sliding fee scale. If a court refers a case to court-based mediation, there shall be no fee.

Sec. 12. At a minimum, the purpose and scope of the parenting plan shall be to:

(1) Assist in developing a satisfactorily restructured family that meets the needs of all the members;

(2) Provide for the minor child's physical care;

(3) Maintain the minor child's emotional stability;

(4) Provide for the minor child's changing needs as he or she develops, in a manner which minimizes the need for future modifications to the parenting plan;

(5) Set forth the authority and responsibilities of each party with respect to the minor child;

(6) Minimize the minor child's exposure to harmful

parental conflict;

(7) Encourage the parties, when appropriate, to fulfill their parenting responsibilities through agreements in the parenting plan rather than by relying on judicial intervention;

(8) Encourage mutual appropriate participation by both parties in the minor child's activities;

(9) Provide both parties equal access to the minor child's medical, dental, and school records;

(10) Encourage remediation prior to litigation; and

(11) Assist both parties to articulate a visitation schedule which would be acceptable if the other party is awarded custody of the minor child.

Sec. 13. The parenting plan shall contain custody and visitation arrangements, apportionment of time with each party, and provisions for a remediation process regarding future modifications to such plan as provided in sections 14 to 16 of this act. The parenting plan shall address only issues regarding parenting functions. Other issues, including, but not limited to, property division and financial issues or child support, shall be specifically excluded from the parenting plan.

Sec. 14. The parenting plan shall encourage mutual discussion of major decisions regarding the minor child's education, health care, and religious upbringing. Regardless of the allocation of decisionmaking in the parenting plan, either party may authorize emergency medical procedures in situations affecting the immediate health of the child.

Each party shall establish procedures for making decisions regarding the day-to-day care and control of the minor child while the minor child is residing with that party.

Sec. 15. (1) The parenting plan shall include a schedule which designates in which party's home the minor child shall reside on given days of the year, including provisions for specified religious and secular holidays, birthdays of family members, vacations, and other special occasions.

(2) In the development of a parenting plan, consideration shall be given to the minor child's age and developmental needs and provision of a healthy relationship between the minor child and each party.

(3) The minimum court-ordered time the minor child shall spend with each parent shall be specified, including, but not limited to, specified religious and secular holidays, birthdays, vacations, and other special occasions.

(4) The decree shall include the parenting plan developed by the parents through mediation and approved by the court pursuant to the Parenting Act.

Sec. 16. When mutual decisionmaking is agreed upon in the parenting plan but cannot be achieved, the parties shall make a good faith effort to resolve the issue through the remediation process. The remediation process shall minimize the minor child's exposure to parental

conflict and encourage mutual agreement without judicial intervention.

Sec. 17. When the parenting plan is agreed to by both parties, it shall be submitted to the parties' legal counsels who shall submit it for inclusion in the decree under section 42-120 or 42-364. The court may, after a hearing and based on the best interests of the minor child, approve the plan, modify and approve the plan as modified, or reject the plan and order the parties to develop a new plan.

Sec. 18. The State Court Administrator shall develop rules to implement the Parenting Act which are consistent with the Dispute Resolution Act. Such rules shall include training and evaluation of mediators used by state mediation centers.

Sec. 19. The Parenting Act shall not apply in any action filed by a county attorney or authorized attorney pursuant to his or her duties under sections 42-358, 43-512 to 43-512.18, and 43-1401 to 43-1418, the Income Withholding for Child Support Act, and the Revised Uniform Reciprocal Enforcement of Support Act for purposes of the establishment of paternity and the establishment and enforcement of child and medical support. A county attorney or authorized attorney shall not participate in the development of or court review of a parenting plan under the Parenting Act.

Sec. 20. That section 42-120, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

42-120. When the validity of any marriage shall be is denied or doubted by either of the parties, the other party may file a bill or petition, in the manner aforesaid provided in section 42-119, for affirming the marriage, and upon due proof of the validity thereof it shall be declared valid by a decree or sentence of the court. Such , and such decree, unless reversed on appeal, shall be conclusive upon all persons concerned. A parenting plan developed pursuant to the Parenting Act may be incorporated into such decree if appropriate.

Sec. 21. That section 42-364, Revised Statutes Supplement, 1992, be amended to read as follows:

42-364. (1) When dissolution of a marriage or legal separation is decreed, the court may include a parenting plan developed under the Parenting Act, if a parenting plan has been so developed, and such orders in relation to any minor child and the child's children and their maintenance as are justified, including placing the minor children child in the custody of the court or third parties or terminating parental rights pursuant to subdivision (5) of this section if the welfare best interests of the children so requires minor child require such orders. Custody and visitation of minor children time spent with each parent shall be determined on the basis of their the best interests of the minor child with the objective of maintaining the ongoing involvement of both parents in the minor child's life. Subsequent changes may be made by the court after hearing on such notice as prescribed by the court.

(2) (4) In determining with which of the parents the children or any of them shall remain custody arrangements and the time to be spent with each parent, the court shall consider the best interests of

the children minor child which shall include, but not be limited to:

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

(b) The desires and wishes of the children minor child 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 minor child.

~~(3) (2) In determining with which of the parents the children or any of them shall remain custody arrangements and the time to be spent with each parent, 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 or suitable than the other.~~

~~(3) The~~ (4) Regardless of the custody determination of the court, (a) each parent shall continue to have full and equal access to the education and medical records of his or her child unless the court orders to the contrary and (b) either parent may make emergency decisions affecting the health or safety of his or her child while the child is in the physical custody of such parent pursuant to a visitation order entered by the court.

(5) 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 when both parents agree to such an arrangement. In that event, the parents each parent shall have equal rights to make decisions in the best interests of the minor child in their his or her custody. The court shall not may place a minor child in joint custody without after conducting a hearing in open court and specifically finding that joint custody is in the best interests of the minor child regardless of any parental agreement or consent.

(6) (4) In determining the amount of child support to be paid by a parent, the court shall consider the earning capacity of each parent and the guidelines provided by the Supreme Court pursuant to section 42-364.16 for the establishment of child support obligations. 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 requires, stating the manner in which such money is used. Child support paid to the party having custody of the minor child shall be the property of such party except as provided in section 43-512.07. The clerk of the district court shall maintain a record, separate from all other judgment dockets, of all decrees and orders in which the payment of child support or spousal support has been ordered, whether ordered by a district court, separate juvenile court, or county court sitting as a juvenile court. Orders for child support in cases in which a party has applied for services under Title IV-D of the Social Security Act, as amended, shall be reviewed as provided in sections

43-512.12 to 43-512.18.

(7) ~~(5)~~ 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 the Nebraska Juvenile Code 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~~ child. The court may terminate the parental rights of one or both parents after notice and hearing when the court finds such action to be in the best interests of the ~~children~~ minor child and it appears by the evidence that one or more of the following conditions exist:

(a) ~~Such children have~~ The minor child has been abandoned by one or both parents;

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

(c) One parent is or both parents are unfit by reason of debauchery, habitual use of intoxicating liquor or narcotic drugs, illegal possession or sale of illegal substances, 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~~ minor child; or

(d) One parent is 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.

(8) Whenever termination of parental rights is placed in issue, the court shall ~~forthwith~~ inform a parent who does not have legal counsel of ~~that~~ the 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's fees and all reasonable expenses incurred by the attorney in protecting the rights of the parent. At such hearing, the guardian ad litem shall take all action necessary to protect the interests of the minor ~~children~~ child. The court shall fix the fees 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. 22. This act shall become operative September 1, 1994.

Sec. 23. That original section 42-120, Reissue Revised

Statutes of Nebraska, 1943, and section 42-364, Revised Statutes Supplement, 1992, are repealed.