

## LEGISLATIVE BILL 1296

Approved by the Governor April 15, 1996

Introduced by Beutler, 28

AN ACT relating to courts; to amend sections 24-312, 24-517, 24-1104, 25-1901, 33-106.03, 42-119, 42-346, 42-348, 42-351, 42-352, 42-357, 42-812, 42-821, 42-822, 43-245, 43-512.17, 43-1743, 43-1803, 43-2904, and 71-615, Reissue Revised Statutes of Nebraska, sections 42-358.08, 42-364, 43-2,113, 43-512.04, and 43-1214.01, Revised Statutes Supplement, 1994, and sections 33-123 and 43-104, Revised Statutes Supplement, 1995; to change consent requirements for a county judge acting as a district judge; to provide precedential status to certain Court of Appeals opinions; to change county court jurisdiction to include concurrent jurisdiction for domestic relations matters; to harmonize provisions; to provide operative dates; to provide severability; and to repeal the original sections. Be it enacted by the people of the State of Nebraska,

Section 1. Section 24-312, Reissue Revised Statutes of Nebraska, is amended to read:

24-312. The district judges may interchange and hold each other's court. Whenever it shall appear by affidavit, to the satisfaction of any district judge in the state, that the judge of any other district is unable to act, on account of sickness, interest, or absence from the district or from any other cause, the judge to whom application may be made shall have power to make any order or do any act relative to any suit, judicial matter, or proceeding or to any special matter arising within the district where such vacancy or disability exists which the judge of such district court could make or do. The order or act shall have the same effect as if made or done by the judge of such district.

A district judge may appoint by order a consenting county judge residing in the district to act as a district judge in specific instances on any matter over which the district court has determined that it has jurisdiction over the parties and subject matter, except appeals from the county court. The appointed county judge shall have power to make any order or do any act relative to any suit, judicial matter, or proceeding or to any special matter which the district judge of such district could make or do if (1) all parties have consented to the appointment or (2) no party has objected to the appointment within ten days after service of the order of appointment upon him or her, except that in any matter arising under Chapter 42, consent shall not be required and a party shall not have the right to object to the appointment of a county judge to act as a district judge. Any such order or act by the county judge after appointment shall have the same effect as if made or done by the district judge of such district. A copy of the order of appointment shall be filed in each action in which a county judge acts as a district judge.

Sec. 2. Section 24-517, Reissue Revised Statutes of Nebraska, is amended to read:

24-517. Each county court shall have the following jurisdiction:

(1) Exclusive original jurisdiction of all matters relating to decedents' estates, including the probate of wills and the construction thereof except as provided in section 30-2486;

(2) Exclusive original jurisdiction of all matters relating to guardianship or conservatorship of any person, including (a) original jurisdiction to consent to and authorize a voluntary selection, partition, and setoff of a ward's interest in real estate owned in common with others and to exercise any right of the ward in connection therewith which the ward could exercise if competent and (b) original jurisdiction to license the sale of such real estate for cash or on such terms of credit as shall seem best calculated to produce the highest price subject only to the requirements set forth in section 30-3201;

(3) Concurrent jurisdiction with the district court to involuntarily partition a ward's interest in real estate owned in common with others;

(4) Concurrent original jurisdiction with the district court in all civil actions of any type when the amount in controversy does not exceed fifteen thousand dollars. When the pleadings or discovery proceedings in a civil action indicate an amount in controversy may exceed fifteen thousand dollars, the county court shall certify the proceedings to the district court as provided in section 25-2706;

(5) Concurrent original jurisdiction with the district court in any criminal matter classified as a misdemeanor or for any infraction;

~~(6) Concurrent original jurisdiction with the district court in domestic relations matters;~~

~~(7) Exclusive original jurisdiction in any action based on violation of a city or village ordinance;~~

~~(7) (8) Exclusive original jurisdiction in all juvenile matters, except in counties which have established separate juvenile courts;~~

~~(8) (9) Exclusive original jurisdiction in all matters of adoption; and~~

~~(9) (10) All other jurisdiction heretofore provided and not specifically repealed by Laws 1972, Legislative Bill 1032, and such other jurisdiction as hereafter provided by law.~~

Sec. 3. Section 24-1104, Reissue Revised Statutes of Nebraska, is amended to read:

24-1104. (1) Decisions of the Court of Appeals shall be in the form of an order which may be accompanied by a memorandum opinion. The memorandum opinion shall not be published unless publication is ordered by the Court of Appeals. All memorandum opinions shall be filed with the Clerk of the Supreme Court, shall be public records, and shall be made available to the public in such manner as may be determined by the Court of Appeals.

(2) In determining whether to publish a memorandum opinion, the Court of Appeals may take into consideration one or more of the following factors:

(a) Whether the decision enunciates a new rule of law;

(b) Whether the decision applies an established rule of law to a factual situation significantly different from that in published opinions;

(c) Whether the decision resolves or identifies a conflict between prior Court of Appeals decisions;

(d) Whether the decision will contribute to legal literature by collecting case law or reciting legislative history; and

(e) Whether the decision involves a case of substantial and continuing public interest.

(3) All published memorandum opinions of the Court of Appeals, whether published before, on, or after the operative date of this section, shall serve as precedent in courts and tribunals of the State of Nebraska inferior to the Court of Appeals unless the decision is modified, reversed, or overruled by the Supreme Court.

Sec. 4. Section 25-1901, Reissue Revised Statutes of Nebraska, is amended to read:

25-1901. A judgment rendered or final order made by any tribunal, board, or officer exercising judicial functions and inferior in jurisdiction to the district court may be reversed, vacated, or modified by the district court, except that the district court shall not have jurisdiction over appeals from a juvenile court as defined in section 43-245 or appeals from a county court in matters arising under the Nebraska Probate Code, ~~or~~ in matters involving adoption or inheritance tax, or in domestic relations matters.

Sec. 5. A judgment rendered or final order made by a county court in a domestic relations matter may be reversed, vacated, or modified by the Court of Appeals in the same manner as judgments and final orders of the district court under sections 25-1911 to 25-1929.

Sec. 6. Section 33-106.03, Reissue Revised Statutes of Nebraska, is amended to read:

33-106.03. In addition to the fees provided for in ~~section 33-106~~ sections 33-106 and 33-123, the clerk of the ~~district~~ court shall collect an additional twenty-five dollars in docket fees for dissolution of marriages. The twenty-five dollar fee shall be paid to the state treasury and credited to the General Fund.

Sec. 7. Section 33-123, Revised Statutes Supplement, 1995, is amended to read:

33-123. The county court shall be entitled to the following fees in civil matters: For any and all services rendered up to and including the judgment or dismissal of the action other than for a domestic relations matter, eighteen dollars, and for any and all services rendered up to and including the judgment or dismissal of a domestic relations matter, forty dollars; for filing a foreign judgment or a judgment transferred from another court in this state, fifteen dollars; and for writs of execution, writs of restitution, garnishment, and examination in aid of execution, five dollars each.

Sec. 8. Section 42-119, Reissue Revised Statutes of Nebraska, is amended to read:

42-119. When a marriage is supposed to be void, or the validity

thereof is doubted, either party, excepting in the cases where a contrary provision is hereinafter made, may file a petition or bill in the county court or district court of the county where the parties, or one of them, reside, for annulling the same, and such petition or bill shall be filed, and proceedings shall be had thereon, as in the case of a petition or bill filed in said the court for a divorce. Upon ~~and upon~~ due proof thereof it shall be declared void by a decree or sentence of nullity.

Sec. 9. Section 42-346, Reissue Revised Statutes of Nebraska, is amended to read:

42-346. When any district court in this state ~~shall have~~ has entered a decree of divorce after August 27, 1951, and when any county court in this state has entered a decree of divorce on or after the operative date of this section, it shall be conclusively presumed that the decree, and all instruments and proceedings in connection therewith are valid in all respects, notwithstanding some defect or defects as may appear on the face of the record or the absence of any record of such court, unless an action is brought within two years from the entry of such decree of divorce attacking the validity thereof.

Sec. 10. Section 42-348, Reissue Revised Statutes of Nebraska, is amended to read:

42-348. All proceedings under sections 42-347 to 42-379 shall be brought in the county court or district court of the county in which one of the parties resides. Proceedings may be transferred to a separate juvenile court or county court sitting as a juvenile court which has acquired jurisdiction pursuant to section 43-2,113. Proceedings shall be transferred to the district court from the county court upon motion of a party if the action is contested. Certified copies of orders filed with the clerk of the ~~district court~~ pursuant to such section shall be treated in the same manner as similar orders issued by the ~~district~~ court.

Sec. 11. Section 42-351, Reissue Revised Statutes of Nebraska, is amended to read:

42-351. (1) In proceedings under sections 42-347 to 42-379, the court shall have jurisdiction to inquire into such matters, make such investigations, and render such judgments and make such orders, both temporary and final, as are appropriate concerning the status of the marriage, the custody and support of minor children, the support of either party, the settlement of the property rights of the parties, and the award of costs and attorney's fees.

(2) When final orders relating to proceedings governed by sections 42-347 to 42-379 are on appeal and such appeal is pending, the ~~district~~ court that issued such orders shall retain jurisdiction to provide for such orders regarding custody, visitation, or support or other appropriate orders in aid of the appeal process.

Sec. 12. Section 42-352, Reissue Revised Statutes of Nebraska, is amended to read:

42-352. A proceeding under sections 42-347 to 42-379 shall be commenced by filing a petition in the county court or district court. Summons shall be served upon the other party to the marriage by personal service or in the manner provided in section 25-517.02.

Sec. 13. Section 42-357, Reissue Revised Statutes of Nebraska, is amended to read:

42-357. The court may order either party to pay to the clerk a sum of money for the temporary support and maintenance of the other party and minor children if any are affected by the action and to enable such party to prosecute or defend the action. The court may make such order after service of process and claim for temporary allowances is made in the petition or by motion by the petitioner or by the respondent in a responsive pleading; but no such order shall be entered before three days after notice of hearing has been served on the other party or notice waived. During the pendency of any proceeding under sections 42-347 to 42-379 after the petition is filed, upon application of either party and if the accompanying affidavit of the party or his or her agent shows to the court that the party is entitled thereto, the court may issue ex parte orders (1) restraining any person from transferring, encumbering, hypothecating, concealing, or in any way disposing of real or personal property except in the usual course of business or for the necessities of life, and the party against whom such order is directed shall upon order of the court account for all unusual expenditures made after such order is served upon him or her, (2) enjoining any party from molesting or disturbing the peace of the other party or any minor children affected by the action, and (3) determining the temporary custody of any minor children of the marriage, except that no restraining order enjoining any party from molesting or disturbing the peace of any minor child shall issue unless, at the same

time, the court determines that the party requesting such order shall have temporary custody of such minor child. Ex parte orders issued pursuant to subdivision (1) of this section shall remain in force for no more than ten days or until a hearing is held thereon, whichever is earlier. After motion, notice to the party, and hearing, the court may order either party excluded from the premises occupied by the other upon a showing that physical or emotional harm would otherwise result. Any restraining order issued excluding either party from the premises occupied by the other shall specifically set forth the location of the premises and shall be served upon the adverse party by the sheriff in the manner prescribed for serving a summons, and a return thereof shall be filed in ~~district~~ the court. Any person who knowingly violates such an order after service shall be guilty of a Class II misdemeanor. In the event a restraining order enjoining any party from molesting or disturbing the peace of any minor children is issued, upon application and affidavit setting out the reason therefor, the court shall schedule a hearing within seventy-two hours to determine whether the order regarding the minor children shall remain in force. Section 25-1064 shall not apply to the issuance of ex parte orders pursuant to this section, except that in the absence from the county of the district court judge when the action is pending in the district court, any judge of the county court may grant a temporary ex parte order in accordance with this section, and except that in the absence from the county of the judge of the county court when the action is pending in the county court, any judge of the district court may grant a temporary ex parte order in accordance with this section.

Sec. 14. Section 42-358.08, Revised Statutes Supplement, 1994, is amended to read:

42-358.08. Notwithstanding any other provision of law regarding the confidentiality of records and when not prohibited by the federal Privacy Act of 1974, Public Law 93-579, as amended, each department and agency of state, county, and city government and each employer or other payor as defined in section 43-1709 shall, upon request, furnish to any court-appointed individuals, the county attorney, any authorized attorney, or the Department of Social Services an absent parent's address, social security number, amount of income, health insurance information, and employer's name and address for the exclusive purpose of establishing and collecting child or spousal support. Information so obtained shall be used for no other purpose. An action may be filed in the county court or district court to enforce this section.

Sec. 15. Section 42-364, Revised Statutes Supplement, 1994, is amended to read:

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 maintenance as are justified, including placing the minor child in the custody of the court or third parties or terminating parental rights pursuant to this section if the best interests of the minor child require such orders. Custody and time spent with each parent shall be determined on the basis of 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) In determining custody arrangements and the time to be spent with each parent, the court shall consider the best interests of the minor child which shall include, but not be limited to:

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

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

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

(d) Credible evidence of abuse inflicted on any family or household member. For purposes of this subdivision, abuse and family or household member shall have the meanings prescribed in section 42-903.

(3) In determining 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 or suitable than the other.

(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, each parent shall have equal rights to make decisions in the best interests of the minor child in his or her custody. The court may place a minor child in joint custody 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) 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 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, county 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 federal Social Security Act, as amended, shall be reviewed as provided in sections 43-512.12 to 43-512.18.

(7) 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 county court or 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 county court or 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 appoint an attorney as guardian ad litem to protect the interests of any minor 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 minor child and it appears by the evidence that one or more of the following conditions exist:

(a) 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 minor child and refused to give such 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 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 inform a parent who does not have legal counsel of the parent's right to retain counsel and 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 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.

~~(9) Subsections (1) through (8) of this section shall apply commencing September 1, 1994. Subsections (10) through (16) of this section shall apply until September 1, 1994.~~

~~(10) 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 are justified, including placing the minor children in the~~

custody of the court or third parties or terminating parental rights pursuant to subdivision (15) 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:

(11) 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;

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

(d) Credible evidence of abuse inflicted on any family or household member. For purposes of this subdivision, abuse and family or household member shall have the meanings prescribed in section 42-903.

(12) 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.

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

(14) 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 stating the manner in which such money is used. Child support paid to the party having custody of the 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-B of the Social Security Act, as amended, shall be reviewed as provided in sections 43-512.12 to 43-512.18.

(15) 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. 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 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.

(16) 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'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. 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. 16. Section 42-812, Reissue Revised Statutes of Nebraska, is amended to read:

42-812. Prior to the filing of any action for divorce, annulment, or separate maintenance, either spouse or both spouses, may file a petition with the clerk of the county court or district court of the county of the residence of either spouse wherein a conciliation court has been established, invoking the jurisdiction of the conciliation court for the purpose of preserving the marriage by effecting a reconciliation between the parties, or for amicable settlement of the controversy between the spouses, so as to avoid further litigation over the issue involved.

Sec. 17. Section 42-821, Reissue Revised Statutes of Nebraska, is amended to read:

42-821. (1) During a period beginning upon the filing of the petition for conciliation and continuing until the earlier of (a) thirty days after the hearing of the petition for conciliation or (b) the dismissal of the petition, neither spouse shall file any action for dissolution of marriage, annulment of marriage, or separate maintenance, except that, for the purpose of protecting the minor children of the parties and the parties, the county court and district court shall have authority after proper notice to enter orders for temporary custody of minor children, temporary child support, and temporary alimony, notwithstanding any such reconciliation proceedings. An order for temporary child support or an order for temporary alimony which is a part of an order providing for temporary child support when the spouse and child reside in the same household shall be governed by the provisions of sections 42-347 to 42-379 relating to child and spousal support. Certified copies of such orders shall be filed by the clerk of the court with the clerk of the district court and treated in the same manner as other such orders issued by a district court.

(2) If, after the expiration of the period specified in subsection (1) of this section, the controversy between the spouses has not been terminated, either spouse may institute proceedings for dissolution of marriage, annulment of marriage, or separate maintenance. The pendency of a dissolution of marriage, annulment, or separate maintenance action shall not operate as a bar to the instituting of proceedings for conciliation under the Conciliation Court Law, but if such action is pending before a petition for conciliation is filed, the court may permit proceeding with such action at any time for good cause shown.

Sec. 18. Section 42-822, Reissue Revised Statutes of Nebraska, is amended to read:

42-822. Whenever any action for divorce, annulment of marriage, or separate maintenance is filed in the county court or district court, and it appears to the court at any time during the pendency of the action that there is any minor child of the spouses or of either of them whose welfare may be adversely affected by the dissolution or annulment of the marriage or the disruption of the household, and that there appears to be some reasonable possibility of a reconciliation being effected, the case may be transferred to the conciliation court for proceedings for reconciliation of the spouses or amicable settlement of issues in controversy, in accordance with the provisions of sections 42-801 to 42-823 Conciliation Court Law.

Sec. 19. Section 43-104, Revised Statutes Supplement, 1995, is amended to read:

43-104. Except as otherwise provided in the Nebraska Indian Child Welfare Act, no adoption shall be decreed unless the petition therefor is accompanied by written consents thereto executed by (1) the minor child, if over fourteen years of age, or the adult child of the adopting person's spouse, (2) any district court, county court, or separate juvenile court in the State of Nebraska having jurisdiction of the custody of a minor child by virtue of divorce proceedings had in any district court, county court, or

separate juvenile court in the State of Nebraska or by virtue of section 43-1203, and (3) both parents if living, the surviving parent of a child born in lawful wedlock, the mother of a child born out of wedlock, or both the mother and father of a child born out of wedlock as determined pursuant to sections 43-104.08 to 43-104.24, except that consent shall not be required of any parent who (a) has relinquished the child for adoption by a written instrument, (b) has abandoned the child for at least six months next preceding the filing of the adoption petition, (c) has been deprived of his or her parental rights to such child by the order of any court of competent jurisdiction, or (d) is incapable of consenting.

Sec. 20. Section 43-245, Reissue Revised Statutes of Nebraska, is amended to read:

43-245. For purposes of the Nebraska Juvenile Code, unless the context otherwise requires:

(1) Parent shall mean one or both parents or a stepparent when such stepparent is married to the custodial parent as of the filing of the petition;

(2) Parties shall mean the juvenile as described in section 43-247 and his or her parent, guardian, or custodian;

(3) Juvenile court shall mean the separate juvenile court where it has been established pursuant to sections 43-2,111 to 43-2,127 and the county court sitting as a juvenile court in all other counties. Nothing in the Nebraska Juvenile Code shall be construed to deprive the county courts or district courts of their habeas corpus, common-law, or chancery jurisdiction or jurisdiction acquired in an action for divorce, legal separation, or annulment;

(4) Traffic offense shall mean any nonfelonious act in violation of a law or ordinance regulating vehicular or pedestrian travel, whether designated a misdemeanor or a traffic infraction;

(5) Juvenile shall mean any person under the age of eighteen;

(6) Age of majority shall mean nineteen years of age; and

(7) Cost or costs shall mean (a) the sum or equivalent expended, paid, or charged for goods or services, or expenses incurred, or (b) the contracted or negotiated price.

Sec. 21. Section 43-2,113, Revised Statutes Supplement, 1994, is amended to read:

43-2,113. (1) In counties where a separate juvenile court is established, the county board of the county shall provide suitable rooms and offices for the accommodation of the judge of the separate juvenile court and the officers and employees appointed by such judge or by the probation administrator pursuant to subsection (4) of section 29-2253. Such separate juvenile court and the judge, officers, and employees of such court shall have the same and exclusive jurisdiction, powers, and duties that are prescribed in the Nebraska Juvenile Code, concurrent jurisdiction under section 83-223, and such other jurisdiction, powers, and duties as specifically provided by law.

(2) A juvenile court created in a separate juvenile court judicial district or a county court sitting as a juvenile court in all other counties shall have and exercise jurisdiction within such juvenile court judicial district or county court judicial district with the county court and district court in all matters arising under Chapter 42, article 3, when the care, support, custody, or control of minor children under the age of eighteen years is involved. Such cases shall be filed in the county court and district court and may, with the consent of the juvenile judge, be transferred to the docket of the separate juvenile court or county court.

(3) All orders issued by a separate juvenile court or a county court which provide for child support or spousal support as defined in section 42-347 shall be governed by sections 42-347 to 42-379 and 43-290 relating to such support. Certified copies of such orders shall be filed by the clerk of the separate juvenile or county court with the clerk of the county court or district court who shall maintain a record as provided in subsection (6) ~~or (14)~~ of section 42-364. There shall be no fee charged for the filing of such certified copies.

Sec. 22. Section 43-512.04, Revised Statutes Supplement, 1994, is amended to read:

43-512.04. (1) An action for child support or medical support may be brought in the county court or district court separate and apart from any action for dissolution of marriage. Such action for support may be filed on behalf of a child:

(a) Whose paternity has been established (i) by prior judicial order in this state, (ii) by a prior determination of paternity made by any other state as described in subsection (1) of section 43-1406, or (iii) by the marriage of his or her parents as described in section 42-377 or subsection



(2) of section 43-1406; or

(b) Whose paternity is presumed as described in section 43-1409 or subsection (2) of section 43-1415.

(2) The father, not having entered into a judicially approved settlement or being in default in the performance of the same, may be made a respondent in such action. The mother of the child may also be made a respondent in such an action. Such action shall be commenced by a complaint of the mother of the child, the father of the child whose paternity has been established, the guardian or next friend of the child, the county attorney, or an authorized attorney.

(3) The petition shall set forth the basis on which paternity was previously established or presumed, if the respondent is the father, and the fact of nonsupport and shall ask that the father, the mother, or both parents be ordered to provide for the support of the child. Summons shall issue against the father, the mother, or both parents and be served as in other civil proceedings, except that such summons may be directed to the sheriff of any county in the state and may be served in any county. The method of trial shall be the same as in actions formerly cognizable in equity, and jurisdiction to hear and determine such actions for support is hereby vested in the district court of the district or the county court of the county where the child is domiciled or found or, for cases under the Uniform Interstate Family Support Act if the child is not domiciled or found in Nebraska, where the parent of the child is domiciled.

(4) In such proceeding, if the respondent is the presumed father as described in subdivision (1)(b) of this section, the court shall make a finding whether or not the presumption of paternity has been rebutted. The presumption of paternity created by acknowledgment as described in section 43-1409 may be rebutted as part of an equitable proceeding to establish support by genetic testing results which exclude the alleged father as being the biological father of the child. A court in such a proceeding may order genetic testing as provided in sections 43-1414 to 43-1418.

(5) If the court finds that the father, the mother, or both parents have failed adequately to support the child, the court shall issue a decree directing him, her, or them to do so, specifying the amount of such support, the manner in which it shall be furnished, and the amount, if any, of any court costs and attorney's fees to be paid by the father, the mother, or both parents. Income withholding shall be ordered pursuant to the Income Withholding for Child Support Act. The court may require the furnishing of bond to insure the performance of the decree in the same manner as is provided for in section 42-358.05 or 43-1405. Failure on the part of the respondent to perform the terms of such decree shall constitute contempt of court and may be dealt with in the same manner as other contempts. The court may also order medical support and the payment of expenses as described in section 43-1407.

Sec. 23. Section 43-512.17, Reissue Revised Statutes of Nebraska, is amended to read:

43-512.17. Any financial information provided to the Department of Social Services, the county attorney, or the authorized attorney by either parent for the purpose of facilitating a modification proceeding under sections 43-512.12 to 43-512.18 may be disclosed to the other parties to the case or to the district court. Financial information shall include the following:

(1) An affidavit of financial status provided by the party requesting review;

(2) An affidavit of financial status of the nonrequesting party provided by the nonrequesting party or by the requesting party at the request of the county attorney or authorized attorney;

(3) Supporting documentation such as state and federal income tax returns, paycheck stubs, W-2 forms, 1099 forms, bank statements, and other written evidence of financial status; and

(4) Information relating to health insurance as provided in subsection (2) of section 42-369.

Sec. 24. Section 43-1214.01, Revised Statutes Supplement, 1994, is amended to read:

43-1214.01. In any custody proceedings heard in this state, the court shall consider, in addition to other factors, the factors prescribed in subsection (2) or (11) of section 42-364 to determine the best interests of the children.

Sec. 25. Section 43-1743, Reissue Revised Statutes of Nebraska, is amended to read:

43-1743. Nothing in the Income Withholding for Child Support Act shall be construed as prohibiting a person from consenting to an income withholding order as part of a property settlement agreement incorporated into

a decree dissolving a marriage or by agreement in a proceeding in the county court, district court, county court sitting as a juvenile court, or separate juvenile court in which the payment of child, spousal, or medical support is an issue. Any such order or agreement shall be filed with the clerk of the district court who shall notify the person's employer or other payor, if any, of the order or agreement by first-class mail and file a record of such mailing in the court. The income withholding shall be treated in all other respects the same as an income withholding initiated pursuant to section 43-1720.

Sec. 26. Section 43-1803, Reissue Revised Statutes of Nebraska, is amended to read:

43-1803. (1) If the minor child's parent or parents are deceased or have never been married, a grandparent seeking visitation shall file a petition in the county court or district court in the county in which the minor child resides. If the marriage of the parents of a minor child has been dissolved or a petition for the dissolution of such marriage has been filed, is still pending, but no decree has been entered, a grandparent seeking visitation shall file a petition for such visitation in the county court or district court in the county in which the dissolution was had or the proceedings are taking place. The form of the petition and all other pleadings required by this section shall be prescribed by the Supreme Court. The petition shall include the following:

- (a) The name and address of the petitioner and his or her attorney;
- (b) The name and address of the parent, guardian, or other party having custody of the child or children;
- (c) The name and address of any parent not having custody of the child or children if applicable;
- (d) The name and date of birth of each child with whom visitation is sought;
- (e) The relationship of petitioner to such child or children;
- (f) An allegation that the parties have attempted to reconcile their differences, but the differences are irreconcilable and such parties have no recourse but to seek redress from the court; and
- (g) A statement of the relief sought.

(2) When a petition seeking visitation is filed, a copy of the petition shall be served upon the parent or parents or other party having custody of the child and upon any parent not having custody of such child by personal service or in the manner provided in section 25-517.02.

Sec. 27. Section 43-2904, Reissue Revised Statutes of Nebraska, is amended to read:

43-2904. (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. 28. Section 71-615, Reissue Revised Statutes of Nebraska, is amended to read:

71-615. On or before the fifth day of each month, the clerk of the county court and district court of each county shall make and return to the Department of Health, upon suitable forms furnished by the department, a statement of each action for annulment or dissolution of marriage granted in the court of which he or she is clerk during the preceding calendar month. The information shall be furnished by the petitioner or his or her legal representative and presented to the clerk of the court with the petition. In all cases, the furnishing of the information to complete the record shall be a prerequisite to the granting of the final decree. If no annulments or dissolutions of marriage were granted in the county during the preceding month, a card furnished by the department indicating such information shall be submitted on or before the fifth day of each month to the department. Upon

neglect or refusal to make such return, such clerk shall, for each neglect or refusal, forfeit and pay the sum of twenty-five dollars for the use of the county.

Sec. 29. Sections 1, 3, and 29 to 31 of this act become operative on their effective date. The other sections of this act become operative on October 1, 1997.

Sec. 30. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 31. Original sections 24-312 and 24-1104, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 32. Original sections 24-517, 25-1901, 33-106.03, 42-119, 42-346, 42-348, 42-351, 42-352, 42-357, 42-812, 42-821, 42-822, 43-245, 43-512.17, 43-1743, 43-1803, 43-2904, and 71-615, Reissue Revised Statutes of Nebraska, sections 42-358.08, 42-364, 43-2,113, 43-512.04, and 43-1214.01, Revised Statutes Supplement, 1994, and sections 33-123 and 43-104, Revised Statutes Supplement, 1995, are repealed.