

AMENDMENTS TO LB 901

Introduced by Judiciary.

1           1. Strike the original sections and insert the following  
2 new sections:

3           Section 1. Section 42-364, Revised Statutes Supplement,  
4 2009, is amended to read:

5           42-364 (1) In an action under Chapter 42 involving  
6 child support, child custody, parenting time, visitation, or other  
7 access, the parties and their counsel, if represented, shall  
8 develop a parenting plan as provided in the Parenting Act. If  
9 the parties and counsel do not develop a parenting plan, the  
10 complaint shall so indicate as provided in section 42-353 and  
11 before July 1, 2010, the case may be referred to mediation,  
12 specialized alternative dispute resolution, or other alternative  
13 dispute resolution process and on or after such date the case  
14 shall be referred to mediation or specialized alternative dispute  
15 resolution as provided in the Parenting Act. For good cause shown  
16 and (a) when both parents agree and such parental agreement is  
17 bona fide and not asserted to avoid the purposes of the Parenting  
18 Act, or (b) when mediation or specialized alternative dispute  
19 resolution is not possible without undue delay or hardship to  
20 either parent, the mediation or specialized alternative dispute  
21 resolution requirement may be waived by the court. In such a case  
22 where waiver of the mediation or specialized alternative dispute  
23 resolution is sought, the court shall hold an evidentiary hearing

1 and the burden of proof for the party or parties seeking waiver is  
2 by clear and convincing evidence. The decree in an action involving  
3 the custody of a minor child shall include the determination of  
4 legal custody and physical custody based upon the best interests of  
5 the child, as defined in the Parenting Act, and child support. Such  
6 determinations shall be made by incorporation into the decree of  
7 (a) a parenting plan developed by the parties, if approved by the  
8 court, or (b) a parenting plan developed by the court based upon  
9 evidence produced after a hearing in open court if no parenting  
10 plan is developed by the parties or the plan developed by the  
11 parties is not approved by the court. The decree shall conform to  
12 the Parenting Act. The social security number of each parent and  
13 the minor child shall be furnished to the clerk of the district  
14 court but shall not be disclosed or considered a public record.

15 (2) In determining legal custody or physical custody,  
16 the court shall not give preference to either parent based on the  
17 sex of the parent and, except as provided in section 43-2933, no  
18 presumption shall exist that either parent is more fit or suitable  
19 than the other. Custody shall be determined on the basis of the  
20 best interests of the child, as defined in the Parenting Act.  
21 Unless parental rights are terminated, both parents shall continue  
22 to have the rights stated in section 42-381.

23 (3) Custody of a minor child may be placed with both  
24 parents on a joint legal custody or joint physical custody basis,  
25 or both, (a) when both parents agree to such an arrangement in the  
26 parenting plan and the court determines that such an arrangement is  
27 in the best interests of the child or (b) if the court specifically

1 finds, after a hearing in open court, that joint physical custody  
2 or joint legal custody, or both, is in the best interests of the  
3 minor child regardless of any parental agreement or consent.

4 (4) In determining the amount of child support to be  
5 paid by a parent, the court shall consider the earning capacity  
6 of each parent and the guidelines provided by the Supreme Court  
7 pursuant to section 42-364.16 for the establishment of child  
8 support obligations. Upon application, hearing, and presentation of  
9 evidence of an abusive disregard of the use of child support money  
10 or cash medical support paid by one party to the other, the court  
11 may require the party receiving such payment to file a verified  
12 report with the court, as often as the court requires, stating  
13 the manner in which child support money or cash medical support  
14 is used. Child support money or cash medical support paid to the  
15 party having custody of the minor child shall be the property of  
16 such party except as provided in section 43-512.07. The clerk of  
17 the district court shall maintain a record, separate from all other  
18 judgment dockets, of all decrees and orders in which the payment  
19 of child support, cash medical support, or spousal support has  
20 been ordered, whether ordered by a district court, county court,  
21 separate juvenile court, or county court sitting as a juvenile  
22 court. Orders for child support or cash medical support in cases  
23 in which a party has applied for services under Title IV-D of  
24 the federal Social Security Act, as amended, shall be reviewed as  
25 provided in sections 43-512.12 to 43-512.18.

26 (5) Whenever termination of parental rights is placed in  
27 issue:

1           (a) The court shall transfer jurisdiction to a juvenile  
2 court established pursuant to the Nebraska Juvenile Code unless  
3 a showing is made that the county court or district court  
4 is a more appropriate forum. In making such determination, the  
5 court may consider such factors as cost to the parties, undue  
6 delay, congestion of dockets, and relative resources available for  
7 investigative and supervisory assistance. A determination that the  
8 county court or district court is a more appropriate forum shall  
9 not be a final order for the purpose of enabling an appeal. If  
10 no such transfer is made, the court shall appoint an attorney as  
11 guardian ad litem to protect the interests of any minor child.  
12 The court may terminate the parental rights of one or both parents  
13 after notice and hearing when the court finds such action to be in  
14 the best interests of the minor child, as defined in the Parenting  
15 Act, and it appears by the evidence that one or more of the grounds  
16 for termination of parental rights stated in section 43-292 exist;  
17 and

18           (b) The court shall inform a parent who does not have  
19 legal counsel of the parent's right to retain counsel and of  
20 the parent's right to retain legal counsel at county expense if  
21 such parent is unable to afford legal counsel. If such parent  
22 is unable to afford legal counsel and requests the court to  
23 appoint legal counsel, the court shall immediately appoint an  
24 attorney to represent the parent in the termination proceedings.  
25 The court shall order the county to pay the attorney's fees and  
26 all reasonable expenses incurred by the attorney in protecting the  
27 rights of the parent. At such hearing, the guardian ad litem shall

1 take all action necessary to protect the interests of the minor  
2 child. The court shall fix the fees and expenses of the guardian ad  
3 litem and tax the same as costs but may order the county to pay on  
4 finding the responsible party indigent and unable to pay.

5 (6) Modification proceedings relating to support,  
6 custody, parenting time, visitation, other access, or removal of  
7 children from the jurisdiction of the court shall be commenced  
8 by filing a complaint to modify. Modification of a parenting  
9 plan is governed by the Parenting Act. Proceedings to modify a  
10 parenting plan shall be commenced by filing a complaint to modify.  
11 Such actions may be referred to mediation, specialized alternative  
12 dispute resolution, or other alternative dispute resolution process  
13 before July 1, 2010, and on and after such date shall be referred  
14 to mediation or specialized alternative dispute resolution as  
15 provided in the Parenting Act. For good cause shown and (a) when  
16 both parents agree and such parental agreement is bona fide and  
17 not asserted to avoid the purposes of the Parenting Act, or (b)  
18 when mediation or specialized alternative dispute resolution is not  
19 possible without undue delay or hardship to either parent, the  
20 mediation or specialized alternative dispute resolution requirement  
21 may be waived by the court. In such a case where waiver of the  
22 mediation or specialized alternative dispute resolution is sought,  
23 the court shall hold an evidentiary hearing and the burden of proof  
24 for the party or parties seeking waiver is by clear and convincing  
25 evidence. Service of process and other procedure shall comply with  
26 the requirements for a dissolution action.

27 (7) In any proceeding under this section relating to

1 custody of a child of school age, certified copies of school  
2 records relating to attendance and academic progress of such child  
3 are admissible in evidence.

4 Sec. 2. Section 43-2923, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6 43-2923 The best interests of the child require:

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

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

15 (3) That the child's families and those serving in  
16 parenting roles remain appropriately active and involved in  
17 parenting with safe, appropriate, continuing quality contact  
18 between children and their families when they have shown the  
19 ability to act in the best interests of the child and have shared  
20 in the responsibilities of raising the child;

21 (4) That even when parents have voluntarily negotiated  
22 or mutually mediated and agreed upon a parenting plan, the court  
23 shall determine whether it is in the best interests of the child  
24 for parents to maintain continued communications with each other  
25 and to make joint decisions in performing parenting functions as  
26 are necessary for the care and healthy development of the child. If  
27 the court rejects a parenting plan, the court shall provide written

1 findings as to why the parenting plan is not in the best interests  
2 of the child; ~~and~~

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

18 (6) In determining custody and parenting arrangements,  
19 the court shall consider the best interests of the minor child,  
20 which shall include, but not be limited to, consideration of the  
21 foregoing factors and:

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

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

27 (c) The general health, welfare, and social behavior of

1 the minor child;

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

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

9 Sec. 3. Section 43-2937, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11 43-2937 (1) In addition to those cases that are  
12 mandatorily referred to mediation or specialized alternative  
13 dispute resolution under subsection (3) of this section, a court  
14 may, at any time in the proceedings upon its own motion or upon the  
15 motion of either party, refer a case to mediation or specialized  
16 alternative dispute resolution in order to attempt resolution of  
17 any relevant matter. The court may state a date for the case to  
18 return to court, and the court shall not grant an extension of such  
19 date except for cause. If the court refers a case to mediation  
20 or specialized alternative dispute resolution, the court may, if  
21 appropriate, order temporary relief, including necessary support  
22 and provision for payment of mediation costs. Court referral  
23 shall be to a mediator agreed to by the parties and approved by  
24 the court, an approved mediation center, or a court conciliation  
25 program. The State Court Administrator's office shall develop a  
26 process to approve mediators under the Parenting Act.

27 (2) Prior to July 1, 2010, if there are allegations of



1 domestic intimate partner abuse or unresolved parental conflict  
2 between the parties in any proceeding, mediation shall not be  
3 required pursuant to the Parenting Act or by local court rule,  
4 unless the court has established a specialized alternative dispute  
5 resolution rule approved by the State Court Administrator. The  
6 specialized alternative dispute resolution process shall include  
7 a method for court consideration of precluding or disqualifying  
8 parties from participating; provide an opportunity to educate both  
9 parties about the process; require informed consent from both  
10 parties in order to proceed; provide safety protocols, including  
11 separate individual sessions for each participant, informing each  
12 party about the process, and obtaining informed consent from  
13 each party to continue the process; allow support persons to  
14 attend sessions; and establish opt-out-for-cause provisions. On and  
15 after July 1, 2010, all trial courts shall have a mediation and  
16 specialized alternative dispute resolution rule in accordance with  
17 the act.

18 (3) ~~For~~ Except as provided in subsection (4) of this  
19 section, for cases filed on or after July 1, 2010, all parties who  
20 have not submitted a parenting plan to the court within the time  
21 specified by the court shall be ordered to participate in mediation  
22 or specialized alternative dispute resolution with a mediator, a  
23 court conciliation program, or an approved mediation center as  
24 provided in section 43-2939.

25 (4) For good cause shown and (a) when both parents agree  
26 and such parental agreement is bona fide and not asserted to  
27 avoid the purposes of the Parenting Act, or (b) when mediation

1 or specialized alternative dispute resolution is not possible  
2 without undue delay or hardship to either parent, the mediation  
3 or specialized alternative dispute resolution requirement may be  
4 waived by the court. In such a case where waiver of the mediation  
5 or specialized alternative dispute resolution is sought, the court  
6 shall hold an evidentiary hearing and the burden of proof for  
7 the party or parties seeking waiver is by clear and convincing  
8 evidence.

9           Sec. 4. This act becomes operative on July 1, 2010.

10           Sec. 5. Original sections 43-2923 and 43-2937, Reissue  
11 Revised Statutes of Nebraska, and section 42-364, Revised Statutes  
12 Supplement, 2009, are repealed.

13           Sec. 6. Since an emergency exists, this act takes effect  
14 when passed and approved according to law.