

LEGISLATURE OF NEBRASKA  
ONE HUNDRED THIRD LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 22**

Introduced by Hadley, 37.

Read first time January 10, 2013

Committee: Judiciary

A BILL

1 FOR AN ACT relating to child custody; to amend section 43-2921,  
2 Reissue Revised Statutes of Nebraska, and section  
3 43-2929, Revised Statutes Cumulative Supplement, 2012; to  
4 change provisions of the Parenting Act relating to  
5 findings and parenting plans; and to repeal the original  
6 sections.

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

1           Section 1. Section 43-2921, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           43-2921 The Legislature finds that it is in the best  
4 interests of a child that a parenting plan be developed in any  
5 proceeding under Chapter 42 involving custody, parenting time,  
6 visitation, or other access with a child and that the parenting plan  
7 establish specific individual responsibility for performing such  
8 parenting functions as are necessary and appropriate for the care and  
9 healthy development of each child affected by the parenting plan.

10           The Legislature further finds that it is in the best  
11 interests of a child to have a safe, stable, and nurturing  
12 environment. The best interests of each child shall be paramount and  
13 consideration shall be given to the desires and wishes of the child  
14 if of an age of comprehension, regardless of chronological age, when  
15 such desires and wishes are based on sound reasoning.

16           In any proceeding involving a child, the best interests  
17 of the child shall be the standard by which the court adjudicates and  
18 establishes the individual responsibilities, including consideration  
19 in any custody, parenting time, visitation, or other access  
20 determinations as well as resolution of conflicts affecting each  
21 child. The state presumes the critical importance of the parent-child  
22 relationship in the welfare and development of the child and that the  
23 relationship between the child and each parent should be equally  
24 considered unless it is contrary to the best interests of the child.

25           The Legislature recognizes the potential profound effects

1 on children who have minimal parenting time with either parent as  
2 well as its related adverse public health consequences. The  
3 Legislature finds that maximized parenting time with each parent  
4 protects children from harm to the father-child relationship, from  
5 harm to the mother-child relationship, and from harm due to parent  
6 conflict. The Legislature further finds that minimal parenting time  
7 with either parent may result in delayed growth during infancy,  
8 poorer physical health, obesity in early adulthood, and serious  
9 medical conditions in midlife. The Legislature finds that, in  
10 addition to being harmful to children, these consequences have  
11 serious adverse public health effects on the state.

12 The Legislature recognizes that both parents and their  
13 children have a recognized unique and legal interest in, and a  
14 constitutionally protected right to, companionship. The substantive  
15 due process right to family integrity protects not only the parent's  
16 right to the companionship, care, custody, and management of his or  
17 her child, but also protects the child's reciprocal right to be  
18 raised and nurtured by his or her biological parent. Both parents and  
19 their children have cognizable substantive due process rights to the  
20 parent-child relationship.

21 The Legislature further recognizes that the interest of  
22 parents in the care, custody, and control of their children is  
23 perhaps the oldest of the fundamental liberty interests. It is the  
24 declared public policy of this state and the general purpose of the  
25 Parenting Act that, absent evidence to the contrary, it is in a

1 child's best interest to have substantial, frequent, meaningful, and  
2 continuing parenting time with both parents and to have both parents  
3 participate in decisionmaking about the child.

4           Given the potential profound effects on children from  
5 witnessing child abuse or neglect or domestic intimate partner abuse,  
6 as well as being directly abused, the courts shall recognize the duty  
7 and responsibility to keep the child or children safe when presented  
8 with a preponderance of the evidence of child abuse or neglect or  
9 domestic intimate partner abuse, including evidence of a child being  
10 used by the abuser to establish or maintain power and control over  
11 the victim. In domestic intimate partner abuse cases, the best  
12 interests of each child are often served by keeping the child and the  
13 victimized partner safe and not allowing the abuser to continue the  
14 abuse. When child abuse or neglect, domestic intimate partner abuse,  
15 or unresolved parental conflict prevents the best interests of the  
16 child from being served in the parenting arrangement, then the safety  
17 and welfare of the child is paramount in the resolution of those  
18 conflicts.

19           Sec. 2. Section 43-2929, Revised Statutes Cumulative  
20 Supplement, 2012, is amended to read:

21           43-2929 (1) In any proceeding in which parenting  
22 functions for a child are at issue under Chapter 42, a parenting plan  
23 shall be developed and shall be approved by the court. Court rule may  
24 provide for the parenting plan to be developed by the parties or  
25 their counsel, a court conciliation program, an approved mediation

1 center, or a private mediator. When a parenting plan has not been  
2 developed and submitted to the court, or agreed to by the parents,  
3 each parent shall submit a proposed parenting plan, and the court  
4 shall create ~~the~~ a parenting plan in accordance with the Parenting  
5 Act. A parenting plan shall serve the best interests of the child  
6 pursuant to sections 42-364, 43-2923, and 43-2929.01 and shall:

7 (a) Assist in developing a restructured family that  
8 serves the best interests of the child by accomplishing the parenting  
9 functions; and

10 (b) Include, but not be limited to, determinations of the  
11 following:

12 (i) Legal custody and physical custody of each child;

13 (ii) Apportionment of parenting time, visitation, or  
14 other access for each child, including, but not limited to, specified  
15 religious and secular holidays, birthdays, Mother's Day, Father's  
16 Day, school and family vacations, and other special occasions,  
17 specifying dates and times for the same, or a formula or method for  
18 determining such a schedule in sufficient detail that, if necessary,  
19 the schedule can be enforced in subsequent proceedings by the court,  
20 and set out appropriate times and numbers for telephone access;

21 (iii) Location of the child during the week, weekend, and  
22 given days during the year;

23 (iv) A transition plan, including the time and places for  
24 transfer of the child, method of communication or amount and type of  
25 contact between the parties during transfers, and duties related to

1 transportation of the child during transfers;

2 (v) Procedures for making decisions regarding the day-to-  
3 day care and control of the child consistent with the major decisions  
4 made by the person or persons who have legal custody and  
5 responsibility for parenting functions;

6 (vi) Provisions for a remediation process regarding  
7 future modifications to such plan;

8 (vii) Arrangements to maximize the safety of all parties  
9 and the child;

10 (viii) Provisions to ensure regular and continuous school  
11 attendance and progress for school-age children of the parties; and

12 (ix) Provisions for safety when a preponderance of the  
13 evidence establishes child abuse or neglect, domestic intimate  
14 partner abuse, unresolved parental conflict, or criminal activity  
15 which is directly harmful to a child.

16 (2) A parenting plan shall require that the parties  
17 notify each other of a change of address, except that the address or  
18 return address shall only include the county and state for a party  
19 who is living or moving to an undisclosed location because of safety  
20 concerns.

21 ~~(3) When safe and appropriate for the best interests of~~  
22 ~~the child, the parenting plan may encourage mutual discussion of~~  
23 ~~major decisions regarding parenting functions including the child's~~  
24 ~~education, health care, and spiritual or religious upbringing.~~  
25 Consistent with the child's best interests and absent evidence to the

1 contrary, the court shall adopt a parenting plan that provides for  
2 both parents to share legal decisionmaking regarding their child and  
3 that maximizes their respective parenting time. The court shall not  
4 prefer a parent's proposed plan because of the parent's or child's  
5 sex. However, when a prior factual determination of child abuse or  
6 neglect, domestic intimate partner abuse, or unresolved parental  
7 conflict has been made, then consideration shall be given to  
8 inclusion of provisions for safety and a transition plan that  
9 restrict communication or the amount and type of contact between the  
10 parties during transfers.

11 (4) Regardless of the custody determinations in the  
12 parenting plan, unless parental rights are terminated, both parents  
13 shall continue to have the rights stated in section 42-381.

14 (5) In the development of a parenting plan, consideration  
15 shall be given to the child's age, the child's developmental needs,  
16 and the child's perspective, as well as consideration of enhancing  
17 healthy relationships between the child and each party.

18 Sec. 3. Original section 43-2921, Reissue Revised  
19 Statutes of Nebraska, and section 43-2929, Revised Statutes  
20 Cumulative Supplement, 2012, are repealed.