

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 769

Introduced by Crawford, 45.

Read first time January 09, 2014

Committee: Judiciary

A BILL

1 FOR AN ACT relating to the Parenting Act; to amend sections 43-2929
2 and 43-2929.01, Revised Statutes Cumulative Supplement,
3 2012; to provide for delegation of a military parent's
4 parenting time or visitation and provide provisions
5 relating to military parents as prescribed; to harmonize
6 provisions; and to repeal the original sections.

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

1 Section 1. Section 43-2929, Revised Statutes Cumulative
2 Supplement, 2012, is amended to read:

3 43-2929 (1) In any proceeding in which parenting
4 functions for a child are at issue under Chapter 42, a parenting plan
5 shall be developed and shall be approved by the court. Court rule may
6 provide for the parenting plan to be developed by the parties or
7 their counsel, a court conciliation program, an approved mediation
8 center, or a private mediator. When a parenting plan has not been
9 developed and submitted to the court, the court shall create the
10 parenting plan in accordance with the Parenting Act. A parenting plan
11 shall serve the best interests of the child pursuant to sections
12 42-364, 43-2923, and 43-2929.01 and shall:

13 (a) Assist in developing a restructured family that
14 serves the best interests of the child by accomplishing the parenting
15 functions; and

16 (b) Include, but not be limited to, determinations of the
17 following:

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

19 (ii) Apportionment of parenting time, visitation, or
20 other access for each child, including, but not limited to, specified
21 religious and secular holidays, birthdays, Mother's Day, Father's
22 Day, school and family vacations, and other special occasions,
23 specifying dates and times for the same, or a formula or method for
24 determining such a schedule in sufficient detail that, if necessary,
25 the schedule can be enforced in subsequent proceedings by the court,

1 and set out appropriate times and numbers for telephone access;

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

4 (iv) A transition plan, including the time and places for
5 transfer of the child, method of communication or amount and type of
6 contact between the parties during transfers, and duties related to
7 transportation of the child during transfers;

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

12 (vi) Provisions for a remediation process regarding
13 future modifications to such plan;

14 (vii) Arrangements to maximize the safety of all parties
15 and the child;

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

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

22 (2) If a military parent is a party, a parenting plan may
23 include a delegation plan as provided in section 43-2929.01.

24 ~~(2)~~(3) A parenting plan shall require that the parties
25 notify each other of a change of address, except that the address or

1 return address shall only include the county and state for a party
2 who is living or moving to an undisclosed location because of safety
3 concerns.

4 ~~(3)~~(4) When safe and appropriate for the best interests
5 of the child, the parenting plan may encourage mutual discussion of
6 major decisions regarding parenting functions including the child's
7 education, health care, and spiritual or religious upbringing.
8 However, when a prior factual determination of child abuse or
9 neglect, domestic intimate partner abuse, or unresolved parental
10 conflict has been made, then consideration shall be given to
11 inclusion of provisions for safety and a transition plan that
12 restrict communication or the amount and type of contact between the
13 parties during transfers.

14 ~~(4)~~(5) Regardless of the custody determinations in the
15 parenting plan, unless parental rights are terminated, both parents
16 shall continue to have the rights stated in section 42-381.

17 ~~(5)~~(6) In the development of a parenting plan,
18 consideration shall be given to the child's age, the child's
19 developmental needs, and the child's perspective, as well as
20 consideration of enhancing healthy relationships between the child
21 and each party.

22 Sec. 2. Section 43-2929.01, Revised Statutes Cumulative
23 Supplement, 2012, is amended to read:

24 43-2929.01 (1) The Legislature finds that for children of
25 military parents it is in the best interests of the child to maintain

1 the parent-child bond during ~~the~~a military parent's mobilization or
2 deployment.

3 (2) In a custody or parenting time, visitation, or other
4 access proceeding or modification or the approval or implementation
5 of a delegation plan involving a military parent, the court shall
6 consider and provide, if appropriate:

7 (a) Orders for communication between ~~the~~a military
8 parent and his or her child during any mobilization or deployment of
9 greater than thirty days. Such communication may be by electronic or
10 other available means, including webcam, Internet, or telephone; ~~and~~

11 (b) Parenting time, visitation, or other access orders
12 that ensure liberal access between ~~the~~a military parent and ~~the~~his
13 or her child during any military leave of the military parent during
14 a mobilization or deployment of greater than thirty days; ~~and~~ -

15 (c) Orders to allow a military parent to present
16 testimony and evidence by electronic or other available means,
17 including webcam, Internet, telephone, or video teleconference, upon
18 motion of a military parent who has received orders for mobilization
19 or deployment and with reasonable advanced notice and proof that the
20 military parent's military duties make personal appearance at such
21 proceedings unduly difficult or unreasonable.

22 (3) A military parent's military membership,
23 mobilization, deployment, absence, relocation, or failure to comply
24 with custody, parenting time, visitation, or other access orders
25 because of military duty shall not, by itself, be sufficient to

1 justify an order or modification of an order involving custody,
2 parenting time, visitation, or other access.

3 (4) If a custody, child support, or parenting time,
4 visitation, or other access proceeding, or modification thereof,
5 involves a military parent and is filed after the military parent's
6 unit has received notice of potential deployment or during the time
7 the military parent is mobilized or deployed:

8 (a) The court shall not issue a custody order or modify
9 any previous custody order that changes custody as it existed on the
10 day prior to ~~the~~a military parent's unit receiving notice of
11 potential deployment, except that the court may issue a temporary
12 custody order or temporary modification if there is clear and
13 convincing evidence that the custody change is in the best interests
14 of the child;

15 (b) The court shall not issue a child support order or
16 modify any previous child support order that changes child support as
17 it existed on the day prior to ~~the~~a military parent's unit receiving
18 notice of potential deployment, except that the court may issue a
19 temporary child support order or temporary modification if there is
20 clear and convincing evidence that the order or modification is
21 required to meet the child support guidelines established pursuant to
22 section 42-364.16; and

23 (c) The court shall not issue a parenting time,
24 visitation, or other access order or modify any previous order that
25 changes parenting time, visitation, or other access as it existed on

1 the day prior to ~~the~~a military parent's unit receiving notice of
2 potential deployment, except that the court may approve or implement
3 a delegation plan or may enter a temporary parenting time,
4 visitation, or other access order or modify any such existing order
5 to permit liberal parenting time, visitation, or other access during
6 any military leave of ~~the~~a military parent.

7 (5) If a temporary order is issued under subsection (4)
8 of this section, upon ~~the~~a military parent returning from
9 mobilization or deployment, either parent may file a motion
10 requesting a rehearing or reinstatement of a prior order. The court
11 shall rehear the matter if the temporary order was the initial order
12 in the proceeding and shall make a new determination regarding the
13 proceeding. The court shall reinstate the original order if the
14 temporary order was a modification unless the court finds that the
15 best interests of the child or the child support guidelines
16 established pursuant to section 42-364.16 require a new
17 determination.

18 (6) Upon finding an (a) unreasonable failure of a
19 ~~nonmilitary~~ parent to accommodate the military leave schedule of the
20 ~~military~~other parent, (b) unreasonable delay by ~~the nonmilitary~~a
21 parent of custody, child support, parenting time, visitation, or
22 other access proceedings involving a military parent, (c)
23 unreasonable failure of ~~the~~a military parent to notify the
24 ~~nonmilitary~~other parent or court of release from mobilization, or
25 (d) unreasonable failure of ~~the~~a military parent to provide

1 requested documentation, the court may order the offending party to
2 pay any attorney's fees of the other party incurred due to such
3 unreasonable action.

4 (7)(a) If a military parent receives orders for a
5 mobilization or deployment of greater than thirty days that involve
6 locating a substantial distance from the military parent's residence,
7 the court, at the request of the military parent, may approve or
8 implement a delegation plan that delegates the military parent's
9 parenting time or visitation, or a portion thereof, to a nonparent
10 who is an adult family member of the child or is a trusted adult that
11 has a preexisting, significant relationship with the child, if such
12 delegation is in the best interests of the child and meets the
13 requirements of this subsection. The delegation plan shall include
14 the name of the nonparent delegate and may include the name of an
15 alternate nonparent delegate.

16 (b) Unless the delegation plan is agreed to by the other
17 parent, the delegation shall not exceed the parenting time or
18 visitation granted under the existing order, except that the court
19 may take into consideration the travel time necessary to transport
20 the child for such delegated parenting time or visitation.

21 (c) A delegation plan approved or implemented under this
22 subsection does not change the parents' duties to pay or receive
23 child support under an existing child support order.

24 (d) A court may terminate a delegation plan if the court
25 determines that the delegation is no longer in the best interests of

1 the child.

2 (e) A delegation plan approved or implemented pursuant to
3 this subsection does not establish separate rights to parenting time
4 or visitation for the nonparent delegate.

5 (f) Nothing in this subsection changes the duty of the
6 court to consider the best interests of the child in deciding custody
7 or visitation matters.

8 ~~(7)~~(8) This section does not apply to permanent change
9 of station moves by a military parent.

10 Sec. 3. Original sections 43-2929 and 43-2929.01, Revised
11 Statutes Cumulative Supplement, 2012, are repealed.