

## LEGISLATIVE BILL 490

Approved by the Governor March 3, 1994

Introduced by Crosby, 29; Wesely, 26

AN ACT relating to child custody; to amend section 43-1225, Reissue Revised Statutes of Nebraska, 1943, and sections 42-364 and 43-2,113, Revised Statutes Supplement, 1993; to provide for evidence of abuse to be considered; to provide standards for all custody proceedings; to harmonize provisions; and to repeal the original sections.

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

Section 1. That section 42-364, Revised Statutes Supplement, 1993, 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 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; and

(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, 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) 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 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-D 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. 2. That section 43-2,113, Revised Statutes Supplement, 1993, be amended to read as follows:

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 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 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 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. 3. 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. 4. That section 43-1225, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-1225. Sections 43-1201 to 43-1225 and section 3 of this act shall be known and may be cited as the Nebraska Child Custody Jurisdiction Act.

Sec. 5. That original section 43-1225, Reissue Revised Statutes of Nebraska, 1943, and sections 42-364 and 43-2,113, Revised Statutes Supplement, 1993, are repealed.