

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1192**

Introduced by McDonnell, 5.

Read first time January 20, 2022

Committee: Judiciary

1 A BILL FOR AN ACT relating to children and families; to amend sections  
2 42-357, 43-2920, and 43-2929, Reissue Revised Statutes of Nebraska;  
3 to provide for a temporary injunction upon filing for dissolution of  
4 marriage or legal separation; to provide for a presumption of joint  
5 legal custody and equal parenting time; to provide for sanctions for  
6 misconduct by a party; to require the filing of reports; to provide  
7 duties for the State Court Administrator; and to repeal the original  
8 sections.  
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 42-357, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 42-357 (1)(a) Upon the filing of a complaint for dissolution of  
4 marriage or legal separation and upon personal service of the complaint  
5 and summons on the defendant or upon waiver and acceptance of service by  
6 the defendant, a temporary injunction shall be in effect against both  
7 parties until the final decree is entered, the complaint is dismissed, or  
8 the court orders otherwise. Such temporary injunction shall:

9 (i) Restrain both parties from transferring, encumbering,  
10 concealing, or in any way disposing of, without the consent of the other  
11 party or an order of the court, any marital property, except in the usual  
12 course of business or for the necessities of life;

13 (ii) Require each party to notify the other party of any proposed  
14 extraordinary expenditures and to account to the court for all  
15 extraordinary expenditures made after the injunction is in effect;

16 (iii) Enjoin both parties from molesting or disturbing the peace of  
17 the other party;

18 (iv) Restrain both parties from removing the minor child or children  
19 of the parties, if any, from the state without the consent of the other  
20 party or an order of the court;

21 (v) Restrain both parties, without at least fourteen days' advance  
22 notification and the written consent of the other party or an order of  
23 the court, from canceling, modifying, terminating, or allowing to lapse  
24 for nonpayment of premiums, any policy of health insurance, homeowner's  
25 or renter's insurance, or automobile insurance that provides coverage to  
26 either of the parties or the minor children or any policy of life  
27 insurance that names either of the parties or the minor children as a  
28 beneficiary; and

29 (vi) Address such other matters as the Supreme Court may by rule  
30 provide.

31 (b) The provisions of the injunction shall be printed upon the

1 summons and the temporary injunction shall become an order of the court  
2 upon fulfillment of the requirements of subdivision (1)(a) of this  
3 section.

4 (c) Nothing in this subsection shall preclude either party from  
5 applying to the court for further temporary orders, an expanded temporary  
6 injunction, or modification or revocation of such orders.

7 (2)(a) The court may order either party to pay to the clerk of the  
8 district court or to the State Disbursement Unit, as provided in section  
9 42-369, a sum of money for the temporary support and maintenance of the  
10 other party and minor children if any are affected by the action and to  
11 enable such party to prosecute or defend the action. The court may make  
12 such order after service of process and claim for temporary allowances is  
13 made in the complaint or by motion by the plaintiff or by the defendant  
14 in a responsive pleading; but no such order shall be entered before three  
15 days after notice of hearing has been served on the other party or notice  
16 waived.

17 (b) During the pendency of any proceeding under sections 42-347 to  
18 42-381 after the complaint is filed, upon application of either party and  
19 if the accompanying affidavit of the party or his or her agent shows to  
20 the court that the party is entitled thereto, the court may issue ex  
21 parte orders:

22 (i) Restraining ~~(1) restraining~~ any person from transferring,  
23 encumbering, hypothecating, concealing, or in any way disposing of real  
24 or personal property except in the usual course of business or for the  
25 necessities of life, and the party against whom such order is directed  
26 shall upon order of the court account for all unusual expenditures made  
27 after such order is served upon him or her; τ

28 (ii) Except as provided in subdivision (2)(c) of this section, ~~(2)~~  
29 enjoining any party from molesting or disturbing the peace of the other  
30 party or any minor children affected by the action; τ and

31 (iii) Determining ~~(3) determining~~ the temporary custody of any minor

1 children of the marriage.

2 (c) No ~~, except that~~ no restraining order enjoining any party from  
3 molesting or disturbing the peace of any minor child shall issue unless,  
4 at the same time, the court determines that the party requesting such  
5 order shall have temporary custody of such minor child.

6 (d) Ex parte orders issued pursuant to subdivision (2)(a)(i) or  
7 (iii) subdivisions (1) and (3) of this section shall remain in force for  
8 no more than ten days or until a hearing is held thereon, whichever is  
9 earlier.

10 (e) After motion, notice to the party, and hearing, the court may  
11 order either party excluded from the premises occupied by the other upon  
12 a showing that physical or emotional harm would otherwise result. Any  
13 restraining order issued excluding either party from the premises  
14 occupied by the other shall specifically set forth the location of the  
15 premises and shall be served upon the adverse party by the sheriff in the  
16 manner prescribed for serving a summons, and a return thereof shall be  
17 filed in the court. Any person who knowingly violates such an order after  
18 service shall be guilty of a Class II misdemeanor. In the event a  
19 restraining order enjoining any party from molesting or disturbing the  
20 peace of any minor children is issued, upon application and affidavit  
21 setting out the reason therefor, the court shall schedule a hearing  
22 within seventy-two hours to determine whether the order regarding the  
23 minor children shall remain in force.

24 (f) Section 25-1064 shall not apply to the issuance of ex parte  
25 orders pursuant to this section. Any judge of the county court or  
26 district court may grant a temporary ex parte order in accordance with  
27 this section.

28 Sec. 2. Section 43-2920, Reissue Revised Statutes of Nebraska, is  
29 amended to read:

30 43-2920 Sections 43-2920 to 43-2943 and sections 4 and 5 of this act  
31 shall be known and may be cited as the Parenting Act.

1           Sec. 3. Section 43-2929, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

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

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

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

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

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

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

27           (iv) A transition plan, including the time and places for transfer  
28 of the child, method of communication or amount and type of contact  
29 between the parties during transfers, and duties related to  
30 transportation of the child during transfers;

31           (v) Procedures for making decisions regarding the day-to-day care

1 and control of the child consistent with the major decisions made by the  
2 person or persons who have legal custody and responsibility for parenting  
3 functions;

4 (vi) Provisions for a remediation process regarding future  
5 modifications to such plan;

6 (vii) Arrangements to maximize the safety of all parties and the  
7 child;

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

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

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

18 (3) When safe and appropriate for the best interests of the child,  
19 the parenting plan may encourage mutual discussion of major decisions  
20 regarding parenting functions including the child's education, health  
21 care, and spiritual or religious upbringing. However, when a prior  
22 factual determination of child abuse or neglect, domestic intimate  
23 partner abuse, or unresolved parental conflict has been made, then  
24 consideration shall be given to inclusion of provisions for safety and a  
25 transition plan that restrict communication or the amount and type of  
26 contact between the parties during transfers.

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

30 (5) In the development of a parenting plan, consideration shall be  
31 given to the child's age, the child's developmental needs, and the

1 child's perspective, as well as consideration of enhancing healthy  
2 relationships between the child and each party.

3 (6)(a) This subsection applies when a parenting plan has not been  
4 developed and submitted to the court.

5 (b) Subject to sections 43-2932 and 43-2933, there shall be a  
6 presumption, rebuttable by a preponderance of evidence, that joint legal  
7 custody and equally shared parenting time are in the best interests of  
8 the child. If a deviation from equal parenting time is warranted, the  
9 court shall construct a parenting time schedule that maximizes the time  
10 each parent has with the child and is consistent with ensuring the best  
11 interests of the child.

12 (c) If a court creates a parenting plan that does not provide for  
13 joint legal custody and equally shared parenting time, the court shall  
14 explain the basis for such decision in writing.

15 Sec. 4. If, at any time during a proceeding under the Parenting Act  
16 or during any other proceeding involving custody or parenting functions,  
17 the court finds by a preponderance of the evidence that a parent has  
18 engaged in a pattern of willfully creating conflict, interfering with  
19 access to the child, or taking other action in an attempt to manipulate  
20 such proceeding, the court shall take such action as the court deems  
21 necessary to discourage such behavior. Such action may include, but is  
22 not limited to, awarding reasonable costs and attorney's fees to the  
23 other parent, imposing monetary sanctions upon the disruptive parent,  
24 deeming such behavior to constitute a material change of circumstances,  
25 or changing custody, including awarding primary physical or legal custody  
26 to the nondisruptive parent.

27 Sec. 5. (1) The State Court Administrator shall adopt a parenting  
28 time summary report form to provide for the reporting of summary  
29 information in every case in which parenting time is established or  
30 modified. The form shall be substantially the same as the form set forth  
31 in subsection (5) of this section.

1           (2) The parenting time summary report form shall include, at a  
 2 minimum, a breakdown of parenting time schedules to the nearest decile  
 3 regarding actual time spent with each parent; representation status of  
 4 the parties; whether domestic violence, child abuse, chemical dependency,  
 5 or mental health issues exist; the name of the judge; and whether the  
 6 matter was agreed or contested.

7           (3) A parenting time summary report shall be filed with the clerk of  
 8 the court in every case in which parenting time is established or  
 9 modified. The party who initiated the case must complete the form and  
 10 file the form with the court clerk. The clerk of the court shall forward  
 11 all completed reports to the State Court Administrator on at least a  
 12 monthly basis.

13           (4) The State Court Administrator shall compile the information in  
 14 the parenting time summary reports for purposes of tracking parenting  
 15 time awards by parent; by judge; representation status of the parties;  
 16 the existence of domestic violence, child abuse, chemical dependency, or  
 17 mental health issues; and whether the matter was agreed or contested. The  
 18 State Court Administrator shall publish the compiled information,  
 19 organized by judge, on at least an annual basis. The publication shall  
 20 not contain personally identifiable information of any party or child.

21           (5) The parenting time summary report form required by this section  
 22 shall be in substantially the following form:

23 District Court of ..... County, Nebraska  
 24  
 25 ....., Plaintiff                    )  
 26   )  
 27   )  
 28   )  
 29 ....., Defendant                    )  
 30   )

Case No: .....  
  
Parenting Time Summary Report

31           This form must be completed and filed with the final parenting plan



1 in every case in which parenting time is established or modified. Please  
2 submit with the final parenting plan only. This form is for statistical  
3 reporting purposes only.

4 1. Parenting Time. Please check the box that best approximates the  
5 time the children are scheduled to spend with each parent, measured by  
6 the number of overnights per year. For example, most every-other-weekend  
7 schedules are 80% for the custodial parent and 20% for the non-custodial  
8 parent. Most 10-4 schedules are 70% for the custodial parent and 30% for  
9 the non-custodial parent. If the same schedule does not apply to all  
10 children, please complete a separate report for each child.

	<u>% of overnights spent</u>	<u>% of overnights spent</u>	
	<u>with father</u>	<u>with mother</u>	
13	<u>0%</u>	<u>100%</u>	<u>[...]</u>
14	<u>10%</u>	<u>90%</u>	<u>[...]</u>
15	<u>20%</u>	<u>80%</u>	<u>[...]</u>
16	<u>30%</u>	<u>70%</u>	<u>[...]</u>
17	<u>40%</u>	<u>60%</u>	<u>[...]</u>
18	<u>50%</u>	<u>50%</u>	<u>[...]</u>
19	<u>60%</u>	<u>40%</u>	<u>[...]</u>
20	<u>70%</u>	<u>30%</u>	<u>[...]</u>
21	<u>80%</u>	<u>20%</u>	<u>[...]</u>
22	<u>90%</u>	<u>10%</u>	<u>[...]</u>
23	<u>100%</u>	<u>0%</u>	<u>[...]</u>

24 2. Representation Status of the Parties. Please indicate the legal  
25 representation status of each party.

	<u>Mother</u>	<u>Father</u>
27 <u>Represented by attorney</u>	<u>[...]</u>	<u>[...]</u>
28 <u>Not represented by attorney</u>	<u>[...]</u>	<u>[...]</u>

29 3. Mediation. Please indicate whether formal mediation was attempted  
30 for the issue of parenting time and, if so, whether mediation was

1 successful.

2		<u>Yes</u>	<u>No</u>
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3	<u>Was formal mediation attempted?</u>	[...]	[...]
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4	<u>Was formal mediation fully successful?</u>	[...]	[...]
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5	<u>Was formal mediation partly successful?</u>	[...]	[...]
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6 4. Legal Custody. Please indicate the legal custody status. If the  
 7 parenting plan provides for joint legal custody with tie-breaker  
 8 provisions and each party has one or more tie-breakers, then you should  
 9 fill the "split legal custody" box.

10	<u>Sole legal custody to mother:</u>	[...]
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11	<u>Joint legal custody:</u>	[...]
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12	<u>Sole legal custody to father:</u>	[...]
----	--------------------------------------	-------

13	<u>Split legal custody:</u>	[...]
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14 5. Physical Custody. Please indicate the physical custody status.

15	<u>Sole physical custody to mother:</u>	[...]
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16	<u>Joint physical custody:</u>	[...]
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17	<u>Sole physical custody to father:</u>	[...]
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18 6. Risk Factors. Please indicate whether any of the following risk  
 19 factors were identified in a settlement agreement, decree, or other court  
 20 order as a basis or reason for custody or parenting time decisions. Check  
 21 all that apply.

22	<u>Mother has:</u>		<u>Father has:</u>	
23	<u>Committed domestic violence</u>	[...]	<u>Committed domestic violence</u>	[...]
24	<u>Abused or neglected a child</u>	[...]	<u>Abused or neglected a child</u>	[...]
25	<u>Chemical dependency issues</u>	[...]	<u>Chemical dependency issues</u>	[...]
26	<u>Mental health issues</u>	[...]	<u>Mental health issues</u>	[...]
27	<u>Other</u>	[...]	<u>Other</u>	[...]

28 7. Resolution. Please indicate how custody and parenting time were  
 29 resolved.

30	<u>By agreement of the parties</u>	[...]
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1 Mediation [...]

2 After contested trial [...]

3 By default [...]

4 8. Modification. If the case was the modification of a prior order,  
5 please indicate whether any changes were made. Check all that apply.

6 Parenting time changed [...]

7 Legal custody changed [...]

8 Physical custody changed [...]

9 No changes [...]

10 Sec. 6. Original sections 42-357, 43-2920, and 43-2929, Reissue  
11 Revised Statutes of Nebraska, are repealed.