

**Nebraska Office of State Court Administrator
Office of Dispute Resolution/Special Court Programs
Nebraska State Capitol, Lincoln, NE**



**NEBRASKA 2002-2012
CUSTODY COURT FILE RESEARCH STUDY
DECEMBER 31, 2013**

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I. Executive Summary

In May 2013, Nebraska's Office of Dispute Resolution launched an intensive and rigorous research study of JUSTICE¹ court files in an effort to address immediate questions about allocation of custody and parenting time in court cases across the state, as requested by Sen. Brad Ashford, Chair of the Legislature's Judiciary Committee.

Purpose of the JUSTICE custody court file analysis

The two-fold purpose of the study is (a) to provide the Legislature, the Judicial Branch and the public with a factual report of custody, parenting time, and related court decisions over the ten-year period of 2002 and 2012, and (b) to provide a preliminary assessment of the implementation of 2007 Parenting Act statutory revisions. Analysis of closed court files is relevant to legislators, policy makers, courts, lawyers, educators and parents to illustrate facts and trends of custody and access to justice issues and to provide information for public policy decision-makers.

Nebraska's legislative framework of custody

Nebraska's statutory scheme has for years had the *best interests of the child* as the standard by which child custody and parenting conflicts are to be resolved. In an effort to respond to increasing family court caseloads and the negative impact of interparental conflict, Nebraska and other state and national legislatures have advanced reforms to help divorcing parents to place their child at the center of parental decision-making as opposed to having their child caught in the middle of adult disputes. In 2007, the Nebraska Legislature enacted comprehensive revisions to the Parenting Act to encourage parental cooperation in custody and parenting time decision making. Some of the new provisions included: providing informational brochures to parents, encouraging voluntary mediation, providing for specialized alternative dispute resolution in high conflict relationships, requiring parenting education and parenting plans for all custody matters, and requiring parents to attempt mediation prior to engaging in a contested custody trial. This study will report the level of implementation for some of these provisions. The National Center for State Courts will use the data and results of this study in its 2014 comprehensive program, outcome, and economic analysis of Nebraska's Parenting Act.

Methodology

The court file analysis of the nearly 400 cases was conducted in the summer and fall of 2013. The analysis was based upon a random sampling of 69,575 custody cases closed between 2002 and 2012, with a research sample of 600 cases as the goal. The cases were pulled from the JUSTICE database. Of the 600 cases randomly identified, slightly more than 200 were eliminated from review because they did not include the issues of custody or apportionment of time in the initial case sequence. These were cases involving children of unmarried parents where child support was the primary issue in controversy. The final number of randomized cases subject to full court file analysis was 392 cases.

¹ JUSTICE is the Nebraska Supreme Court's case file data system.

Careful consideration was given to the selection of 183 fields of information² believed best to acquire data for the two-fold goal of the study. The research sample represented 67 of Nebraska's 93 counties and all 12 of the state's judicial districts.

Data analysis

All data were checked and coded for data processing and statistical analyses purposes. The data were then entered into a statistical software package (SPSS 21.0 for Mac). All statistical analyses were conducted using the traditional alpha level of $p < 0.05$, unless otherwise noted in the results.

The analysis of multiple raters was assessed by exploring internal consistency rather than interrater reliability because of the following reasons: 1) to provide a larger sample of files to help strengthen the sample power to detect statistically significant findings; 2) internal consistency can provide information of whether the data are consistently connected in similar directions; and 3) the evaluation team held regular meetings to work towards consensus.

Key highlights:

Demographics

- A total of 67 Nebraska counties were represented in the sample of court files involving child custody determinations. Court files reflect orders and decrees made by 70 Nebraska district court judges.
- Of the 392 cases reviewed, the vast majority were for dissolution of marriage.
- The cases reflect equal distribution of years of disposition ranging from 2002 through 2012, as well as equal distribution between pre- and post-2007 Parenting Act revisions.
- Of the 392 cases, there were 663 children included in the analysis (almost equal boys and girls under the age of 18).
- Plaintiffs were more likely to be mothers and the defendants were more likely to be fathers.
- Fathers had statistically higher incomes than mothers.
- Both plaintiffs and defendants reported that children were more likely residing in the primary residence of the mother at the time of filing.
- In the original complaint, parties requested joint custody about 1/7 of the time.

Access to justice

- In a vast majority of cases, plaintiffs were represented by attorneys at the time of the filing of the complaint.
- Defendants, upon entry into the case, were represented in about half of the cases.
- The higher the conflict score, the more likely parties retained multiple attorneys throughout the court process.

Elements of dissolution / custody cases

- Motions for temporary custody were filed in the bulk of cases.

² See Appendix D, *Nebraska Custody Court File Coding Document*

- Evidence of a protection order appeared in very few of the dissolution and custody files. No difference in reporting of protection orders was found prior to and after the 2007 Parenting Act revisions.
- Parties were ordered to mediate in a number of cases, and were statistically more likely to be ordered to mediate after the implementation of the 2007 Parenting Act revisions.
- Parties were ordered to attend parenting education in a quarter of the cases and statistically more likely to be ordered after the implementation of the 2007 Parenting Act revisions.
- The matter of custody was settled in most of the cases before reaching trial.
- Contested cases were found to have higher levels of conflict.
- A majority of the cases did contain a parenting plan for the child, broadly defined as being evidenced by two determinations: (a) custody and (b) apportionment (access) specifics such as weekends, days of the week, holidays.³

Custody allocation

- Over the ten-year period, mothers were granted sole legal custody about half of the time and fathers were granted sole legal custody much less of the time.
- During the same 2002-2012 period, joint legal custody was granted about a third of the time, with shared residence occurring occasionally. Children's primary residence was in their mothers' homes more often than in their fathers' homes.
- Comparing all 12 judicial districts, parents in the 2nd judicial district were granted the highest percentage of joint custody with shared residence, while there were no cases within the 9th and 12th judicial districts that included a similar arrangement.

Apportionment of parenting time; visitation schedules

- During the ten-year period, over one-third of the parenting plans reflected a weekly plan of apportionment of time, another third showed an every-other-week, and the balance was a range of other arrangements. On a very rare occasion was no access allowed to the non-custodial parent.
- On average, the plans apportioned 5 days of time with the non-custodial parent per month. Parents that mediated with each other created plans that increased the non-custodial parents' average total days of monthly access with the children.

Child support

- Child support calculations were provided in a majority of cases, with most cases using the Basic Child Support Calculation Worksheet, or Worksheet #1.
- From pre to post 2007 revisions of the Parenting Act, there was a significant increase in the utilization of Worksheet #3 for joint custody. No other worksheet showed similar increase in use post Parenting Act revisions.
- Of the cases that specified child support, fathers on average had a higher income than mothers and thus were ordered to pay child support most of the time, with mothers occasionally paying child support.

³ For purposes of the study, a *parenting plan* was defined broadly to encompass custody and parenting allocations made in both pre- and post-2007 Parenting Act cases.

Level of high inter-parental conflict

- Based on a composite high conflict score (CCS) identifying the extent of high conflict within families, the distribution of the total score suggests that the majority of families involved in the courts did not score in the high inter-parental conflict range.
- Consistent with the literature on high conflict families, approximately 12% of Nebraska's cases scored in the high inter-parental conflict range.
- Slightly more than half of the cases had not been reopened at the time of study. The number of reopenings was strongly correlated with the level of interparental conflict.

Implications and future directions:

Legal representation

Data from this study shows that in Nebraska, defendants, as compared to plaintiffs, are less likely to retain legal representation during the court process. Lack of access to courts, particularly by *pro se* or self-represented parents going through dissolution and custody matters is a growing concern in many states and countries. More information is needed to explore the reasons as to why Nebraska defendants do not retain attorneys and whether there are any potential barriers or obstacles for defendants to secure legal representation.

Considerations for joint custody or shared parenting

The rate of joint custody in Nebraska has steadily increased in the past decade.⁴ Based on the court file analysis, joint custody with shared residence was awarded in 12% of plans. The rate of Nebraska's joint custody is similar to other states and countries. Sole custody to mother remains the most common type of custody arrangement, especially in cases that involve higher rates of high conflict and / or domestic violence. Future data collection and analysis would be warranted to track the different types, occurrences, and trends of custody and apportionment of parental time with children occurring statewide in succeeding reporting periods.

Differential family justice system approaches for divorcing and separating parents

Nebraska's 2007 Parenting Act revisions include statutory provisions that begin to provide a differential approach to addressing parents' and children's needs as they go through the challenging family transitions of divorce and separation. These provisions include such items as (a) the use of a temporary child custody information affidavit to provide the judge information with which to make temporary child custody orders; (b) the requirement for mediators to conduct a private initial screening session with each parent to assess which mediation process to appropriately use; and (c) the provision of a basic level and optional second level of parenting education class depending upon the needs of the parents. Research points to the need for early court system assessment and identification of interparental conflict. Given the high conflict group is more likely to be involved in a contested case, more attention is needed to explore the unique factors for this group for the justice system to help these parents to resolve their disputes in a timely and effective manner.

⁴ Joint custody has increased an average of 6.25% per year between 2003 and 2011, from 632 per year to 947 per year. Bureau of Vital Statistics, Nebraska Department of Health and Human Services, Voices for Children.

Use of alternative dissolution resolution

Over the years, multiple studies have examined the effects and outcomes of mediation as an alternative to litigation, with overall findings suggesting that mediation is a successful alternative that leads to increased out-of-court agreements and satisfaction amongst service users. Although the court file analysis shows trends that are consistent with the literature, the low and inconsistent reporting in the JUSTICE court files regarding the use of mediation and specialized ADR precludes any reliable data to support this analysis. Identification and collection of ADR data, and its future data collection and analysis is warranted to enable the state to assess effectiveness and efficiencies of mediation and specialized alternative dispute resolution for separating and divorcing parents.

Future research and program evaluation

It is expected that the results of the JUSTICE custody court file analysis will contribute to building the evidence and knowledge about the overall efficiency and effectiveness of the Parenting Act within a broader approach of providing court services to families involved in the family justice system.

Use of this study - National Center for State Courts' comprehensive research of Parenting Act

The data and analysis from this study will be used by the National Center for State Courts (National Center) in its comprehensive program, outcome, and economic analysis of Nebraska's Parenting Act. The National Center commenced its research in October 2013 and its final report is due Spring 2015. Surveys, focus groups, and interviews of parents, children, lawyers, judges, legislators, mediators and other key stakeholders will be conducted in both urban and rural areas over the course of 2014. An additional 200 dissolution/custody case files will be coded using the same data coding document as employed for this Study.

Future program evaluation

To capture performance monitoring, process and outcome variables identified in the Logic Model, Nebraska's JUSTICE data system provided adequate data for the most of questions addressed in this court file analysis. For future program and outcome evaluation, the Nebraska Administrative Office of the Courts should develop a plan to support ongoing analysis of performance measures for Parenting Act implementation. A critical preliminary step is to identify what additional data is essential and then add those data fields to JUSTICE to provide a more reliable essential data set to measure performance and implementation. For example, JUSTICE does not collect explicit data on Parenting Act-required elements of court-ordered mediation and temporary child custody information affidavits. Secondly, uniformity in coding data across the state's 93 counties be enhanced. There were inconsistencies between court offices in how data is gathered and reported in JUSTICE that creates an additional burden in data collection and analysis.

II. Summary of Nebraska Statutes Relating to Domestic Relations Issues

Policies governing divorce, parenting time, child support, and domestic intimate partner abuse have received considerable attention by the Nebraska Unicameral over the last two-plus decades. Members of the Nebraska State Bar Association and a statewide child advocacy organization, Voices for Children in Nebraska, began an effort in 1991 to reduce the adversarial nature of divorce and focus attention on the best interests of children involved in custody disputes. While this study primarily focuses upon the issues of child custody and parenting time, this summary will briefly review custody as well as other domestic relations laws and legal processes that impact these issues.

Nebraska's dissolution statutes

Laws relating to dissolution are primarily contained in Neb.Rev.Stat. §§42-346 through 42-381. These statutes set forth jurisdictional requirements⁵, residency⁶, definitions⁷, provisions regarding child custody and parenting plans⁸, child support⁹, alimony and property division¹⁰, irretrievably broken findings¹¹, legal separation¹², modification¹³, rights to access of educational and medical records¹⁴, as well as other provisions.

Dispute Resolution Act adopted in 1991.

To promote disputant cooperation and reduce litigation, Senator David Landis introduced LB 90 in 1991 to promote the use of mediation in court-connected and community controversies. This bill was unanimously enacted by the Legislature in the spring of 1991 as the Dispute Resolution Act. The Act created the Office of Dispute Resolution within the State Court Administrator's Office to oversee development of mediation training, ethics, and credentialing as well as the creation of regional non-profit ODR-approved mediation centers across the state. The Act established uniform definitions of mediation and defined a range of litigation and types of disputes appropriate for mediation. Divorce and custody disputes were among the areas

⁵ Neb.Rev.Stat. §42-348 (1997)

⁶ Neb.Rev.Stat. §42-349 (2004)

⁷ Neb.Rev.Stat. §42-347 (2007) defines custody, dissolution of marriage, joint legal custody, joint physical custody, legal separation, spousal support, support order and other terms.

⁸ Neb.Rev.Stat. §42-364 (2013) (2) In determining legal custody or physical custody, the court shall not give preference to either parent based on the sex of the parent and, except as provided in section 43-2933, no presumption shall exist that either parent is more fit or suitable than the other. Custody shall be determined on the basis of the best interests of the child, as defined in the Parenting Act. Unless parental rights are terminated, both parents shall continue to have the rights stated in section 42-381.

(3) Custody of a minor child may be placed with both parents on a joint legal custody or joint physical custody basis, or both, (a) when both parents agree to such an arrangement in the parenting plan and the court determines that such an arrangement is in the best interests of the child or (b) if the court specifically finds, after a hearing in open court, that joint physical custody or joint legal custody, or both, is in the best interests of the minor child regardless of any parental agreement or consent.

⁹ Neb.Rev.Stat. §42-364.01 to 42-364.12 (2007)

¹⁰ Neb.Rev.Stat. §42-365 (2004)

¹¹ Neb.Rev.Stat. §42-361 (2011)

¹² Neb.Rev.Stat. §42-368 (1993)

¹³ Neb.Rev.Stat. §42-364 (6) (2013)

¹⁴ Neb.Rev.Stat. §42-381 (1993)

identified as particularly appropriate for mediation. The provision of statewide mediation resources established a solid platform from which to launch the initial version of a Parenting Act bill that Voices for Children brought to the Unicameral during the 1992 Legislative session.

Nebraska's first Parenting Act adopted in 1993

A coalition of professionals and interested parties drafted Parenting Act legislation, LB629, introduced in 1992 by Senator Brad Ashford. This diverse coalition included custodial and noncustodial parents, family law attorneys, judges, domestic violence advocates, and mental health professionals. LB 629 was enacted by the Legislature in 1993 and became operative in 1994. The Act focused trial courts, parents, and their lawyers on a more parentally-engaged approach to the best interests of the child. The Act required trial courts to provide information to all divorcing parents regarding the effect of divorce on children, availability of divorce and family resources, and information about mediation to develop parenting plans. The 1993 Parenting Act defined a parenting plan and encouraged, but did not require, parents to develop a parenting plan in the divorce process.

Parenting education amendment in 1998

During the years following the 1993 Parenting Act, individuals working in schools, community, and family and child welfare agencies became more aware of the impact of divorce and separation upon children and parents. Issues of child abuse and domestic abuse were also being raised but there were few mechanisms for parents and lawyers to examine or address these concerns. Parents and family professionals wanted to continue to build upon the Parenting Act to further improve the well-being of children caught in the middle of custody disputes. As a result, LB777 amended the Act in 1998 to encourage trial courts to order parents to attend parenting education classes. Parenting education classes were intended to help parents better understand the negative effect of acrimony and conflict upon their children. Classes such as *What About the Children* and *Parenting Children from Two Homes Rather than One* began to be offered in parts of the Nebraska. Many saw the benefit of parenting classes, but the concern was whether the class could be made available across the state. An important partner at this juncture was a statewide educational provider: University of Nebraska – Extension. UNL-Extension had established a parenting education curriculum for divorcing parents using experienced instructors. It was able to offer parenting education classes across the state, and was instrumental in reaching even the smallest and least populated regions of Nebraska.

Trends leading up to the 2007 revisions of the Parenting Act

Over the intervening years, Douglas County District Court had adopted a court rule mandating completion of a parenting education class for all parties involved in dissolution. Additionally, Douglas County District Court had operated its Conciliation Court for over a couple of decades and had of late moved into mediating custody conflicts laying the groundwork for the mediation element in the 2007 Revisions. Child and family law, counseling, and educational professionals believed that there were sufficient parenting education classes available statewide to propose a requirement that every parent involved in a custody and parenting decision should attend such a class.

It was also noted that while parenting plans were encouraged in the 1993 Act, plans were not required, thus not widely utilized. This resulted at best, in post-divorce uncertainty about parenting time, communication, and responsibilities, and at worst, protracted post-divorce litigation between the parents. Other professionals, including mediators and domestic violence advocates also learned from clients that persons involved in domestic abuse no longer wanted to be prohibited from mediating custody and parenting matters. There was a growing interest in creating a safe way for these parenting negotiations to be effectively mediated. As a result, a diverse coalition of family justice professionals coalesced around amending the Parenting Act to address parenting education, parenting plans and mediation in domestic abuse situations. The work of the child-centered family justice coalition was facilitated by the Office of Dispute Resolution with strong participation from child advocates, members of the Bar, parenting educators, family mediators, and domestic abuse intervention advocates.

Working throughout 2006 and 2007 the collaborative group gathered all available research on the subject of dissolution, custody, parenting, domestic abuse, mediation, and child abuse. They worked to craft a legislative proposal that would continue to strengthen the best interests of the children standard, encourage maximum shared parenting time and keep victims of domestic intimate partner abuse safe during parent-child transitions and in mediation settings. Simultaneously, the Speaker of the Legislature, Senator Mike Flood, advanced his own legislative study in late 2006 on how to keep children out of the middle of adults' conflicts, including requiring a child to testify in the parents' contested custody litigation. Speaker Flood's goal was to expand mediation to facilitate parental decision-making and he drafted legislation to do so.

2007 Parenting Act revisions¹⁵

Senator Flood, along with members of the child-centered family justice coalition and many others worked throughout the 2007 legislative session to merge ideas and priorities in order to achieve the passage of LB 554, a comprehensive revision of the Parenting Act. Substantial changes were made to all sections of the Parenting Act, increasing uniformity between the dissolution statutes and the Parenting Act statutes. Definitions were changed and the *best interest of the child* provisions were strengthened throughout. This legislation mandated that all parents involved in custody disputes be notified by the clerks of the district court of Parenting Act requirements and be provided family justice information; be required to attend a basic parenting education class; create a parenting plan setting forth custody, parenting time, parenting functions, and children's transitions. In contested custody cases, parenting mediation was mandated with additional protections for mediating cases in which domestic intimate partner abuse or high conflict were identified. An alternative form of mediation, specialized alternative dispute resolution (*specialized ADR*) was established by statute with additional training and credentialing requirements assuring that mediators were skilled and knowledgeable in working with high conflict families and those with domestic abuse dynamics.

Educational requirements for lawyers and judges covering issues of parenting, child development, and domestic abuse were also included in LB554. However, these provisions were repealed the following year in an amendment brought by a group of family lawyers, stating that

¹⁵ See Appendix B for Nebraska's Parenting Act 2007, as amended

the Legislature cannot mandate specific educational requirements for lawyers or judges. The Act was further amended in 2010 to provide for a waiver of mediation upon evidentiary findings and in 2011 to provide provisions for parents engaged in the military.

III. Nebraska Custody Court File Research Study

JUSTICE Custody Case Files: 2002-2012

In May 2013, in an effort to respond more quickly to immediate questions from the 2013 Legislature's Judiciary Committee regarding custody and parenting time questions, the Office of Dispute Resolution in the Administrative Office of the Courts launched an intensive and rigorous research study of JUSTICE court files.

The two-fold purpose of the study is (a) to provide the Legislature, the Judicial Branch and the public with a factual report of custody, parenting time, and related court decisions over the ten-year period of 2002 and 2012, and (b) to provide a preliminary assessment of the implementation of 2007 Parenting Act statutory revisions. Analysis of closed court files is relevant to legislators, policy makers, courts, lawyers, educators and parents to illustrate facts and trends of custody and access to justice issues and to provide information for public policy decision-makers.

The study begins to examine whether the requirements outlined in the 2007 Parenting Act (as amended) are being implemented and whether the elements in the Act benefits children involved in dissolution and custody proceedings. The comprehensive Parenting Act research, described below, will continue this examination. As described above, the Parenting Act has evolved through passage of at least four primary pieces of legislation. Initially permissive, the Act became more directive under the 2007 revisions. To measure effectiveness, the study began by determining whether practice is following the letter of the law. If being complied with, the next, and essential question is, whether the Act's provisions are resulting in positive outcomes for children. The Act was designed to increase parents' and the justice system's focus on putting the best interests of children at the center of parental dissolution and custody decisions and to reduce having children caught in the middle of parental litigation, acrimony and harmful conflict.

Through the Association of Family and Conciliation Courts, (AFCC), there is significant national and international interest in Nebraska's unique approach to reducing the adversarial context of custody determinations. Practitioners and researchers in the field are interested in how the Nebraska Act's statutory scheme protects the safety of those involved in high conflict and domestic abuse situations while addressing children's best interests. State, regional and national interest in Nebraska's Parenting Act makes research and evaluation even more important so lessons can be learned for replication.

2013-2015 Comprehensive Parenting Act Research Project

Parallel to and building upon the JUSTICE Court File Research Study, the National Center for State Courts (NCSC), in cooperation with the Nebraska Judicial Branch and its consultant, Dr. Michael Saini, is conducting a comprehensive evaluation of Nebraska's Parenting Act. The NCSC began its project in October 2013. The project is built upon the Parenting Act Evaluation Protocol, a blueprint for research, which was developed in 2012 as a result of urging by Speaker Mike Flood, and which focused on the key question: is the Act serving the best interests of the children? The NCSC research project will engage stakeholders, including the Evaluation Advisory Panel, family lawyers, judges, mediators, parents, and others involved in dissolution

and custody decisions in Nebraska and will include qualitative as well as quantitative methodology, including the custody case file data from this study. The NCSC research evaluation will result in a Report of Findings and Recommendations due to be completed and submitted to the Supreme Court and Legislature by Spring 2015.

Methodology

The court file analysis of nearly 400 cases was conducted in the summer and fall of 2013. The analysis was based upon a random sampling of 69,575 custody cases closed between 2002 and 2012, with a research sample of 600 cases as the goal. The cases were pulled from the JUSTICE database (Nebraska's statewide court file data system). Of the 600 cases randomly identified, slightly more than 200 were eliminated from review because they did not include the issues of custody or apportionment of time in the initial case sequence. These were cases involving children of unmarried parents where child support was the primary issue in controversy. The final number of randomized cases subject to full court file analysis was 392 cases. An analysis of closed court files is important because it provides retrospective insight into the practices and services offered by the family courts. The analysis of case files has played an important role in a number of influential studies related to children and families (Hayes & Devaney, 2004).¹⁶

Careful consideration was given to the selection of 183 fields of information¹⁷ believed best to acquire data for the two-fold goal of the study. Examples of variables captured included: whether the petitioner was the father or mother; what type of custody was requested in the complaint and what type of custody and parenting time was ordered in the final decree; child support; and whether petitioner or defendant were represented by legal counsel. Other variables included whether there were parenting plans; whether the parenting plans contained statutorily required elements; whether the file showed if the parenting plan was negotiated, mediated, or litigated. A rating of conflict indicators was coded, including indicators such as the noncompliance with court orders, interference with parent-child contact and the presence of domestic violence. Additionally, data was coded as to whether modifications were sought after the final order; and how many times modifications were sought.

Nebraska's JUSTICE court file system is built upon electronic imaging of all court files. Imaging has been the regular business practice of the Nebraska court system since April 2008. The majority of the randomized file samples were of cases that had been imaged into JUSTICE. However, some of the cases disposed of prior to 2008 had not been imaged into JUSTICE, which required a special request for local clerks of the district court to individually scan or "image" targeted cases to JUSTICE. All but 57 of the requested cases were scanned to JUSTICE and were able to be reviewed electronically. The remaining 57 were scanned and emailed to researchers or were reviewed in paper file format on site in two court offices of larger counties.

The research sample represented 67 of Nebraska's 93 counties and all 12 of the state's judicial districts. File reviews and coding were performed by three contract researchers. Fidelity to

¹⁶ Hayes, D. and Devaney, J. (2004) Accessing Social Work Case Files for Research Purposes: Some Issues and Problems *Qualitative Social Work*, 3(3): 313-333

¹⁷ See Appendix D, *Nebraska Custody Court File Coding Document*

coding was achieved through regular communication, definition clarification, cross-checking, and re-checking.

Sample

The court file analysis was conducted in the summer and fall of 2013 based upon a random sample of 69,575 court file cases closed between 2002 and 2012 with a research sample of 600 cases as the goal. Randomized cases in the sample represented 67 of Nebraska's 93 counties and represented all 12 of the state's judicial districts. The cases were pulled from the JUSTICE database (Nebraska's statewide court file data system) using the following parameters:

- Primary target group: cases which include essential criteria of:
 - a. Parents: requesting dissolution, separation, order of custody, visitation
 - b. Children: are minors of the parents and subject to the proceedings
- Timeframe: cases in which the first sequence was closed between 2002 and 2012
- Case types: sort only those that show "children" in the cases coded as:
 - a. DSSMARR – dissolution of marriage
 - b. CTSUPP – court ordered support (to capture any initial such filings that may prompt an answer requesting custody, visitation, access)
 - c. ANNULMNT – annulment
 - d. LSEPR – legal separation
 - e. CTSUPPPA – order of support/custody/visit – private attorney
- All Nebraska counties: random search of all 93 counties
- Exclusion of non-parenting, non-custody cases: the study's primary focus is on custody and parenting time; hence, any case that did not include these key issues during the "first sequence" (from initial filing of complaint/petition to the closing of the first sequence by court order or decree), that case was not included in the study. Examples of non-parenting or non-custody cases excluded from the study were "child support only" or "paternity only."

Data analysis

All data were checked and coded for data processing and statistical analyses purposes. The data were then entered into a statistical software package (SPSS 21.0 for Mac). All statistical analyses were conducted using the traditional alpha level of $p < 0.05$, unless otherwise noted in the results.

The analysis of multiple raters was assessed by exploring internal consistency rather than interrater reliability because of the following reasons: 1) to provide a larger sample of files to help strengthen the sample power to detect statistically significant findings; 2) internal consistency can provide information of whether the data are consistently connected in similar directions; and 3) the evaluation team held regular meetings to work towards consensus.

Comparative analysis of nominal or ordinal level data involved the use of the chi-square testing. Analyses of variables measured at the interval and / or ratio level included the use of independent

t-tests for differences between means and all standard deviations were reported. The assumptions underlying each statistical test were explored to ensure that there was no violation of the statistical assumptions of each test performed. For example, all continuous measures were examined for normality of distribution in the explore procedure in SPSS 21.0. Assumptions of ordinal data included an examination to ensure that the data were independent, that each respondent provides only one observation and that there was a minimum expected value of at least 5 in each cell.

To investigate the relationship of multiple variables, multiple regressions were performed. All statistically significant predictors were included in the analysis and were checked for multicollinearity (a statistical phenomenon in which two or more predictor variables in regression model are highly correlated) using Spearman's rank correlation coefficient for non-parametric measure of statistical dependence between two variables and Pearson correlations for parametric measures.

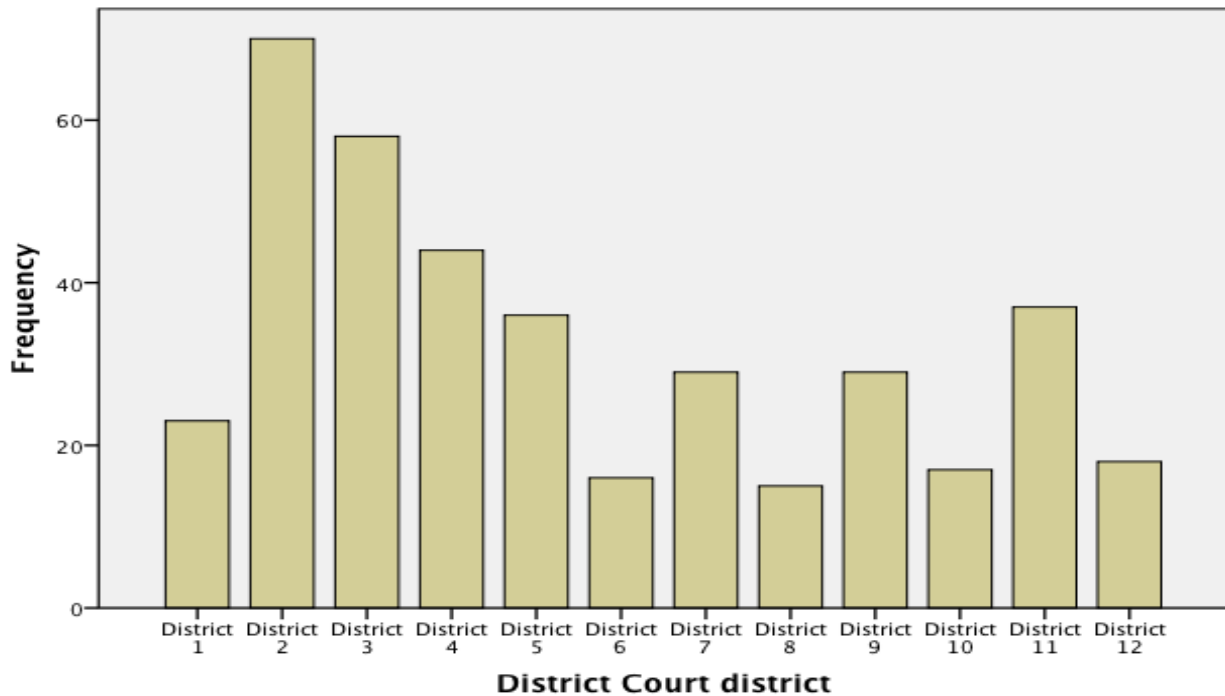
IV. Results

The results reported below are from the court file analysis of nearly 400 cases. The analysis was based upon a random sampling of 69,575 custody cases closed between 2002 and 2012. The final number of randomized cases subject to full court file analysis was 392 cases. In the results following, when a smaller data set is included (e.g. due to missing data), the number is provided for reference. Most results sections are based on the full dataset of 392 cases or a slightly lower amount of cases (388-391).

A. Summary of Case Demographics

Court files were randomly drawn from Nebraska's 12 judicial districts (see figure 1) and all of Nebraska's 93 counties. A total of 67 counties were represented in the sample. All included court files involving child custody determinations. The court files reflect orders and decrees entered by 70 district court judges.

Figure 1: Sample by judicial district



The majority of cases were accessed from the statewide court electronic database, JUSTICE (85.7%). A few of the older cases that had not been uploaded to JUSTICE were scanned and then emailed to coders. Two counties had a large enough number of randomly selected older cases to warrant a review of paper files on site in the clerk's office. A total of 14.3% of cases were reviewed from paper files rather than the JUSTICE system.

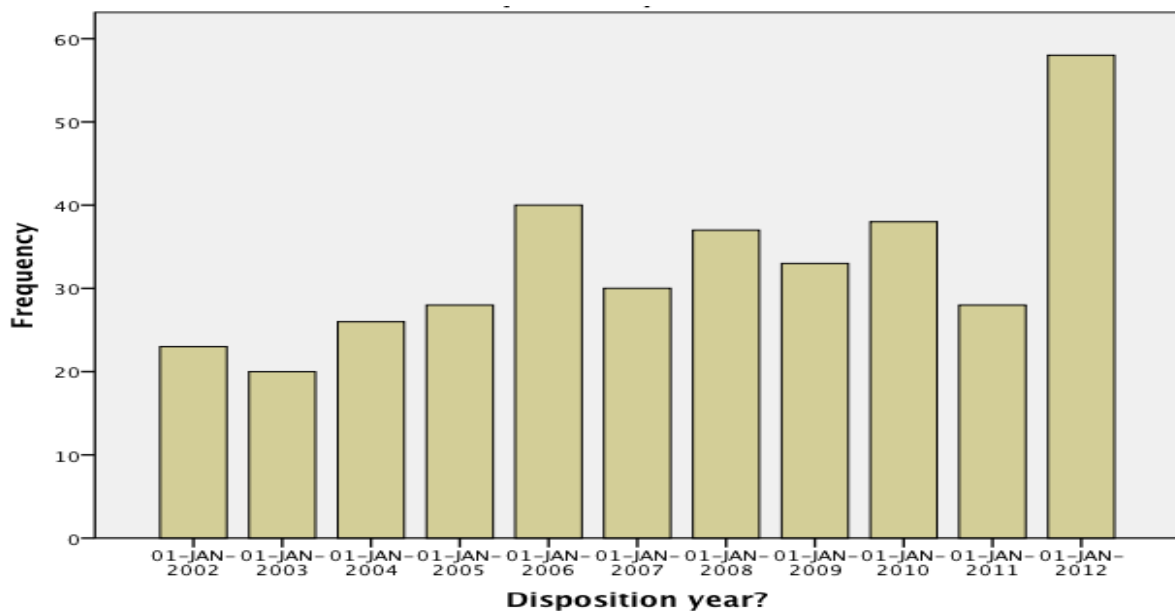
Case subtype

Of the 392 cases reviewed, the vast majority were for dissolution of marriage (91.8%). The remaining cases were order of support/custody/visitation (1.5%) (n=6), order of support/custody/visitation in which a private attorney was used (4.8%) (n=19), and cases involving legal separation (1.8%) (n=7).¹⁸

Year of disposition

The cases include equal distribution of years of disposition ranging from 2002 through 2012 (see figure 2). This range was important to reflect the years prior to and after the January 1, 2008 implementation of the 2007 Parenting Act revisions.

Figure 2: Year of disposition



Pre and post 2007 Parenting Act revisions

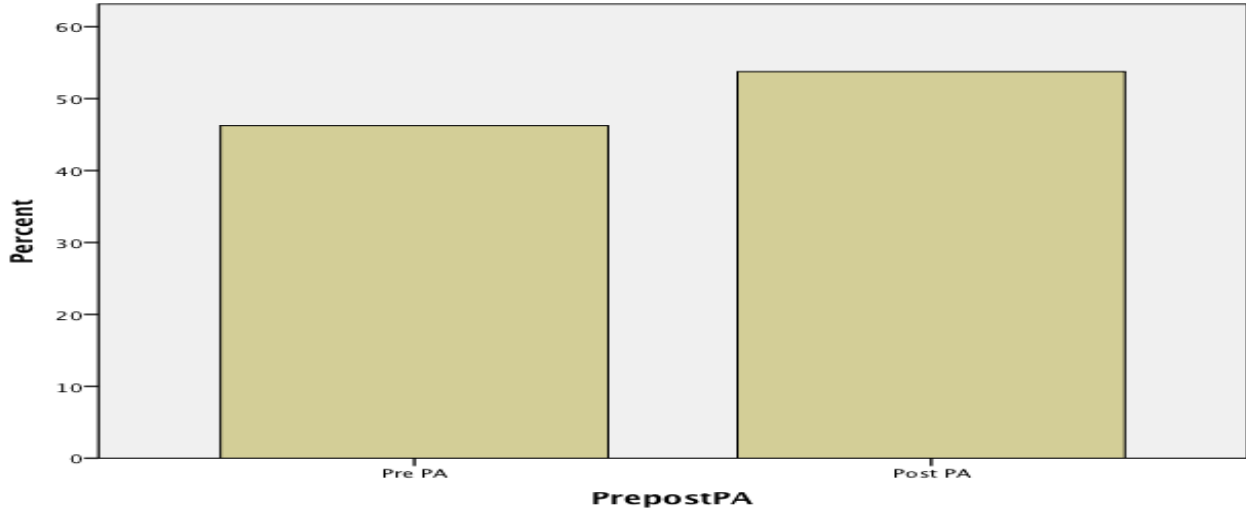
The random sample of 392 cases resulted in 167 cases (46.3%) with a disposition year of 2007 or lower (referred to as “pre Parenting Act revisions”) and 194 cases (53.7) with a disposition year of 2008 or higher (referred to as “post Parenting Act revisions”) (see figure 3).²⁰

¹⁸ Decimals are rounded for clarity and therefore the total percentages of attributes for a variable may not always total 100 percent.

¹⁹ Pre Parenting Act refers to cases closed prior to the revisions made to the Parenting Act in 2007; post Parenting Act refers to cases closed subsequent to the revisions implemented January 1, 2008.

²⁰ Note that there were 31 cases where the disposition year was unknown and so these cases were used for descriptive results but removed from all pre and post comparisons.

Figure 3: Pre and post 2007 Parenting Act revisions based on disposition year



Number of children

In almost half of the cases, there was a single child whose custody was at issue (49.1%) (n=192). More than a third of the cases involved two children (34.5%) (n=135). Three children were involved in 13% of cases (n=51), four children were involved in 2.6% of cases (n=10), and five children were involved in 0.8% of the cases (n=3).

Gender of children

All 392 cases involved a custody determination concerning at least one child (referred to as “first-youngest child”). The genders of the youngest children were almost equally divided between male (49%) (n=191) and female (51%) (n=201). Of cases that included a second-youngest child, gender was also nearly equally divided between male (49%) (n=98) and female (51%) (n=101). In cases that involved a third-youngest child, 54% of those children were male (n=37) and 46% were female (n=31). Of the cases that dealt with a custody determination for a fourth-youngest child, 15% of these children were male (n=2) while 85% were female (n=11). Lastly, the percentage of cases dealing with a fifth-youngest child was 50% both for male (n=2) and female children (n=2).

Plaintiffs’ relationship to children

Plaintiffs were more likely to be mothers (68.6%) (n=269) than fathers (29.3%) (n=115). The State of Nebraska was the plaintiff in a small percentage of cases (1.8%) (n=7) with .3% being filed by “other” (n=1).

Defendants’ relationship to children

Defendants were more likely to be fathers (70.2%) (n=275) with mothers representing 29.3% of defendants (n=115). Both mother and father appeared as co-defendants in a two instances (0.5%) (n=2).

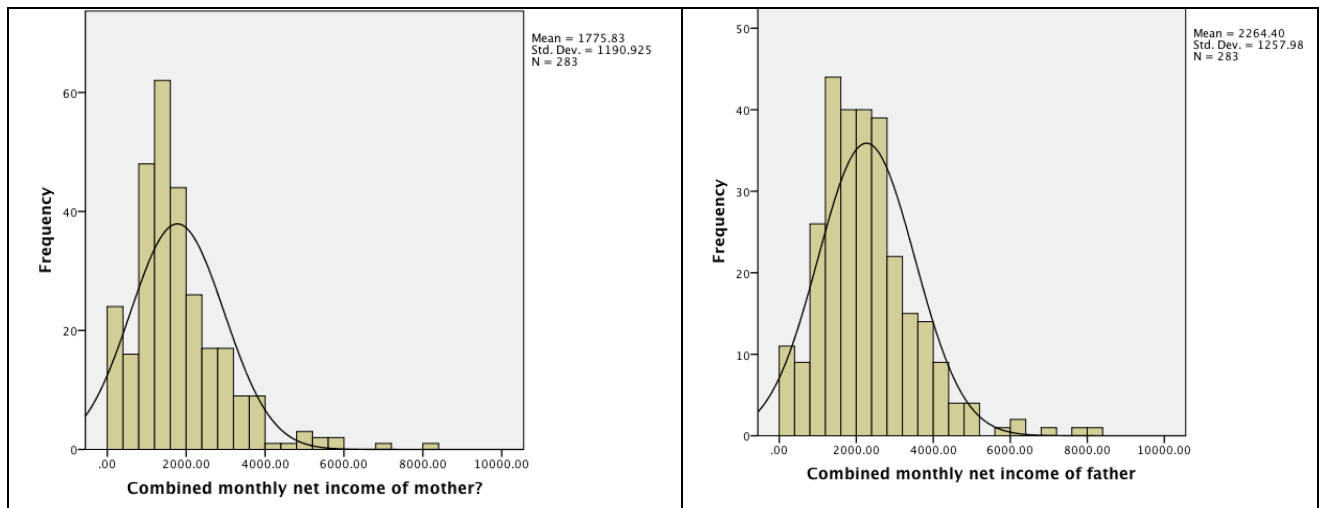
Third parties and other interested parties

In a few cases (7.2%) (n=29), a third party formally moved to intervene on behalf of the child or an interested party provided relevant information. A third party may be a family member, friend or guardian ad litem and an interested party is anyone with a close relationship with the child such as a formal or informal caretaker.

Income of parties

The average monthly income reported by mothers was \$1,775.83 (SD = \$1,190.93). For fathers, the average monthly income reported was \$2,264.40 (SD = \$1,257.98). The difference in income of mothers and fathers was statistically significant ($t = -5.522$, $p < .0000$).

Figure 4: Combined income of mothers and fathers



Plaintiffs' report of current custody in complaint

Current custody of children at the time the complaint was filed was reported in 74% of complaints. In the cases reporting current custody, plaintiffs most frequently reported that children lived with their mothers as a primary residence (60%). Children's primary residence at the time of filing was with their fathers in 10% of cases. Unspecified arrangements were reported in 30% of cases, including couples still living together with no formal joint custody arrangements, as well as legal custody being with a state agency or other party.

Plaintiffs' request for custody in complaint

A request for custody was made in 97% of complaints. When such requests were made, plaintiffs most often requested that the mother be granted sole custody of the child or children (66%) (n=252). Sole custody with the father was requested in 16% of complaints that made requests for custody (n=60), while joint custody was requested in 14% (n=52). Other custody arrangements were requested in a small number of complaints (4%) (n=16).

Table 1: Plaintiff request for custody

Plaintiff request for custody	Frequency	Percent
Sole custody with mother	252	64.3
Sole custody with father	60	15.3
Joint custody	52	13.3
Other	16	4.1
No custody requested	10	2.6

Amended complaints

A few complaints were amended (4%) (n=16). The remaining 96% (n=376) of complaints were never amended. Complaints were amended for many different reasons, including several instances where the plaintiff sought to change the petition from legal separation petition to dissolution.

Defendants' answers to complaint; defendants' counter-complaints

In a majority of cases, defendants did not file an answer to the plaintiff's complaint or initial court filing (58.4%) (n= 229), while answers were filed in 41.6 % of the cases (n=163). Defendants did not file counter-complaints containing a written response to the plaintiff's complaint or initial court filing in 66.1% of cases (n=258) but did so in 33.9% (n=133).

Answers and counter-complaints specified current custody of the child or children in 28.3% of the total case sample filings (n=111). Of these, 63% reported current custody was held solely by the mother (n=70). Sole custody with the father was reported in 5% (n=5) while joint custody was reported in 25% (n=28). Other arrangements were reported in 7% of cases (n=8).

Table 2: Current custody of children reported by answer/counter-complaint

Current custody	Frequency	Percent
Sole custody with mother	70	63
Sole custody with father	5	5
Joint custody	28	25
Other	8	7

A request for custody was included in 37.5% of the answers and counter-complaints filed (n=147). Of these, requests that sole custody be granted to the mother occurred in 35% of cases (n=52), while 27% requested sole custody with the father (n=40) and 26% requested joint custody in answers and counter-complaints (n=38). Other types of custody arrangements were requested in 12% of these instances (n=17).

Plaintiffs' replies to answers and counter-complaints

Plaintiffs responded to answers and counter-complaints entered by defendants in 39% of cases (n=58) and did not do so in 61% of applicable cases (n=91).

Orders to proceed in forma pauperis (IFP) entered for the plaintiff

Forty-nine (12.5%) of the 392 plaintiffs filed a motion to proceed *in forma pauperis*, an application alleging he or she could not afford to pay court costs and fees. Of the plaintiffs who did file an IFP motion, 86% of requests were granted and 14% were denied.

Orders to proceed in forma pauperis (IFP) entered for the defendant

Even fewer defendants (10 or 2.6%) filed an application alleging he or she could not afford to pay court costs and fees. Of those who did file, 30% of defendants were granted an order to proceed *in forma pauperis*, while in 70% of these instances the application was denied.

Voluntary appearance

Defendants entered a voluntary appearance in nearly two-thirds of the cases (62.5%) (n=245).

Case reopening

As of the date of this case review, 43.4% of the 392 cases had been reopened (n= 170). Of those, nearly two thirds of the cases were reopened once (65.3%) (n=111); followed by 21.8% that had been reopened twice (n=37); 9.4% were reopened three times (n=16); 2.9% were reopened four times (n=5); and 0.6% were reopened five times (n=1). It is worth noting that data regarding case reopening was tracked only up to the third reopening sequence.

There was a fairly even distribution among plaintiffs and defendants in filing for a first reopening of a case. The State of Nebraska filed for reopening several times and the court reopened on its own motion a few times. About twice as many defendants than plaintiffs filed for reopening of the case a second time. The State of Nebraska filed a few times and the court on its own motion once. The plaintiff filed for a third reopening slightly more than half the time than the defendant did. The State of Nebraska and the court on its own motion filed a couple of times. Reasons for reopening a case varied and included motions for contempt where one party alleged the other party was not in compliance with the parenting plan or an order of support as well as modification of decrees where a party sought to have child support, visitation, or custody modified by the court.

The number of previous openings was strongly correlated with the level of conflict as reported by the Composite Conflict Score ($r = 436, p. <0.000$). Whether a case had previous court involvement was also statistically related to whether there were safety provisions included in the parenting plan ($X^2 (2, N=385) 13.553 p < 0.000$).

B. High Inter-parental Conflict

In family and domestic relations court case management, there are currently few reliable high inter-parental conflict indicators that could assist courts and families to identify and differentiate between levels of interparental conflict in order to guide parents to the services or support they need in a timely and efficient way. Family court jurisdictions that have instituted a family

conflict assessment have determined that it is helpful component to use to provide parents with appropriate resources and services. Conflict assessments can assist parents to work through separation, divorce, and post-divorce transitions, support the best interests and well-being of children, maximize the use of services provided or recommended through the family court system; and reduce domestic relations court dockets.

Indicators of high conflict

The parental high conflict indicators below reflect the more serious and damaging types of conflict that some families may experience during a divorce or separation. This study did not attempt to assess the normal types of conflicts that most parents and families experience through divorce and separation, such as stress, discord, and breakdown in communication. This study, rather, desired to assess the occurrence of high or destructive conflict evident from documents found within the case files. In an effort to measure the amount of high conflict between parties in the Nebraska custody case study, eleven (11) conflict indicators were defined (see below) and rated by information available within the court file.²¹ To the extent possible, documentation was defined as *previous/historical* (prior to litigation), or *ongoing/current* (during litigation). Certain indicators were also defined as “parent alleges” – information that might be found in an affidavit or a cross pleading; “verified” – meaning there is some official corroboration that the event occurred such as known witnesses with affidavits, police involvement and / or court involvement; or “substantiated” – meaning other corroborating circumstances indicated that the allegations are very likely true.

Parental high onflict indicators were developed based on research findings and clinical experiences that suggest that mediation is especially effective if offered early in the divorce process (Zuberbuhler, 2001); post-judgment disputes are likely to be more severe and intractable (Ash & Guyer, 1986a, 1986b); repeated litigation is a hallmark of high-conflict couples who are resistant to stable settlement through negotiation or mediation (Cohen, 1998; Depner, Cannata & Ricci, 1994; Duryee, 1992); and repeated litigation suggests the need for third-party decision-based models of dispute resolution (Coates, Deutsch, Starnes, Sullivan & Sydlik, 2004; T. Johnston, 1994; Zibbell, 1995).²²

²¹ The ratings of high inter-parental conflict are likely underestimated. For the purposes of this study, only documents contained in the targeted case file were reviewed. The reviewers did not conduct a collateral search of JUSTICE case files for evidence of other relevant domestic relations court filings regarding the plaintiff, defendant, or children. Nor were relevant evidentiary hearing and trial documents available to the reviewers for consideration.

²² Zuberbuhler, J. (2001). The use of court-ordered mediation in the initial stages of divorce litigation to resolve parenting issues. *Family Court Review*, 39, 203–206. Ash, P., & Guyer, M. (1986a). Child psychiatry and the law: The functions of psychiatric evaluation in contested child custody and visitation cases. *Journal of the American Academy of Child and Adolescent Psychiatry*, 25, 554. Ash, P. & Guyer, M. (1986b). Relitigation after contested custody and visitation evaluations, *Bulletin of the American Academy of Psychiatry and Law*, 14,323. Cohen, I.M. (1998). Postdecree litigation: Is joint custody to blame? *Family and Conciliation Courts Review*, 41, 367-380. Depner, C., Cannata K., & Ricci, I (1994). Client evaluations of mediation services: The impact of case characteristics and mediation service models. *Family and Conciliation Courts Review*, 32, 306–312. Duryee, M. (1992). Mandatory court mediation: Demographic summary and consumer evaluation of one court service, *Family and Conciliation Courts Review*, 30, 260. Coates, C., Deutsch, R., Starnes,H., Sullivan, M., & Sydlik, B. (2004). Parenting coordination for high-conflict families. *Family Court Review*, 42, 246–262. Johnston, T. (1994). Summary of research on the decrease of court involvement after the appointment of a special master. Unpublished paper to the

For each indicator, ‘0’ indicated the least amount of risk identified by documentation in the file, while ‘3’ indicated the most amount of risk identified by documentation found in the file. Scoring was based on adding the scores for all indicators in order to come up with a total conflict score. The composite score of the conflict indicators used a weighted scoring method to indicate a case level of risk in order to determine the level of conflict (0=1, 1=2, 2=4, 3=8). Scores of “0” suggest that there was no evidence in the case file of the presence of the factors, thus suggesting a lower risk score. Although the lack of presence of a factor is treated as a discrete variable in the reporting of each factor, adding the scores across factors for the overall conflict score treats conflict as a continuous measure from low to high levels of conflict.

i. Previous involvement with court

In 78.5% of all the cases reviewed, there had been no previous court involvement evidenced within the case file (n=306). There was evidence in case files of previous court involvement in 21.5% of cases reviewed (n=84). Examples of previous court involvement included criminal prosecution resulting in incarceration, DUI’s, protection order proceedings, and orders dealing with child support or paternity, among others.

ii. Compliance with court orders

This factor was examined as either historical or current and either alleged or verified. In 77.9% of all cases reviewed, there were no concerns of non-compliance with court orders (n=303). Parents alleged non-compliance in 5.1% of cases (n=20). There was a verified history of non-compliance in 8.0% of cases (n=31), with verified ongoing non-compliance in the remaining 9.0% of cases (n=35).

iii. Child’s exposure to inter-parent conflict

In 89.0% of the cases reviewed, case files contained no evidence that a child had been witness to parental conflict as indicated by threats, hitting, pushing, yelling, etc. (n=347). In 6.2% of cases there was a parental allegation of child exposed to inter-parent conflict (n=24). There was verified past child witnessing of parental conflict in 4.3% of cases (n=17) while the remaining 0.5% continued to witness parental conflict at the time of litigation (n=2).

iv. Child abuse and/or neglect

Child abuse and/or neglect was also examined as past or ongoing in addition to parental allegations versus verified. There was no indication of child abuse or neglect in 89.7% of cases reviewed (n=350). In 6.2% of cases there was a parental allegation that a child had been maltreated by the other parent (n=24). There was verified previous child abuse or neglect by the other parent in 3.6% of cases (n=14) with 0.5% of the remaining cases experiencing current/ongoing child abuse by parent (n=2).

Special Masters Training Conference, Palo Alto, CA. Zuberbuhler, J. (2001). The use of court-ordered mediation in the initial stages of divorce litigation to resolve parenting issues. *Family Court Review*, 39, 203–206.

v. *Child abduction concerns*

These concerns were examined from a slightly different perspective, looking at threats versus actual attempts. There were no concerns of child abduction seen in the majority of cases (95.4%) (n=372). One parent alleged the other parent made threats to abduct one or more children in 3.8% of cases (n=15). There were verified threats to abduct children in 0.3% of cases (n=1) and verified attempts to abduct children in the remaining 0.5% of cases (n=2).

vi. *Domestic violence*

Domestic violence occurrences included threats, hitting, pushing, yelling, etc. of one intimate partner upon another. Verified cases typically included action from law enforcement or the issuance of a protection order. In 88.4% of the cases reviewed, there was no evidence of concern regarding domestic violence (n=344). A parent alleged domestic violence by the other parent in 5.4% of cases (n=21). There was verified previous domestic violence in 5.9% of cases (n=23) and ongoing domestic violence in .3% of cases (n=1).

vii. *Stalking, intimidation or threats*

These types of matters were identified as alleged or verified and past or current. In 92.6% of the cases reviewed, there was no evidence apparent of concern of stalking, intimidation or threats (n=361). A parent alleged stalking, intimidation or threats by the other parent in 6.2% of cases (n=24). There was verified historical or current stalking, intimidation or threats in 1.0% of cases (n=4) and current/ongoing stalking in .2% of cases (n=1).

viii. *Restraining orders or protection orders*²³

Restraining and protection orders did not appear in 86.4% of cases reviewed (n=336). Indication of past or current restraining/protection orders existed in 2.8% of cases (n=11). Verified or substantiated previous or current protection orders were indicated in 10.8% of cases (n=42).

ix. *Parenting ability concerns*

Concerns over a party's ability to effectively parent did not appear in 83.8% of cases reviewed (n=327). The majority of concerns were found in a parent's allegation that the other parent lacks skills and creates risk to the child (12.1%) (n=47). There was a verified or substantiated previous or current lack of parenting ability in 4.1% of cases (n=16).

x. *Parent-child contact interference*

This factor was examined as past or ongoing in addition to parental allegations versus verified. No interference with visitation or contact was identified in 89.7% of cases reviewed (n=350). A parent alleged interference in 7.4% of cases (n=29). Past interference was identified in 2.1% of cases (n=8) while the remaining 0.8% identified ongoing interference (n=3).

²³ Given the relatively small number of cases and finite distinction between the definitions of "verified" and "substantiated" cases, these were combined under *Restraining/Protection Orders* and *Parenting Abilities*.

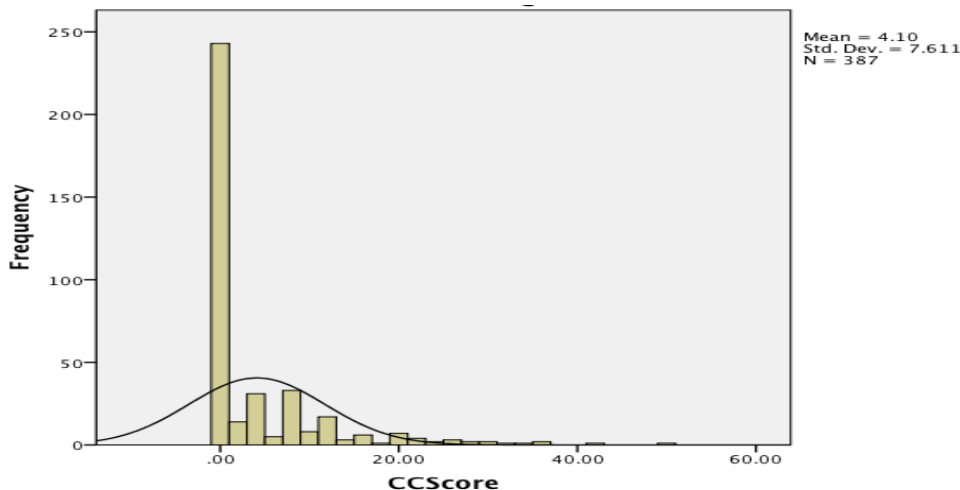
xi. Children refusing to visit with the noncustodial parent

Finally, instances of children refusing to visit were examined from the perspective of the child, measuring their level of discomfort or resistance to visits with the noncustodial parent. The majority of cases reflected no concerns related to visitation (96.4%) (n=376). Between the remaining three levels, 1.5% of children expressed discomfort (n=6), 1.3% resisted contact (n=5) and 0.8% did not want any contact (n=3).

Composite high inter-parental conflict score (total score).

The distribution of the total score suggests that the majority of families involved in Nebraska’s courts did not score in the high inter-parental conflict range. Consistent with the literature on high conflict families, approximately 12% of Nebraska’s cases scored in the high inter-parental conflict range.²⁴ Empirical evidence suggests that 10 to 15% of families remain in “high conflict” for several years following separation, with the children in these families at greatest risk of maladjustment and long-lasting problems (Saini & Birnbaum, 2007).²⁵ These families are less likely to reach a facilitated agreement than families with lower levels of conflict. Interparental conflict has been found to be the most significant variable in both children’s and parents’ adjustment following separation or divorce, and a more powerful predictor of children’s maladjustment than the actual event of separation (Amato, 2001; Bacon & McKenzie, 2004; Grych, 2005; Stewart, 2000).²⁶

Figure 5: Composite high conflict score (CCScore)



²⁴ A caveat to the Composite Conflict Score rankings is that level of conflict may be underestimated as ratings were solely based upon information contained within the dissolution/custody case file itself.

²⁵ Saini, M. & Birnbaum, R. (2007). Unraveling the label of ‘high conflict’: What factors really count in divorce and separated families. *Ontario Association of Children’s Aid Societies Journal*, 51(1), 14-20.

²⁶ Amato, Paul R. (2001). Children of divorce in the 1990s: An update of the Amato and Keith (1991) meta-analysis. *Journal of Family Psychology*, 15(3), Sept. 2001, 355-370. Bacon, Brenda L. & McKenzie, Brad. (2004). Parent Education After Separation/Divorce, *Family Court Review*, 42(1), 85-98. Grych, John. (2005). Interparental Conflict as a Risk Factor for Child Maladjustment, *Family Court Review*, 43(1), 97-108. Clarke-Stewart, K.A., Vandell, D.L., McCartney, K., Owen, M.T., & Booth, C. (2000). Effects of parental separation and divorce on very young children. *Journal of Family Psychology*, 14(2), 304-236.

The composite high conflict score before ($M = 4.55$, $SD = 8.47$) and after ($M=3.63$, $SD = 6.60$) the 2007 Parenting Act revisions did not significantly differ ($p = .236$), suggesting that the frequency of higher conflict families involved in the family courts has remained stable during the past 10 years.

Reliability of the high conflict indicators

Based on the court file analysis, ten²⁷ high inter-parental conflict indicators had a good internal consistency (Cronbach's Alpha = 0.82). Results show that all items had good internal consistency as each item has little influence on the overall Cronbach's Alpha. This suggests that the ten indicators of conflict used in this analysis is a reliable composite score to measure the levels of conflict within court cases.

C. Access to Justice

Plaintiffs' legal representation

In a vast majority of cases, plaintiffs were represented by an attorney at the time of filing of the complaint (88.3%) ($n=346$). Some plaintiffs opted to file without first obtaining legal representation (10.2%) ($n=40$). There were six cases found not applicable (1.5%).

Also in a vast majority of the cases, plaintiffs were represented by an attorney at the time of the final order or decree (84.6%) ($n=330$). In some cases, representation at the time of the final order or decree was deemed not applicable, either because the plaintiff was the State of Nebraska or because the case was dismissed without prejudice.

Defendants' legal representation

In slightly more than half of the cases (50.8%), defendants were represented by an attorney at the onset of their entry into the case ($n=198$).

At the time of the final order or decree, 47.2% ($n=184$) of defendants were represented by counsel while 51.8% ($n=202$) were not. Legal counsel was not applicable in the remaining 1% ($n=4$) of cases.

Table 3 shows the percent of plaintiffs and dependants represented by attorneys at both the onset of the case and at the final order or decree. Plaintiffs were statistically more likely to be represented by attorneys at both the onset (X^2 (2, $n=390$) 24.79 $p < 0.000$) and at the final order or decree (X^2 (2, $n=385$) 10.89 $p < 0.004$).

²⁷ *Previous court involvement* was omitted from the reliability analysis because it included different attributes than the other ten indicators.

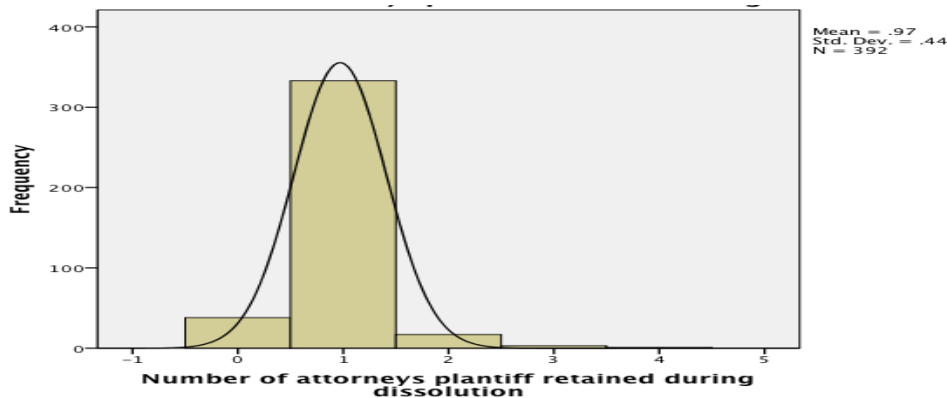
Table 3: Legal representation for both plaintiff and defendant

	Represented at onset of case	Represented at final order of decree
Plaintiff	88.3%	84.6%
Defendant	50.8%	47.2%

Number of attorneys retained by plaintiffs

In most cases, plaintiffs retained one attorney throughout the action (84.9%) (n=333). Plaintiffs retained two attorneys over the course of the action in 4.3% (n=17) of the cases, three attorneys in 0.8% (n=3), and four attorneys in 0.3% (n=1). Plaintiffs did not retain legal counsel in 9.7% of the cases (n=38), in most instances because plaintiff was the State or appeared pro se.

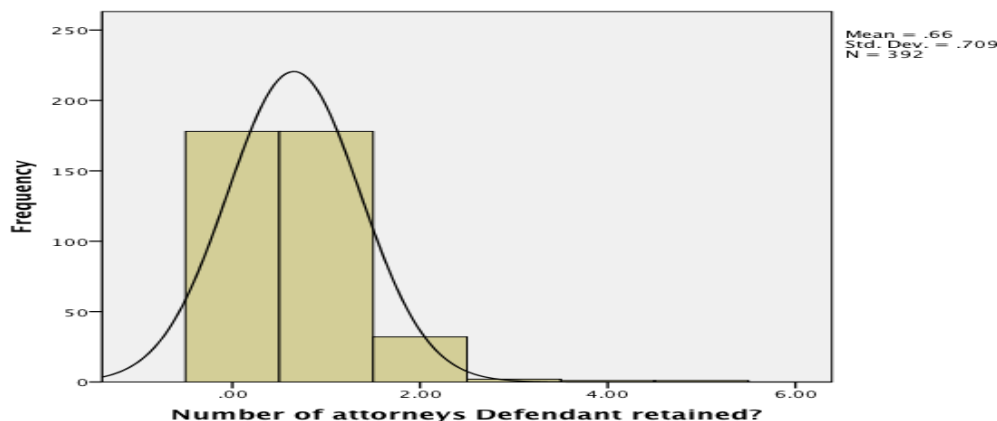
Figure 6: Number of attorneys for the plaintiff



Number of attorneys retained by defendants

Defendants retained one attorney throughout the action in 45.4% of the cases (n=178). Defendants retained two attorneys over the course of the action in 8.2% of the cases (n=32), three attorneys in 0.5% (n=2), four attorneys in 0.3% (n=1), and five attorneys in 0.3% (n=1). Defendants did not retain legal counsel in 45.4% of the cases (n=178).

Figure 7: Number of attorneys for the defendant



The higher number of attorneys retained during the court process was related to the level of conflict between the parties, for both the plaintiff ($r = .235$, $p.001$) and the defendant ($r = .322$, $p.001$), suggesting that parties involved in higher levels of conflict are more likely to change attorneys during the court process.

D. Components of the Parenting Act

Parenting Act Notice²⁸

A Parenting Act Notice (as required by the 2007 statutory revisions) occurs when the *Parenting Act Information Brochure* describing required statutory notices, parenting education and mediation, parenting plans, and parental and child resources has been provided to all parties by the clerk of the district court. Parenting Act information was delivered to plaintiffs and defendants by the clerk of the district court in half of the cases ($n=194$).²⁹ The Parenting Act requires attorneys also to deliver notice. Of the applicable cases, there was documentation in the case file that plaintiffs' attorneys provided the notice 14% ($n=33$) of the time, while defendants' attorneys were documented to have provided notice 6% ($n=11$) of the time.

Pretrial order (order scheduling)

Most cases did not contain a pretrial order to keep the case moving by setting a schedule of tasks that the parties needed to accomplish before the final hearing date (72.9%) ($n=285$). Out of the 106 pretrial orders issued, language ordering mediation prior to contested custody trials was included in 34% of cases ($n=36$).

Motions filed by parties

Ex parte motions

An ex parte motion (a request by a party in a case without having the other party present) may be filed for issues ranging from custody and support to restraint from physical harm or movement of assets. An ex parte motion was filed in 12.8% of cases ($n=50$). In these instances, plaintiffs filed the vast majority of ex parte motions (94%) ($n=47$), while defendants filed such motions in 6% of the cases ($n=3$). In cases where a motion was filed, ex parte orders resulted 94% of the time.

Motions and orders for temporary custody

Motions for temporary custody were filed in the majority of cases (71%) ($n=279$), while such motions were not filed in 29% of cases ($n=112$). Temporary child information affidavits³⁰ were

²⁸ Neb. Rev. Stat. § 43-2925 and §43-2926 (2007)

²⁹ A pre- and post-Parenting Act revision analysis was not conducted for this data set; however, one assumption is that "delivered ... in half of the cases... would be close to 100% of the post-Parenting Act revision date of 2008, at which time the statute became mandatory for clerks of district courts, as well as parties' attorneys. Such a pre-and post analysis will be conducted by the 2014 National Center for State Courts' comprehensive evaluation of the Parenting Act.

³⁰ Neb. Rev. Stat. §43-2930 (2007)

filed in 19% of cases that motioned for temporary custody (n=58).³¹ Temporary orders for custody or access to child were issued in 59% of these cases (n=178). In the cases that had a temporary order for custody, 45% (n=83) included a temporary parenting plan that specified at minimum a legal custody arrangement plus a physical custody schedule or some kind of holiday schedule.

Of the 185 temporary custody orders issued, mothers were granted temporary sole legal custody in 58.4% of cases (n=108), while sole legal custody was granted to fathers in 13.5% (n=25) of the cases. Joint legal custody with the mother as primary residence was ordered in 15.1% of the cases (n=28) (primary residence meaning the child or children resides with the party more than half of the time). Joint legal custody with the father as primary residence was ordered in 1.6% of instances (n=3). Joint custody with shared residence, an arrangement that means the child or children live at parents’ residences in equal amounts of time, was granted in 6.0% of orders (n=11). Joint custody with split residence, which means one child or more lives with one parent while another child or other children live with the other parent, was ordered 2.7% of the time (n=5). Other living arrangements were ordered in 2.7% of cases (n=5).

Of the temporary orders, there have been more joint custody arrangements with shared residency granted since the implementation of the 2007 Parenting Act revisions (see table 4³²), but the differences are not statistically significant. Caution must be made when interpreting this result as the small sample in each cell creates high probability of type II error.

Table 4: Pre and post 2007 Parenting Act revisions: temporary custody allocation³³

	Sole custody to mother	Sole custody to father	Joint custody with mother's primary residence	Joint custody with father's primary residence	Joint custody with shared residence	Joint custody with split residence	Total
Pre	50	10	10	0	4	4	78
Post	54	14	10	2	7	0	87
	104	24	20	2	11	4	165

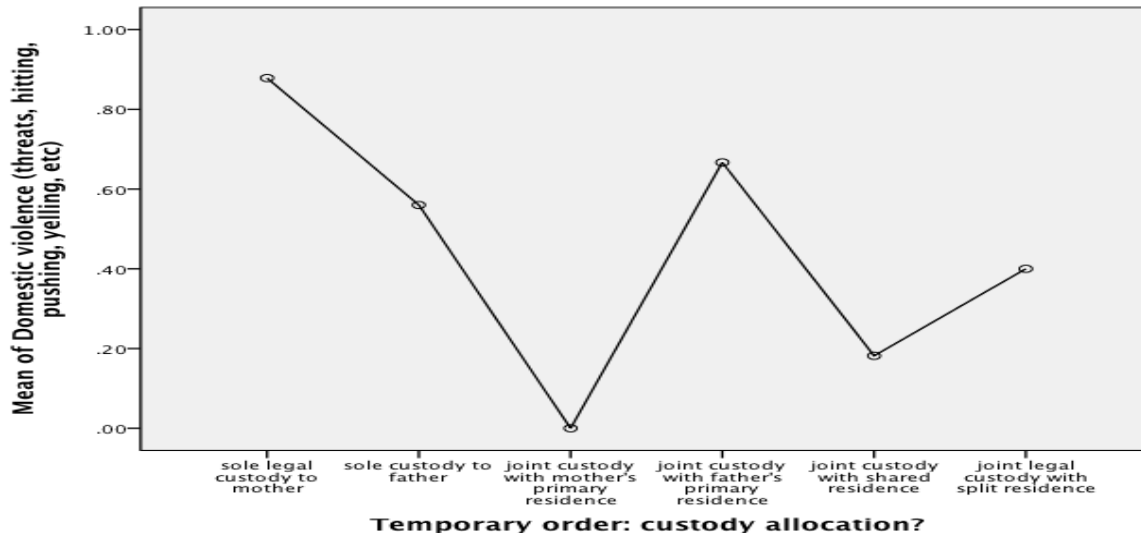
The type of custody arrangement granted on a temporary order is statistically related to the level of domestic violence as reported in the court files $F(5), 2.382, p. < .05$. Post hoc tests (analysis to explore the differences between variables) reveal that joint custody with primary residence with the mother and joint custody with shared residence are associated with statistically lower levels of domestic violence (see figure 8).

³¹ A pre- and post-Parenting Act revision analysis was not conducted for this data set. Further analysis of compliance of the use of a temporary child information affidavit as required in the 2007 revisions will be conducted by the 2014 NCSC evaluation.

³² For the pre and post comparison, 31 cases of the total sample were removed from the analysis because the disposition year of the 31 cases was unclear from the court file. Therefore, the total sample included 185 cases, but only 165 cases were used for the pre and post comparisons.

³³ Given the small number of “other” cases reported in the pre and post comparison, it was removed from the analysis.

Figure 8: Temporary order for custody and presence of domestic violence



Temporary orders granted weekly parenting time (visitation) 11.1% of the time (n=43), meaning the non-custodial parent has parenting time with the child or children at least once a week for any period of time, while parenting time was granted on an every-other-week basis in 7.7% of orders (n=30). Parenting time was granted though no access was specified in 19.5% of orders (n=76), meaning the order granted visitation but did not specify a visitation schedule. Temporary custody orders granted no access at all in 1.0% of all orders (n=4), in that the non-custodial parent was not allowed any visitation. Other parenting time arrangements appeared in temporary custody orders 4.1% of the time (n=16).

Temporary custody orders also ordered mediation prior to a final hearing in thirteen cases (7.3%), while the temporary custody order contained no such requirement in 166 cases (92.7%).

Motions to dismiss

Motions to dismiss were filed in 11% of all cases (n=43). Motions to dismiss were filed twice as much by plaintiffs as by defendants, and jointly on occasion. When filed, motions to dismiss were granted in 73% of the cases (n=30).

Other motions directly related to custody

Other motions directly related to child custody matters were filed in almost a quarter of the cases (24%) (n=94) by plaintiffs and defendants equally. These other motions included motions for contempt for withheld visitation, motions to extend visitation, and motions for psychological evaluations in order to determine parties' fitness for custody, among others.

Protection orders

Evidence of a protection order appeared in nearly 7% of the cases (n=26). Of these cases, plaintiffs filed for protection orders the majority of the time. In none of these cases did

defendants file, though there was information in the case file that third parties to the action, such as ex-spouses and outside victims occasionally filed for protection orders. The filings were made for a number of reasons, but most often they were filed in domestic violence situations. When a protection order was filed, it was almost always granted 88.5% (n=23). Protection orders included language regarding access to children 26% of the time (n=6).

Indication that protection order allegations were incorporated into a parenting plan appeared in 1.5% of cases with parenting plans (n=4). Similarly, evidence that allegations contained in a protection order were incorporated into a final decree appeared in 1.5% of all cases (n=6).

No difference in reporting of protection orders was found between prior to and after the implementation of the 2007 Parenting Act revisions.

Mediation

Orders to mediate³⁴

Outside of the temporary custody orders, parties were ordered to mediate in 29 cases (7.5%). Of those, mediation was ordered by the court's own motion in 73% of cases (n=21). In six cases (21%), the mediation order was a result of the plaintiffs' motions. In one case the order was a result of a defendant's motion (3%) and once (3%) the order was the result of a motion of both parties. In no case did a party object to an order to mediate. Regardless of an order to mediate, evidence available in the court file indicated parties utilized mediation services in 31 cases (8.2%). Specialized alternative dispute resolution was not documented as being used in any of the cases reviewed. Parties were statically more likely to be ordered to mediate after the implementation of the 2007 Parenting Act revisions ($X^2(4, N=354) 9.437 p < 0.05$).

Mediation forms filed with the court

In the 31 cases where mediation was documented to have occurred³⁵, over half resulted in clearly delineated mediated parenting plans being filed with the court. Mediated parenting plans along with property settlement agreements were filed with the court in 10% (n=3) of these cases. In 16% of these cases (n=6), the parties attended mediation but did not file any forms with the court. Other forms were filed with the court in 19% (n=6) of these instances, including statements of unsuccessful negotiations, partial parenting plans as well as waivers of mediation made by one of the parties to an action. Mediation forms were statistically more likely to be filed with the court after the implementation of the 2007 Parenting Act revisions ($X^2(4, N=359) 12.955 p < 0.05$).

Parenting education

Courts ordered parties to attend parenting education courses in 25.8% of cases (n=100). Plaintiffs attended these courses in 41.7% of the overall number of cases (n=163), while defendants

³⁴ Neb. Rev. Stat. § 43-2937 (2007)

³⁵ Other than recently implemented in Douglas County, JUSTICE does not currently track mediation or specialized alternative dispute resolution.

attended in 29.7% (n=116). Parenting education was statically more likely to be ordered after the implementation of the 2007 Parenting Act revisions (X^2 (2, N=385) 18.540 $p < 0.000$).

Guardian ad litem appointment

A guardian ad litem was appointed in (4.6%) of the cases reviewed (n=18).

Contested custody at issue in trial

Custody was a contested issue in 9.7% of cases (n=38). In other words, the matter of custody was settled in 90.3% of cases before reaching trial. Whether a settlement concerning custody had not been reached was determined by the contents of discovery documents as well the absence of a parenting plan or other custody settlement agreement at the time of the final order or decree.

Contested cases were found to have higher levels of conflict ($M = 10.27$, $SD = 12.04$) than non-contested cases ($M = 3.44$, $SD = 6.68$), as reported by the Composite Conflict Score. The difference of conflict levels between these two groups was statistically significant ($t = 5.371$, $p < .001$.) suggesting that parties with higher levels of conflict are less likely to resolve their disputes before reaching trial.

Parenting plan³⁶

A majority of the cases did contain a parenting plan (67.8%) (n=263), broadly defined as minimally containing a custody determination and an apportionment of parenting time and holidays. Of these, 7% (n=19) had a parenting plan created on a pre-formatted Nebraska court form, such as Forms DC 6:5(13), DC 6:5(14), DC 6:5(6) or DC 6:5(7). Few (7%) of these parenting plans were modified by the parties.

Most parenting plans appeared to be attorney-generated (86%) (n=223) as evidenced by attorney signatures on parenting plans or attorney involvement in a case where there was no indication that a parenting plan had been mediated. In contrast, a small number of parenting plans were explicitly identified as being created as a result of mediation (14%) (n=18).

Signatures of parties

Over half of the parenting plans had been signed by both parties (63%) (n=172). Plaintiffs alone signed plans in 12% of cases (n=34), while defendants alone signed 4% (n=12). Just under a quarter (21%) of parenting plans were not signed by either party (n=57).

Statutorily required elements of a parenting plan³⁷

The 2007 revisions to the Parenting Act made explicit certain elements required to be included in a parenting plan. Some of these elements, such as legal and physical custody and parenting time have been included in different degrees and formats in orders of separation or dissolution in

³⁶ Neb. Rev. Stat. § 43-2929 (2007)

³⁷ Neb. Rev. Stat. § 43-2929(1) (2007)

years prior to the 2007 revisions. Data points for all sample cases, both pre- and post-Parenting Act 2007 revisions, were captured in the following statutorily required elements of the post-2007 revision parenting plans. These include, but are not limited to:

- Legal custody and physical custody of each child;
- Apportionment of parenting time, visitation, or other access for each child with sufficient detail to be able to be enforced in subsequent proceedings;
- Location of the child during the week;
- A transition plan for transferring the child; communication processes;
- Procedures for making day-to-day decisions for the child;
- Provisions for a remediation process;
- Provisions for safety when preponderance of evidence so requires;
- Notifications for parental change of address;
- Parental access to school and health records and related decision-making;
- When safe and appropriate, provisions to encourage mutual discussion of major decisions regarding parenting functions.

Custody allocation in parenting plans

Out of 267 parenting plans, sole legal custody for mothers was set forth in 42% of parenting plans (n=113), while sole legal custody for fathers was set forth in 7% (n=19). Joint legal custody with the mother as primary residence was delineated in 28% of plans (n=75). Joint legal custody with the father as primary residence was determined in 5% of plans (n=12). Joint custody with shared residence, an arrangement that means the child or children live at parents' residences in equal amounts of time, was set forth in 12% of plans (n=33). Joint custody with split residence, which means one child or more lives with one parent while another child or other children live with the other parent, was delineated in 3% of the plans (n=7). Other arrangements were set forth in 3% of the parenting plans (n=8).

Apportionment of parenting time from the parenting plan

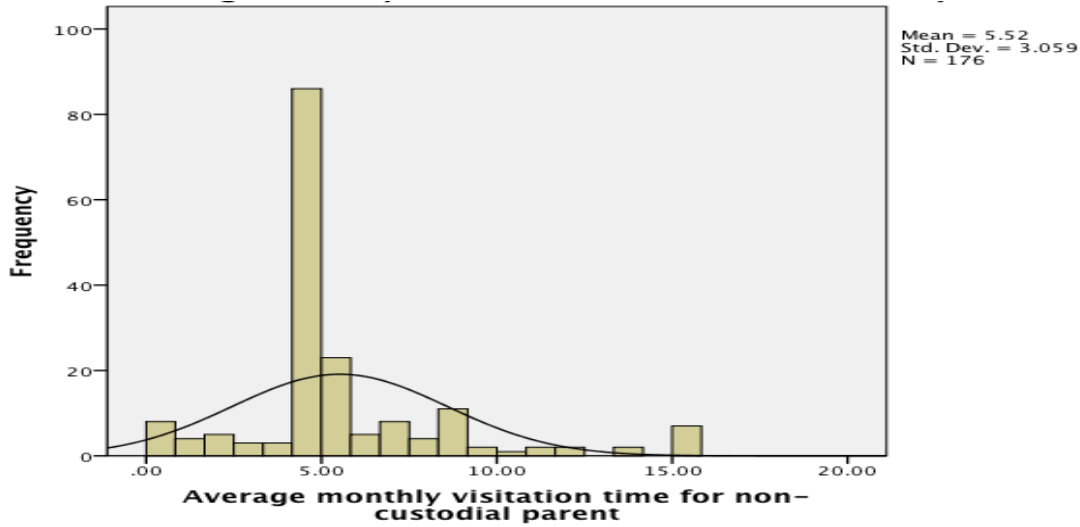
Out of 247 parenting plans, two-fifths included a weekly parenting time schedule (40%) (n=99), while nearly a third of the plans provided for parenting time with the non-custodial parent on an every-other-week basis (30%) (n=73). Parenting time was ordered on a once-a-month basis in 4% of plans (n=9), and time was granted though no access was specified in 13% of plans (n=32). Parenting plans allotted for seasonal break access in a few cases (1%) (n=4). No access was granted in 1% of cases (n=3), while other schedules were arranged in 11% of plans (n=26).

As represented in the figures below, monthly parenting time for non-custodial parents in days and hours varied in the 392 cases reviewed, as did parenting time measured in summer days.

The average non-custodial parent's days of access was 5.52 days per month ($SD^{38} = 3.05$) with the majority of cases including the 5 days per month as the typical plan. The frequency of this parenting arrangement is most similar to the every-second weekend and Wednesday night plan.

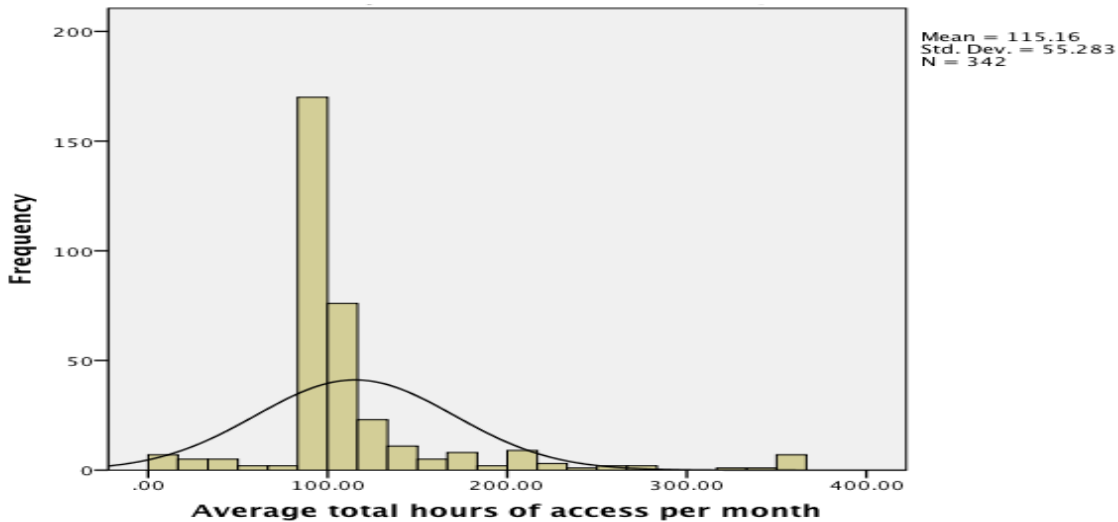
³⁸ M = Mean (average), SD = Standard deviation (the variability of scores around the mean)

Figure 9: Average parenting time in days per month



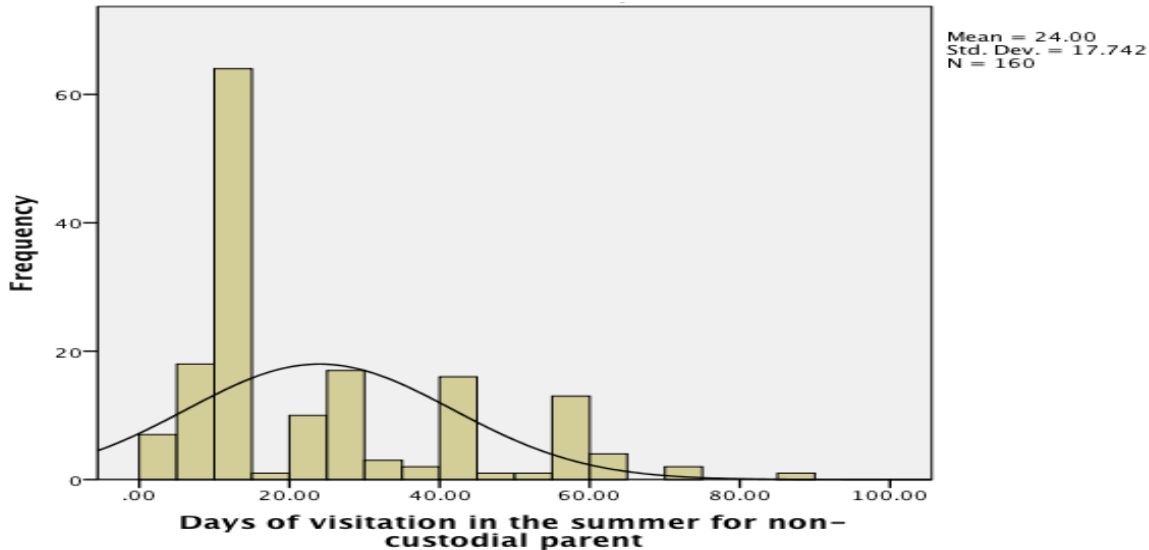
The average parenting time in hours per month was 115.15 hours (SD = 55.28) per month. Cases that used mediation resulted in an increased average total of monthly hours of access (M = 144.49, SD = 72.89) than those cases that did not mediate (M = 112.84, SD = 53.68) and this difference was statistically significant ($t = 6.465, p < .05$).

Figure 10: Average parenting time in hours per month



The average parenting time in the summer was 24 days (SD = 17.74) suggesting that the average summer time that children spend with the non-custodial parent is almost a month in duration. The range of responses included from 0 days to 86 days, which may have also skewed the mean. The median (the most occurring day) in the results was 14 days.

Figure 11: Average parenting time (visitation) in summer – days



Other statutory required parenting plan elements³⁹

Out of 262 cases that included a parenting plan, an apportionment of parenting time was provided for most of the time (91%) (n=238).⁴⁰ A vast majority of plans clarified where the child or children would be each day of the week (86%) (n=224),⁴¹ either through a custody schedule or a statement of which parent has primary physical custody. Just over half of the plans included a transition or transportation plan that describes how the child or children go to and from each parent’s residence for visitation (59%) (n=155).⁴² Parenting plans included procedures for making decisions regarding day-to-day care and control of the child or children 65% of the time (n=170).⁴³

Provisions for regular school and continuous school attendance and progress for school-aged children, including meeting any special needs, appeared in 39% of plans (n=101).⁴⁴ Less than half of plans included a provision requiring each parent notify the other of change of address (41%) (n=106).⁴⁵ 40% of parenting plans included language requiring parents to consider a child's age, the child's developmental needs, and the child's perspective, as well as consideration of enhancing healthy relationships between the child and each party (n=105).⁴⁶ Lastly, out of 198 applicable plans, 15% contained provisions for safety to reduce risk of harm to children and adults who were victims of child abuse or neglect, domestic intimate partner abuse or unresolved

³⁹ Neb. Rev. Stat. § 43-2929(1)(b)(vi) (2007) regarding remediation for Parenting Plan modifications was omitted
⁴⁰ Neb. Rev. Stat. § 43-2929(1)(b)(i) (2007)
⁴¹ Neb. Rev. Stat. § 43-2929(1)(b)(iii) (2007)
⁴² Neb. Rev. Stat. § 43-2929(1)(b)(iv) (2007)
⁴³ Neb. Rev. Stat. § 43-2929(1)(b)(v) (2007)
⁴⁴ Neb. Rev. Stat. § 43-2929(1)(b)(viii) (2007)
⁴⁵ Neb. Rev. Stat. § 43-2929(2) (2007)
⁴⁶ Neb. Rev. Stat. § 43-2929(5) (2007)

parental conflict (n=30).⁴⁷ It is important to note that cases reviewed for this study included six years prior to the most recent amendments strengthening the requirements of the Parenting Act.

Other parenting plan provisions

Parenting plans reviewed in this study included other provisions related to various issues, such as: notification of children's events and activities; limits on drug and alcohol consumption; extended family visitation or restrictions; children's appearance including piercings or tattoos; religious preferences; neither party estranging child from parent or extended family; removal from jurisdiction; smoke free environment; and medical care provisions.

Parenting plan document

In cases that contained a parenting plan, 15% contained more than one version of a plan (n=38). In 63% of the cases with a plan, the parenting plan appeared as a separate document (n=143).

Final order/decree

Cases included in this study all were concluded with a final order or decree or were dismissed without prejudice. Of the final orders and decrees, 11% stated restrictions on access to the child or children (n=40). The justifications for restrictions varied, and included restrictions such as supervised visitation, fulfilment of certain requirements such as parenting education or housing and prohibitions on drug and alcohol use during and immediately before visitation times.

Custody specified in final order/decree

Of the 354 final orders or decrees that provided an allocation of custody, mothers were granted sole legal custody of the child 46.0% of the time (n=163), with sole legal custody allocated to fathers in 8.8% of the cases (n=31). Joint legal custody with the mother as primary residence was ordered in 23.4% of final orders or decrees (n=83). Joint legal custody with the father as primary residence was ordered in 4.5% of these instances (n=16). Joint custody with shared residence was granted in 11.9% of orders containing custody allocations (n=42). Joint custody with split residence was ordered in 2.0% of these cases (n=7). Other arrangements in were provided in 3.4% of orders containing a custody allotment (n=12).

Although there have been more joint custody arrangements with shared residency granted since the implementation of the 2007 Parenting Act revisions (see table 5)⁴⁸, the differences are not statistically significant. Caution must be made when interpreting this result as the small sample in each cell creates high probability of type II error.

⁴⁷ Neb. Rev. Stat. § 43-2932 (2007)

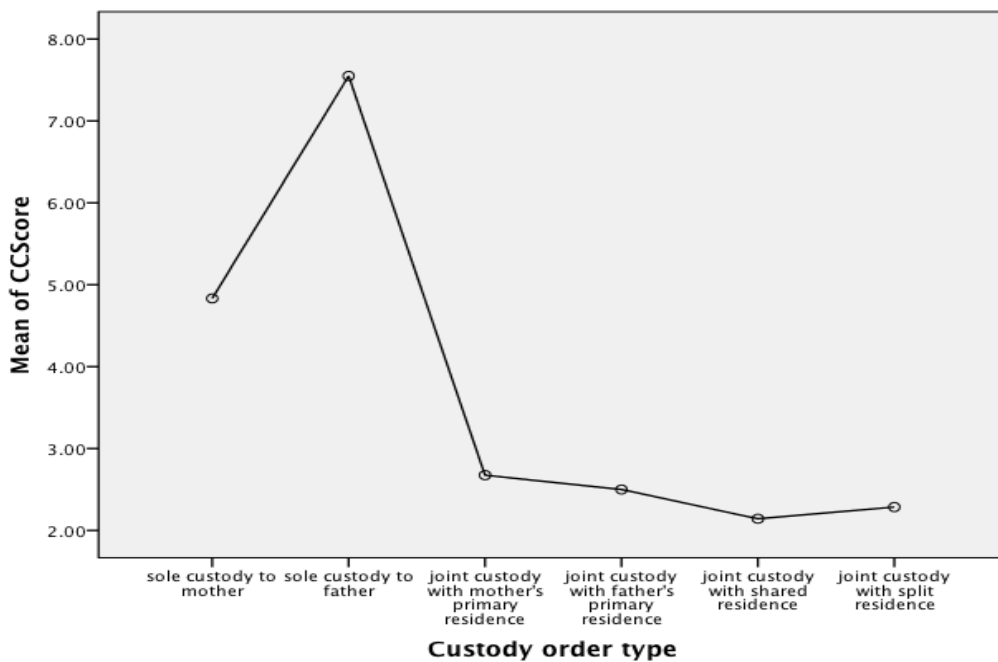
⁴⁸ For the pre and post comparison, 31 cases of the total sample were removed from the analysis because the disposition year of the 31 cases was unclear from the court file. Therefore, the total sample included 354 cases, but only 318 cases were used for the pre and post comparisons.

Table 5: Pre and post 2007 Parenting Act revisions - custody ordered at final decree⁴⁹

	Sole custody to mother	Sole custody to father	Joint custody with mother's primary residence	Joint custody with father's primary residence	Joint custody with shared residence	Joint custody with split residence	Total
Pre	75	11	30	7	18	4	145
Post	78	18	42	9	24	2	173
	153	29	72	16	42	6	318

The type of custody arrangement granted is statistically related to the level of conflict between the parties as reported by the Composite Conflict Score (CCS) $F(5), 3.093, p. < .05$. Post Hoc Tests reveal that joint custody arrangements (both decision-making and living arrangements) have statistically lower levels of conflict than sole custody arrangements to either the mother or the father. The high level of conflict (see figure 12) is associated with orders for sole custody to the father.

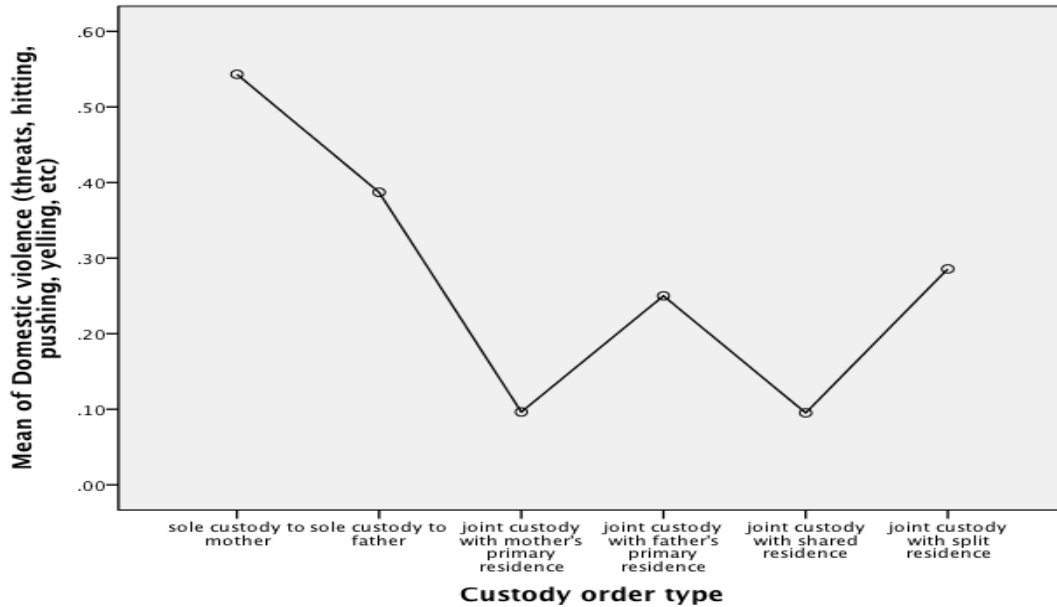
Figure 12: Means plot for level of conflict for various custody types in final decree



In cases where there was evidence of higher levels of domestic violence, sole custody to mother was more likely to be granted ($F(5), 2.53, p. < .05$) as depicted in figure 13. Joint custody with the mother's primary residence and joint custody with shared residence were more likely granted when there was evidence of lower levels of domestic violence.

⁴⁹ Given the small number of "other" cases reported in the pre and post comparison, it was removed from the analysis.

Figure 13: Level of domestic violence and custody type granted



Custody type by district

The type of custody ordered within the twelve judicial districts are varied (see table 6). Differences were not statistically significant, most likely due to the small samples in each of the cells.

Table 6: Custody type ordered by district

	Sole custody to mother	Sole custody to father	Joint custody with mother's primary residence	Joint custody with father's primary residence	Joint custody with shared residence	Joint custody with split residence
District 1	31.6%	10.5%	31.6%	0.0%	26.3%	0.0%
District 2	39.7%	5.2%	37.9%	5.2%	10.3%	1.7%
District 3	42.9%	10.2%	22.4%	2.0%	20.4%	2.0%
District 4	51.3%	2.6%	30.8%	2.6%	10.3%	2.6%
District 5	42.4%	12.1%	21.2%	6.1%	18.2%	0.0%
District 6	53.3%	20.0%	6.7%	6.7%	13.3%	0.0%
District 7	59.3%	3.7%	18.5%	3.7%	11.1%	3.7%
District 8	30.8%	23.1%	23.1%	0.0%	15.4%	7.7%
District 9	61.5%	7.7%	19.2%	11.5%	0.0%	0.0%
District 10	33.3%	20.0%	26.7%	6.7%	6.7%	6.7%
District 11	56.3%	9.4%	15.6%	6.3%	9.4%	3.1%
District 12	75.0%	6.3%	12.5%	6.3%	0.0%	0.0%
Total	47.7%	9.1%	24.3%	4.7%	12.3%	2.0%

E. Child Support

Child support calculations

Child support calculations were provided in a majority of cases (74.1%). Most cases that provided child support calculations provided a Basic Child Support Calculation Worksheet, or Worksheet #1 (85%) (n=281). Worksheet #1 is required by the Nebraska Supreme Court Rules, although prior to a recent court decision⁵⁰ in 2009 the worksheet does not always show up in court files. Worksheet #1 shows the monthly net income of the mother, the monthly net income of the father, and each parent's corresponding percent contribution to the monthly child support according to Child Support Guidelines.

Worksheet #2 is used in split custody arrangements when one parent has sole custody of one or more children and the other parent has sole custody of the rest of the sibling group. Of the cases that included child support calculations, 1% provided Worksheet #2 (n=4). This worksheet specifies how much support will be paid and by which party.

Worksheet #3 is used when parents have joint physical custody of the children; e.g., the children are with both parents about 50/50 or 40/60 percent of the time. Of the cases that included child support calculations, 9% provided Worksheet #3 (n=29). Worksheet #3 designates the number of days annually that the child or children are in the mother's custody and how many days are spent in the father's custody. It then provides a support amount to be paid and by whom. In these cases, the obligation for support most often fell to higher-income earning fathers (81%) (n=19).

Worksheet #5 is used when parents want to deviate from the calculations. Of the cases that included child support calculations, 3% provided Worksheet #5 (n=10). This worksheet specifies adjusted child support for the mother as well as adjusted child support for the father. Reasons for deviation from the standard child support calculations vary.

The Imputation of Childcare Tax Credit Worksheet, or Worksheet #6, is used when parents pay for childcare and want a federal tax credit and it specifies an imputed monthly tax credit. Worksheet #6 was not used in any of the cases reviewed.

From pre to post the implementation of the 2007 Parenting Act revisions, there was a significant increase in the utilization of Worksheet #3 (joint custody) $X^2(2, N=385) 5.883 p < 0.05$. No other worksheet showed similar increase in use post the Parenting Act.

Child support specified in final order/decre

A majority of cases that resulted in a final order or decree specified a child support amount (79.8%) (n=313). Of the 295 cases that specified child support amounts, fathers were ordered to pay 86% of the time (n=254), while mothers had the obligation of support in 14% of such instances (n=41).

⁵⁰ Rutherford v. Rutherford, 277 Neb.301,761 N.W. 2d 922 (2009)

F. Alimony

Alimony is only awarded in cases of married (as opposed to unmarried) parents; as such, the issue of alimony would be relevant in 88% of cases reviewed. Alimony was granted in 16% (n=55) of those cases, being awarded to the mother 58% of the time (n=32) and to the father 42% of the time (n=23).

V. Summary Conclusions

The 2013 Nebraska Custody Court File Report is unique and notable as the first such study to be conducted in the state. It provides a factual baseline of data for present and future policy makers, educators, family court professionals, and citizens to reflect upon and to build upon to achieve enhancements to improve the system of justice for the best interests of children, parents, and restructuring families in our state. Following are the key highlights and implications for future directions for Nebraska to improve outcomes for children, parents, and families, the building blocks of the future stability, well-being, and progress.

Key highlights:

Demographics

- A total of 67 Nebraska counties were represented in the sample of court files involving child custody determinations. Court files reflect orders and decrees made by 70 Nebraska district court judges.
- Of the 392 cases reviewed, the vast majority of them were for dissolution of marriage.
- The cases reflect equal distribution of years of disposition ranging from 2002 through 2012, as well as equal distribution between pre- and post-2007 Parenting Act revisions.
- Of the 392 cases included in the analysis, there were 663 children included in the analysis (almost equal boys and girls under the age of 18).
- Plaintiffs were more likely to be mothers and the defendants were more likely to be fathers.
- Fathers had statistically higher incomes than mothers.
- Both plaintiffs and defendants reported that children were more likely residing in the primary residence of the mother at the time of filing.
- At the time of filing the initial complaint, parties requested joint custody in about 1/7 of the cases.

Access to justice

- In a vast majority of cases, plaintiffs were represented by attorneys at the time of the filing of the complaint.
- Defendants, upon entry into the case, were represented in about half of the cases.
- The higher the conflict score, the more likely parties retained multiple attorneys throughout the court process.

Elements of dissolution / custody cases

- Motions for temporary custody were filed in the bulk of cases.
- Evidence of a protection order appeared in very few of the cases. No difference in reporting of protection orders was found between prior to and after the 2007 Parenting Act revisions.
- Parties were ordered to mediate in a number of cases, and were statistically more likely to be ordered to mediate after the implementation of the 2007 Parenting Act revisions.

- Parties were ordered to attend parenting education in a quarter of the cases and statistically more likely to be ordered after the implementation of the 2007 Parenting Act revisions.
- The matter of custody was settled in most of the cases before reaching trial.
- Contested cases were found to have higher levels of conflict.
- A majority of the cases did contain a parenting plan for the child, broadly defined as being evidenced by two determinations: (a) custody and (b) apportionment (access) specifics such as weekends, days of the week, holidays.⁵¹

Custody allocation

- Over the ten-year period, mothers were granted sole legal custody about half of the time and fathers were granted sole legal custody much less of the time.
- During the same 2002-2012 period, joint legal custody was granted about a third of the time, with shared residence occurring occasionally. Children primarily resided in their mothers' homes more often than in their fathers' homes.
- Comparing all 12 judicial districts, parents in the 2nd judicial district were granted the highest percentage of joint custody with shared residence, while there were no families within the 9th and 12th judicial districts that included a similar arrangement.

Apportionment of parenting time; visitation schedules

- During the ten-year period, over one-third of the parenting plans reflected a weekly plan of apportionment of time, another third showed an every-other-week visitation, and the balance was a range of other arrangements. On a very rare occasion was no access allowed to the non-custodial parent.
- On average, the plans apportioned 5 days of time with the non-custodial parent per month. Parents that mediated with each other created plans that increased the non-custodial parents' average total days of monthly access with the children.

Child support

- Child support calculations were provided in a majority of cases, with most cases using the Basic Child Support Calculation Worksheet, or Worksheet #1.
- From pre to post 2007 revisions of the Parenting Act, there was a significant increase in the utilization of Worksheet #3 for joint custody. No other worksheet showed similar increase in use post Parenting Act revisions.
- Of the cases that specified child support, fathers on average had a higher income than mothers and thus were ordered to pay child support most of the time, with mothers occasionally paying child support.

Level of high inter-parental conflict

- Based on a composite high conflict score (CCS) identifying the extent of high conflict within families, the distribution of the total score suggests that the majority of families involved in the courts did not score in the high inter-parental conflict range.

⁵¹ For purposes of the study, a *parenting plan* was defined broadly to encompass custody and parenting time allocation in cases filed both pre- and post-2007 Parenting Act revisions.

- Consistent with the literature on high conflict families, approximately 12% of Nebraska's cases scored in the high inter-parental conflict range.
- Slightly more than half of the cases had not been reopened at the time of study. The number of reopenings was strongly correlated with the level of interparental conflict.

Implications and future directions:

Legal representation

Data from this study shows that in Nebraska, defendants, as compared to plaintiffs, are less likely to retain legal representation during the court process. Lack of access to courts, particularly by *pro se* or self-represented parents going through dissolution and custody matters is a growing concern in many states and countries. More information is needed to explore the reasons as to why Nebraska defendants do not retain attorneys and whether there are any potential barriers or obstacles for defendants to secure legal representation.

Considerations for joint custody or shared parenting

The rate of joint custody in Nebraska has steadily increased in the past decade.⁵² Based on the court file analysis, joint custody with shared residence was awarded in 12% of plans. The rate of Nebraska's joint custody is similar to other states and countries. Sole custody to mother remains the most common type of custody arrangement, especially in cases that involve higher rates of high conflict and / or domestic violence. Future data collection and analysis would be warranted to track the different types, occurrences, and trends of custody and apportionment of parental time with children occurring statewide in succeeding reporting periods.

Differential family justice system approaches for divorcing and separating parents

Nebraska's 2007 Parenting Act revisions include statutory provisions that begin to provide a differential approach to addressing parents' and children's needs as they go through the challenging family transitions of divorce and separation. These provisions include such items as (a) the use of a temporary child custody information affidavit to provide the judge information with which to make temporary child custody orders; (b) the requirement for mediators to conduct a private initial screening session with each parent to assess which mediation process to appropriately use; and (c) the provision of a basic level and optional second level of parenting education class depending upon the needs of the parents. Research points to the need for early court system assessment and identification of interparental conflict. Given the high conflict group is more likely to be involved in a contested case, more attention is needed to explore the unique factors for this group for the justice system to help these parents to resolve their disputes in a timely and effective manner.

Use of alternative dissolution resolution

⁵² Joint custody has increased an average of 6.25% per year between 2003 and 2011, from 632 per year to 947 per year. Bureau of Vital Statistics, Nebraska Department of Health and Human Services, Voices for Children.

Over the years, multiple studies have examined the effects and outcomes of mediation as an alternative to litigation, with overall findings suggesting that mediation is a successful alternative that leads to increased out-of-court agreements and satisfaction amongst service users. Although the court file analysis shows trends that are consistent with the literature, the low and inconsistent reporting in the JUSTICE court files regarding the use of mediation and specialized ADR precludes any reliable data to support this analysis. Identification and collection of ADR data, and its future data collection and analysis is warranted to enable the state to assess effectiveness and efficiencies of mediation and specialized alternative dispute resolution for separating and divorcing parents.

Future research and program evaluation

It is expected that the results of the JUSTICE custody court file analysis will contribute to building the evidence and knowledge about the overall efficiency and effectiveness of the Parenting Act within a broader approach of providing court services to families involved in the family justice system.

Use of this study - National Center for State Courts' comprehensive research of Parenting Act

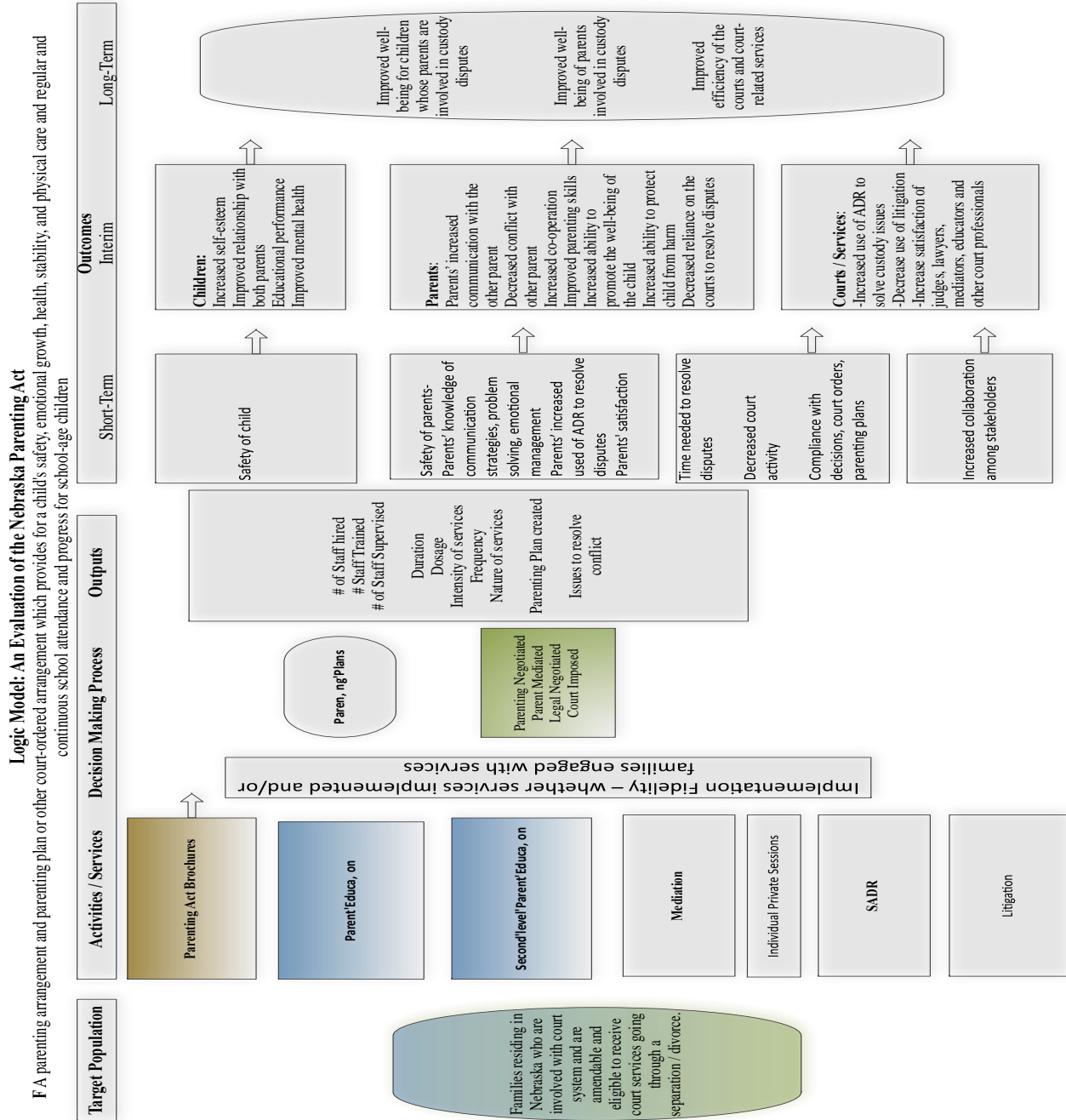
The data and analysis from this study will be used by the National Center for State Courts (National Center) in its comprehensive program, outcome, and economic analysis of Nebraska's Parenting Act. The National Center commenced its research in October 2013 and its final report is due Spring 2015. Surveys, focus groups, and interviews of parents, children, lawyers, judges, legislators, mediators and other key stakeholders will be conducted in both urban and rural areas over the course of 2014. An additional 200 dissolution/custody case files will be coded using the same data coding document as employed for this Study.

Future program evaluation

To capture performance monitoring, process and outcome variables identified in the Logic Model, Nebraska's JUSTICE data system provided adequate data for the most of questions addressed in this court file analysis. For future program and outcome evaluation, the Nebraska Administrative Office of the Courts should develop a plan to support ongoing analysis of performance measures for Parenting Act implementation. A critical preliminary step is to identify what additional data is essential and then add those data fields to JUSTICE to provide a more reliable essential data set to measure performance and implementation. For example, JUSTICE does not collect explicit data on Parenting Act-required elements of court-ordered mediation and temporary child custody information affidavits. Secondly, uniformity in coding data across the state's 93 counties be enhanced. There were inconsistencies between court offices in how data is gathered and reported in JUSTICE that creates an additional burden in data collection and analysis.

APPENDICES

Appendix A: Logic Model



Appendix B: The Parenting Act

43-2920. Act, how cited.

Sections 43-2920 to 43-2943 shall be known and may be cited as the Parenting Act.
Source: Laws 2007, LB554, § 1; Laws 2011, LB673, § 2.

43-2921. Legislative findings.

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

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

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

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

Source: Laws 2007, LB554, § 2.

43-2922. Terms, defined.

For purposes of the Parenting Act:

(1) Appropriate means reflective of the developmental abilities of the child taking into account any cultural traditions that are within the boundaries of state and federal law;

- (2) Approved mediation center means a mediation center approved by the Office of Dispute Resolution;
- (3) Best interests of the child means the determination made taking into account the requirements stated in sections 43-2923 and 43-2929.01;
- (4) Child means a minor under nineteen years of age;
- (5) Child abuse or neglect has the same meaning as in section 28-710;
- (6) Court conciliation program means a court-based conciliation program under the Conciliation Court Law;
- (7) Custody includes legal custody and physical custody;
- (8) Domestic intimate partner abuse means an act of abuse as defined in section 42-903 and a pattern or history of abuse evidenced by one or more of the following acts: Physical or sexual assault, threats of physical assault or sexual assault, stalking, harassment, mental cruelty, emotional abuse, intimidation, isolation, economic abuse, or coercion against any current or past intimate partner, or an abuser using a child to establish or maintain power and control over any current or past intimate partner, and, when they contribute to the coercion or intimidation of an intimate partner, acts of child abuse or neglect or threats of such acts, cruel mistreatment or cruel neglect of an animal as defined in section 28-1008, or threats of such acts, and other acts of abuse, assault, or harassment, or threats of such acts against other family or household members. A finding by a child protection agency shall not be considered res judicata or collateral estoppel regarding an act of child abuse or neglect or a threat of such act, and shall not be considered by the court unless each parent is afforded the opportunity to challenge any such determination;
- (9) Economic abuse means causing or attempting to cause an individual to be financially dependent by maintaining total control over the individual's financial resources, including, but not limited to, withholding access to money or credit cards, forbidding attendance at school or employment, stealing from or defrauding of money or assets, exploiting the victim's resources for personal gain of the abuser, or withholding physical resources such as food, clothing, necessary medications, or shelter;
- (10) Emotional abuse means a pattern of acts, threats of acts, or coercive tactics, including, but not limited to, threatening or intimidating to gain compliance, destruction of the victim's personal property or threats to do so, violence to an animal or object in the presence of the victim as a way to instill fear, yelling, screaming, name-calling, shaming, mocking, or criticizing the victim, possessiveness, or isolation from friends and family. Emotional abuse can be verbal or nonverbal;
- (11) Joint legal custody means mutual authority and responsibility of the parents for making mutual fundamental decisions regarding the child's welfare, including choices regarding education and health;

(12) Joint physical custody means mutual authority and responsibility of the parents regarding the child's place of residence and the exertion of continuous blocks of parenting time by both parents over the child for significant periods of time;

(13) Legal custody means the authority and responsibility for making fundamental decisions regarding the child's welfare, including choices regarding education and health;

(14) Mediation means a method of nonjudicial intervention in which a trained, neutral third-party mediator, who has no decision making authority, provides a structured process in which individuals and families in conflict work through parenting and other related family issues with the goal of achieving a voluntary, mutually agreeable parenting plan or related resolution;

(15) Mediator means a mediator meeting the qualifications of section 43-2938 and acting in accordance with the Parenting Act;

(16) Military parent means a parent who is a member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or Reserves of the United States or the National Guard;

(17) Office of Dispute Resolution means the office established under section 25-2904;

(18) Parenting functions means those aspects of the relationship in which a parent or person in the parenting role makes fundamental decisions and performs fundamental functions necessary for the care and development of a child. Parenting functions include, but are not limited to:

(a) Maintaining a safe, stable, consistent, and nurturing relationship with the child;

(b) Attending to the ongoing developmental needs of the child, including feeding, clothing, physical care and grooming, health and medical needs, emotional stability, supervision, and appropriate conflict resolution skills and engaging in other activities appropriate to the healthy development of the child within the social and economic circumstances of the family;

(c) Attending to adequate education for the child, including remedial or other special education essential to the best interests of the child;

(d) Assisting the child in maintaining a safe, positive, and appropriate relationship with each parent and other family members, including establishing and maintaining the authority and responsibilities of each party with respect to the child and honoring the parenting plan duties and responsibilities;

(e) Minimizing the child's exposure to harmful parental conflict;

(f) Assisting the child in developing skills to maintain safe, positive, and appropriate interpersonal relationships; and

(g) Exercising appropriate support for social, academic, athletic, or other special interests and abilities of the child within the social and economic circumstances of the family;

(19) Parenting plan means a plan for parenting the child that takes into account parenting functions;

(20) Parenting time, visitation, or other access means communication or time spent between the child and parent or stepparent, the child and a court-appointed guardian, or the child and another family member or members including stepbrothers or stepsisters;

(21) Physical custody means authority and responsibility regarding the child's place of residence and the exertion of continuous parenting time for significant periods of time;

(22) Provisions for safety means a plan developed to reduce risks of harm to children and adults who are victims of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict;

(23) Remediation process means the method established in the parenting plan which maintains the best interests of the child and provides a means to identify, discuss, and attempt to resolve future circumstantial changes or conflicts regarding the parenting functions and which minimizes repeated litigation and utilizes judicial intervention as a last resort;

(24) Specialized alternative dispute resolution means a method of nonjudicial intervention in high conflict or domestic intimate partner abuse cases in which an approved specialized mediator facilitates voluntary mutual development of and agreement to a structured parenting plan, provisions for safety, a transition plan, or other related resolution between the parties;

(25) Transition plan means a plan developed to reduce exposure of the child and the adult to ongoing unresolved parental conflict during parenting time, visitation, or other access for the exercise of parental functions; and

(26) Unresolved parental conflict means persistent conflict in which parents are unable to resolve disputes about parenting functions which has a potentially harmful impact on a child.

Source:Laws 2007, LB554, § 3; Laws 2008, LB1014, § 55; Laws 2011, LB673, § 3.

Cross References

Conciliation Court Law, see section 42-802.

43-2923. Best interests of the child requirements.

The best interests of the child require:

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

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

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

(4) That even when parents have voluntarily negotiated or mutually mediated and agreed upon a parenting plan, the court shall determine whether it is in the best interests of the child for parents to maintain continued communications with each other and to make joint decisions in performing parenting functions as are necessary for the care and healthy development of the child. If the court rejects a parenting plan, the court shall provide written findings as to why the parenting plan is not in the best interests of the child;

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

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

(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 but regardless of chronological age, when such desires and wishes are based on sound reasoning;

(c) The general health, welfare, and social behavior of the minor child;

(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; and

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

Source:Laws 2007, LB554, § 4; Laws 2008, LB1014, § 56; Laws 2010, LB901, § 2.

Annotations

A court is required to devise a parenting plan and to consider joint legal and physical custody, but the court is not required to grant equal parenting time to the parents if such is not in the child's best interests. *Kamal v. Imroz*, 277 Neb. 116, 759 N.W.2d 914 (2009).

43-2924. Applicability of act.

(1) The Parenting Act shall apply to proceedings or modifications filed on or after January 1, 2008, in which parenting functions for a child are at issue (a) under Chapter 42, including, but not limited to, proceedings or modification of orders for dissolution of marriage and child custody and (b) under sections 43-1392 to 43-1418. The Parenting Act may apply to proceedings or modifications in which parenting functions for a child are at issue under Chapter 30 or 43.

(2) The Parenting Act does not apply in any action filed by a county attorney or authorized attorney pursuant to his or her duties under section 42-358, 43-512 to 43-512.18, or 43-1392 to 43-1418, the Income Withholding for Child Support Act, the Revised Uniform Reciprocal Enforcement of Support Act before January 1, 1994, or the Uniform Interstate Family Support Act for purposes of the establishment of paternity and the establishment and enforcement of child and medical support. A county attorney or authorized attorney shall not participate in the development of or court review of a parenting plan under the Parenting Act. If both parents are parties to a paternity or support action filed by a county attorney or authorized attorney, the parents may proceed with a parenting plan.

Source:Laws 2007, LB554, § 5; Laws 2008, LB1014, § 57.

Operative Date: April 17, 2008

Cross References

Income Withholding for Child Support Act, see section 43-1701.

Revised Uniform Reciprocal Enforcement of Support Act, see section 42-7,105.

Uniform Interstate Family Support Act, see section 42-701.

Annotations

In a paternity case subject to the Parenting Act where neither party has requested joint custody, if the court determines that joint custody is, or may be, in the best interests of the child, the court shall give the parties notice and an opportunity to be heard by holding an evidentiary hearing on the issue of joint custody. *State ex rel. Amanda M. v. Justin T.*, 279 Neb. 273, 777 N.W.2d 565 (2010).

43-2925. Proceeding in which parenting functions for child are at issue; information provided to parties; filing required.

(1) In any proceeding under Chapter 30 or 43 in which the parenting functions for a child are at issue, except any proceeding under the Revised Uniform Reciprocal Enforcement of Support Act or the Uniform Interstate Family Support Act, subsequent to the initial filing or upon filing of an application for modification of a decree, the parties shall receive from the clerk of the court information regarding the parenting plan, the mediation process, and resource materials, as well

as the availability of mediation through court conciliation programs or approved mediation centers.

(2) In any proceeding under Chapter 42 and the Parenting Act in which the parenting functions for a child are at issue, subsequent to the filing of such proceeding all parties shall receive from the clerk of the court information regarding:

- (a) The litigation process;
- (b) A dissolution or separation process timeline;
- (c) Healthy parenting approaches during and after the proceeding;
- (d) Information on child abuse or neglect, domestic intimate partner abuse, and unresolved parental conflict;
- (e) Mediation, specialized alternative dispute resolution, and other alternative dispute resolution processes available through court conciliation programs and approved mediation centers;
- (f) Resource materials identifying the availability of services for victims of child abuse or neglect and domestic intimate partner abuse; and
- (g) Intervention programs for batterers or abusers.

(3) The clerk of the court and counsel for represented parties shall file documentation of compliance with this section. Development of these informational materials and the implementation of this section shall be accomplished through the State Court Administrator.

Source:Laws 2007, LB554, § 6.

Cross References

Revised Uniform Reciprocal Enforcement of Support Act, see section 42-7,105.

Uniform Interstate Family Support Act, see section 42-701.

43-2926. State Court Administrator; create information sheet; contents; parenting plan mediation; distribution of information sheet.

The State Court Administrator shall create an information sheet for parties in a proceeding in which parenting functions for a child are at issue under the Parenting Act that includes information regarding parenting plans, child custody, parenting time, visitation, and other access and that informs the parties that they are required to attend a basic level parenting education course. The information sheet shall also state (1) that the parties have the right to agree to a parenting plan arrangement, (2) that before July 1, 2010, if they do not agree, they may be required, and on and after July 1, 2010, if they do not agree, they shall be required to participate in parenting plan mediation, and (3) that if mediation does not result in an agreement, the court will be required to create a parenting plan. The information sheet shall also provide information on how to obtain assistance in resolving a custody case, including, but not limited to, information

on finding an attorney, information on accessing court-based self-help services if they are available, information about domestic violence service agencies, information about mediation, and information regarding other sources of assistance in developing a parenting plan. The State Court Administrator shall adopt this information sheet as a statewide form and take reasonable steps to ensure that it is distributed statewide and made available to parties in parenting function matters.

Source:Laws 2007, LB554, § 7.

43-2927. Training; screening guidelines and safety procedures; State Court Administrator's office; duties.

(1) Mediators involved in proceedings under the Parenting Act shall participate in training approved by the State Court Administrator to recognize child abuse or neglect, domestic intimate partner abuse, and unresolved parental conflict and its potential impact upon children and families.

(2) Screening guidelines and safety procedures for cases involving conditions identified in subsection (1) of section 43-2939 shall be devised by the State Court Administrator. Such screening shall be conducted by mediators using State Court Administrator-approved screening tools.

(3) Such screening shall be conducted as a part of the individual initial screening session for each case referred to mediation under the Parenting Act prior to setting the case for mediation to determine whether or not it is appropriate to proceed in mediation or to proceed in a form of specialized alternative dispute resolution.

(4) The State Court Administrator's office, in collaboration with professionals in the fields of domestic abuse services, child and family services, mediation, and law, shall develop and approve curricula for the training required under subsection (1) of this section, as well as develop and approve rules, procedures, and forms for training and screening for child abuse or neglect, domestic intimate partner abuse, and unresolved parental conflict.

Source:Laws 2007, LB554, § 8; Laws 2008, LB1014, § 58.

Operative Date: April 17, 2008

43-2928. Attendance at basic level parenting education course; delay or waiver; second-level parenting education course; State Court Administrator; duties; costs.

(1) The court shall order all parties to a proceeding under the Parenting Act to attend a basic level parenting education course. Participation in the course may be delayed or waived by the court for good cause shown. Failure or refusal by any party to participate in such a course as ordered by the court shall not delay the entry of a final judgment or an order modifying a final judgment in such action by more than six months and shall in no case be punished by incarceration.

(2) The court may order parties under the act to attend a second-level parenting education course subsequent to completion of the basic level course when screening or a factual determination of

child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict has been identified.

(3) The State Court Administrator shall approve all parenting education courses under the act.

(4) The basic level parenting education course pursuant to this section shall be designed to educate the parties about the impact of the pending court action upon the child and appropriate application of parenting functions. The course shall include, but not be limited to, information on the developmental stages of children, adjustment of a child to parental separation, the litigation and court process, alternative dispute resolution, conflict management, stress reduction, guidelines for parenting time, visitation, or other access, provisions for safety and transition plans, and information about parents and children affected by child abuse or neglect, domestic intimate partner abuse, and unresolved parental conflict.

(5) The second-level parenting education course pursuant to this section shall include, but not be limited to, information about development of provisions for safety and transition plans, the potentially harmful impact of domestic intimate partner abuse and unresolved parental conflict on the child, use of effective communication techniques and protocols, resource and referral information for victim and perpetrator services, batterer intervention programs, and referrals for mental health services, substance abuse services, and other community resources.

(6) Each party shall be responsible for the costs, if any, of attending any court-ordered parenting education course. At the request of any party, or based upon screening or recommendation of a mediator, the parties shall be allowed to attend separate courses or to attend the same course at different times, particularly if child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict is or has been present in the relationship or one party has threatened the other party.

Source:Laws 2007, LB554, § 9; Laws 2008, LB1014, § 59.

Operative Date: April 17, 2008

43-2929. Parenting plan; developed; approved by court; contents.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) In the development of a parenting plan, consideration shall be given to the child's age, the child's developmental needs, and the child's perspective, as well as consideration of enhancing

healthy relationships between the child and each party.

Source:Laws 2007, LB554, § 10; Laws 2008, LB1014, § 60; Laws 2011, LB673, § 5.

43-2929.01. Children of military parents; proceeding involving military parent; court; considerations; limitation on certain orders; attorney's fees.

(1) The Legislature finds that for children of military parents it is in the best interests of the child to maintain the parent-child bond during the military parent's mobilization or deployment.

(2) In a custody or parenting time, visitation, or other access proceeding or modification involving a military parent, the court shall consider and provide, if appropriate:

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

(b) Parenting time, visitation, or other access orders that ensure liberal access between the military parent and the child during any military leave of the military parent during a mobilization or deployment of greater than thirty days.

(3) A military parent's military membership, mobilization, deployment, absence, relocation, or failure to comply with custody, parenting time, visitation, or other access orders because of military duty shall not, by itself, be sufficient to justify an order or modification of an order involving custody, parenting time, visitation, or other access.

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

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

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

(c) The court shall not issue a parenting time, visitation, or other access order or modify any previous order that changes parenting time, visitation, or other access as it existed on the day prior to the military parent's unit receiving notice of potential deployment, except that the court may enter a temporary parenting time, visitation, or other access order or modify any such

existing order to permit liberal parenting time, visitation, or other access during any military leave of the military parent.

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

(6) Upon finding an (a) unreasonable failure of a nonmilitary parent to accommodate the military leave schedule of the military parent, (b) unreasonable delay by the nonmilitary parent of custody, child support, parenting time, visitation, or other access proceedings, (c) unreasonable failure of the military parent to notify the nonmilitary parent or court of release from mobilization, or (d) unreasonable failure of the military parent to provide requested documentation, the court may order the offending party to pay any attorney's fees of the other party incurred due to such unreasonable action.

(7) This section does not apply to permanent change of station moves by a military parent.
Source:Laws 2011, LB673, § 4.

43-2930. Child information affidavit; when required; contents; hearing; temporary parenting order; contents; form; temporary support.

(1) Each party to a contested proceeding for a temporary order relating to parenting functions or custody, parenting time, visitation, or other access shall offer a child information affidavit as an exhibit at the hearing before the court. The child information affidavit shall be verified to the extent known or reasonably discoverable by the filing party or parties and may include the following:

(a) The name, address, and length of residence with any adults with whom each child has lived for the preceding twelve months; except that the address shall only include the county and state for a parent who is living in an undisclosed location because of safety concerns;

(b) The performance by each parent or person acting as parent for the preceding twelve months of the parenting functions relating to the daily needs of the child;

(c) A description of the work and child care schedules for the preceding twelve months of any person seeking custody, parenting time, visitation, or other access and any expected changes to these schedules in the near future;

(d) A description of the current proposed work and child care schedules; and

(e) A description of the child's school and extracurricular activities, including who is responsible for transportation of the child.

The child information affidavit may also state any circumstances of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict that are likely to pose a risk to the child and that warrant limitation on the award of temporary custody, parenting time, visitation, or other access to the child pending entry of a permanent parenting plan, including any restraining orders, protection orders, or criminal no-contact orders against either parent or a person acting as a parent by case number and jurisdiction.

(2) After a contested hearing by live testimony or affidavit, the court shall enter a temporary parenting order that includes:

(a) Provision for temporary legal custody;

(b) Provisions for temporary physical custody, which shall include either:

(i) A parenting time, visitation, or other access schedule that designates in which home each child will reside on given days of the year; or

(ii) A formula or method for determining such a schedule in sufficient detail that, if necessary, the schedule can be enforced in subsequent proceedings by the court;

(c) Designation of a temporary residence for the child;

(d) Reference to any existing restraining orders, protection orders, or criminal no-contact orders as well as provisions for safety and a transition plan, consistent with any court's finding of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict in order to provide for the safety of a child and custodial parent necessary for the best interests of the child; and

(e) If appropriate, a requirement that a parent complete a program of intervention for perpetrators of domestic violence, a program for drug or alcohol abuse, or a program designed to correct another factor as a condition of parenting time.

(3) A party may move for an order to show cause, and the court may enter a modified temporary parenting order.

(4) The State Court Administrator's office shall create a form that may be used by the parties to create a child information affidavit setting forth the elements identified in this section.

(5) Provisions for temporary support for the child and other financial matters may be included in the temporary parenting order.

Source:Laws 2007, LB554, § 11; Laws 2008, LB1014, § 61.

Operative Date: April 17, 2008

43-2931. Repealed. Laws 2008, LB 1014, § 81.

43-2932. Parenting plan; limitations to protect child or child's parent from harm; effect of court determination; burden of proof.

(1) When the court is required to develop a parenting plan:

(a) If a preponderance of the evidence demonstrates, the court shall determine whether a parent who would otherwise be allocated custody, parenting time, visitation, or other access to the child under a parenting plan:

(i) Has committed child abuse or neglect;

(ii) Has committed child abandonment under section 28-705;

(iii) Has committed domestic intimate partner abuse; or

(iv) Has interfered persistently with the other parent's access to the child, except in the case of actions taken for the purpose of protecting the safety of the child or the interfering parent or another family member, pending adjudication of the facts underlying that belief; and

(b) If a parent is found to have engaged in any activity specified by subdivision (1)(a) of this section, limits shall be imposed that are reasonably calculated to protect the child or child's parent from harm. The limitations may include, but are not limited to:

(i) An adjustment of the custody of the child, including the allocation of sole legal custody or physical custody to one parent;

(ii) Supervision of the parenting time, visitation, or other access between a parent and the child;

(iii) Exchange of the child between parents through an intermediary or in a protected setting;

(iv) Restraints on the parent from communication with or proximity to the other parent or the child;

(v) A requirement that the parent abstain from possession or consumption of alcohol or nonprescribed drugs while exercising custodial responsibility and in a prescribed period immediately preceding such exercise;

(vi) Denial of overnight physical custodial parenting time;

(vii) Restrictions on the presence of specific persons while the parent is with the child;

(viii) A requirement that the parent post a bond to secure return of the child following a period in which the parent is exercising physical custodial parenting time or to secure other performance required by the court; or

(ix) Any other constraints or conditions deemed necessary to provide for the safety of the child, a child's parent, or any person whose safety immediately affects the child's welfare.

(2) A court determination under this section shall not be considered a report for purposes of inclusion in the central register of child protection cases pursuant to the Child Protection Act.

(3) If a parent is found to have engaged in any activity specified in subsection (1) of this section, the court shall not order legal or physical custody to be given to that parent without making special written findings that the child and other parent can be adequately protected from harm by such limits as it may impose under such subsection. The parent found to have engaged in the behavior specified in subsection (1) of this section has the burden of proving that legal or physical custody, parenting time, visitation, or other access to that parent will not endanger the child or the other parent.

Source:Laws 2007, LB554, § 13; Laws 2008, LB1014, § 62.

Operative Date: April 17, 2008

Cross References

Child Protection Act, see section 28-710.

43-2933. Registered sex offender; other criminal convictions; limitation on or denial of custody or access to child; presumption; modification of previous order.

(1)(a) No person shall be granted custody of, or unsupervised parenting time, visitation, or other access with, a child if the person is required to be registered as a sex offender under the Sex Offender Registration Act for an offense that would make it contrary to the best interests of the child for such access or for an offense in which the victim was a minor or if the person has been convicted under section 28-311, 28-319.01, 28-320, 28-320.01, or 28-320.02, unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record.

(b) No person shall be granted custody of, or unsupervised parenting time, visitation, or other access with, a child if anyone residing in the person's household is required to register as a sex offender under the Sex Offender Registration Act as a result of a felony conviction in which the victim was a minor or for an offense that would make it contrary to the best interests of the child for such access unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record.

(c) The fact that a child is permitted unsupervised contact with a person who is required, as a result of a felony conviction in which the victim was a minor, to be registered as a sex offender under the Sex Offender Registration Act shall be prima facie evidence that the child is at significant risk. When making a determination regarding significant risk to the child, the prima facie evidence shall constitute a presumption affecting the burden of producing evidence. However, this presumption shall not apply if there are factors mitigating against its application, including whether the other party seeking custody, parenting time, visitation, or other access is also required, as the result of a felony conviction in which the victim was a minor, to register as a sex offender under the Sex Offender Registration Act.

(2) No person shall be granted custody, parenting time, visitation, or other access with a child if the person has been convicted under section 28-319 and the child was conceived as a result of that violation.

(3) A change in circumstances relating to subsection (1) or (2) of this section is sufficient grounds for modification of a previous order.

Source:Laws 2007, LB554, § 14.

Cross References

Sex Offender Registration Act, see section 29-4001.

43-2934. Restraining order, protection order, or criminal no-contact order; effect; court findings; court powers and duties.

(1) Whenever custody, parenting time, visitation, or other access is granted to a parent in a case in which domestic intimate partner abuse is alleged and a restraining order, protection order, or criminal no-contact order has been issued, the custody, parenting time, visitation, or other access order shall specify the time, day, place, and manner of transfer of the child for custody, parenting time, visitation, or other access to limit the child's exposure to potential domestic conflict or violence and to ensure the safety of all family members. If the court finds that a party is staying in a place designated as a shelter for victims of domestic abuse or other confidential location, the time, day, place, and manner of transfer of the child for custody, parenting time, visitation, or other access shall be designed to prevent disclosure of the location of the shelter or other confidential location.

(2) When making an order or parenting plan for custody, parenting time, visitation, or other access in a case in which domestic abuse is alleged and a restraining order, protection order, or criminal no-contact order has been issued, the court shall consider whether the best interests of the child, based upon the circumstances of the case, require that any custody, parenting time, visitation, or other access arrangement be limited to situations in which a third person, specified by the court, is present, or whether custody, parenting time, visitation, or other access should be suspended or denied.

(3) When required by the best interests of the child, the court may enter a custody, parenting time, visitation, or other access order that is inconsistent with an existing restraining order, protection order, or criminal no-contact order. However, it may do so only if it has jurisdiction and authority to do so.

(4) If the court lacks jurisdiction or is otherwise unable to modify the restraining order, protection order, or criminal no-contact order, the court shall require that a certified copy of the custody, parenting time, visitation, or other access order be placed in the court file containing the restraining order, protection order, or criminal no-contact order.

Source:Laws 2007, LB554, § 15; Laws 2008, LB1014, § 63.

Operative Date: April 17, 2008

43-2935. Hearing; parenting plan; modification; court powers.

(1) After a hearing on the record, the court shall determine whether the submitted parenting plan meets all of the requirements of the Parenting Act and is in the best interests of the child. If the parenting plan lacks any of the elements required by the act or is not in the child's best interests,

the court shall modify and approve the parenting plan as modified, reject the parenting plan and order the parties to develop a new parenting plan, or reject the parenting plan and create a parenting plan that meets all the required elements and is in the best interests of the child. The court may include in the parenting plan:

(a) A provision for resolution of disputes that arise under the parenting plan, including provisions for suspension of parenting time, visitation, and other access when new findings of child abuse or neglect, domestic intimate partner abuse, criminal activity affecting the best interests of a child, or the violation of a protection order, restraining order, or criminal no-contact order occur, until a modified custody order or parenting plan with provisions for safety or a transition plan, or both, is in place; and

(b) Consequences for failure to follow parenting plan provisions.

(2) A hearing is not required under this section if both parties have waived the requirement for a hearing under section 42-361 or 42-361.01.

Source:Laws 2007, LB554, § 16; Laws 2012, LB899, § 3.

Effective Date: July 19, 2012

43-2936. Request for mediation, specialized alternative dispute resolution, or other alternative dispute resolution process; information provided to parties.

An individual party, a guardian ad litem, or a social service agency may request that a custody, parenting time, visitation, other access, or related matter proceed to mediation, specialized alternative dispute resolution, or other alternative dispute resolution process at any time prior to the filing or after the filing of an action with a court. Upon receipt of such request, each mediator, court conciliation program, or approved mediation center shall provide information about mediation and specialized alternative dispute resolution to each party.

Source:Laws 2007, LB554, § 17; Laws 2008, LB1014, § 64.

Operative Date: April 17, 2008

43-2937. Court referral to mediation or specialized alternative dispute resolution; temporary relief; specialized alternative dispute resolution rule; approval; mandatory court order; when; waiver.

(1) In addition to those cases that are mandatorily referred to mediation or specialized alternative dispute resolution under subsection (3) of this section, a court may, at any time in the proceedings upon its own motion or upon the motion of either party, refer a case to mediation or specialized alternative dispute resolution in order to attempt resolution of any relevant matter.

The court may state a date for the case to return to court, and the court shall not grant an extension of such date except for cause. If the court refers a case to mediation or specialized alternative dispute resolution, the court may, if appropriate, order temporary relief, including necessary support and provision for payment of mediation costs. Court referral shall be to a mediator agreed to by the parties and approved by the court, an approved mediation center, or a court conciliation program. The State Court Administrator's office shall develop a process to approve mediators under the Parenting Act.

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

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

(4) For good cause shown and (a) when both parents agree and such parental agreement is bona fide and not asserted to avoid the purposes of the Parenting Act, or (b) when mediation or specialized alternative dispute resolution is not possible without undue delay or hardship to either parent, the mediation or specialized alternative dispute resolution requirement may be waived by the court. In such a case where waiver of the mediation or specialized alternative dispute resolution is sought, the court shall hold an evidentiary hearing and the burden of proof for the party or parties seeking waiver is by clear and convincing evidence.

Source:Laws 2007, LB554, § 18; Laws 2008, LB1014, § 65; Laws 2010, LB901, § 3.

43-2938. Mediator; qualifications; training; approved specialized mediator; requirements.

(1) A mediator under the Parenting Act may be a court conciliation program counselor, a court conciliation program mediator, an approved mediation center affiliated mediator, or a mediator in private practice.

(2) To qualify as a Parenting Act mediator, a person shall have basic mediation training and family mediation training, approved by the Office of Dispute Resolution, and shall have served as an apprentice to a mediator as defined in section 25-2903. The training shall include, but not be limited to:

(a) Knowledge of the court system and procedures used in contested family matters;

(b) General knowledge of family law, especially regarding custody, parenting time, visitation, and other access, and support, including calculation of child support using the child support guidelines pursuant to section 42-364.16;

(c) Knowledge of other resources in the state to which parties and children can be referred for assistance;

(d) General knowledge of child development, the potential effects of dissolution or parental separation upon children, parents, and extended families, and the psychology of families;

(e) Knowledge of child abuse or neglect and domestic intimate partner abuse and their potential impact upon the safety of family members, including knowledge of provisions for safety, transition plans, domestic intimate partner abuse screening protocols, and mediation safety measures; and

(f) Knowledge in regard to the potential effects of domestic violence on a child; the nature and extent of domestic intimate partner abuse; the social and family dynamics of domestic intimate partner abuse; techniques for identifying and assisting families affected by domestic intimate partner abuse; interviewing, documentation of, and appropriate recommendations for families affected by domestic intimate partner abuse; and availability of community and legal domestic violence resources.

(3) To qualify as an approved specialized mediator for parents involved in high conflict and situations in which abuse is present, the mediator shall apply to an approved mediation center or court conciliation program for consideration to be listed as an approved specialized mediator. The approved mediation center or court conciliation program shall submit its list of approved specialized mediators to the Office of Dispute Resolution on an annual basis. Minimum requirements to be listed as an approved specialized mediator include:

(a) Affiliation with a court conciliation program or an approved mediation center;

(b) Meeting the minimum standards for a Parenting Act mediator under this section;

(c) Meeting additional relevant standards and qualifications as determined by the State Court Administrator; and

(d) Satisfactorily completing an additional minimum twenty-four-hour specialized alternative dispute resolution domestic mediation training course developed by entities providing domestic abuse services and mediation services for children and families and approved by the State Court Administrator. This course shall include advanced education in regard to the potential effects of domestic violence on the child; the nature and extent of domestic intimate partner abuse; the social and family dynamics of domestic intimate partner abuse; techniques for identifying and assisting families affected by domestic intimate partner abuse; and appropriate and safe mediation strategies to assist parties in developing a parenting plan, provisions for safety, and a transition plan, as necessary and relevant.

Source:Laws 2007, LB554, § 19.

43-2939. Parenting Act mediator; duties; conflict of interest; report of child abuse or neglect; termination of mediation.

(1) A Parenting Act mediator, prior to meeting with the parties in an initial mediation session, shall provide an individual initial screening session with each party to assess the presence of child abuse or neglect, unresolved parental conflict, domestic intimate partner abuse, other forms of intimidation or coercion, or a party's inability to negotiate freely and make informed decisions. If any of these conditions exist, the mediator shall not proceed with the mediation session but shall proceed with a specialized alternative dispute resolution process that addresses safety measures for the parties, if the mediator is on the approved specialized list of an approved mediation center or court conciliation program, or shall refer the parties to a mediator who is so qualified. When public records such as current or expired protection orders, criminal domestic violence cases, and child abuse or neglect proceedings are provided to a mediator, such records shall be considered during the individual initial screening session to determine appropriate dispute resolution methods. The mediator has the duty to determine whether to proceed in joint session, individual sessions, or caucus meetings with the parties in order to address safety and freedom to negotiate. In any mediation or specialized alternative dispute resolution, a mediator has the ongoing duty to assess appropriateness of the process and safety of the process upon the parties.

(2) No mediator who represents or has represented one or both of the parties or has had either of the parties as a client as an attorney or a counselor shall mediate the case, unless such services have been provided to both participants and mediation shall not proceed in such cases unless the prior relationship has been disclosed, the role of the mediator has been made distinct from the earlier relationship, and the participants have been given the opportunity to fully choose to proceed. All other potential conflicts of interest shall be disclosed and discussed before the parties decide whether to proceed with that mediator.

(3) No mediator who is also a licensed attorney may, after completion of the mediation process, represent either party in the role of attorney in the same matter through subsequent legal proceedings.

(4) The mediator shall facilitate the mediation process. Prior to the commencement of mediation, the mediator shall notify the parties that, if the mediator has reasonable cause to believe that a child has been subjected to child abuse or neglect or if the mediator observes a child being subjected to conditions or circumstances which reasonably would result in child abuse or neglect, the mediator is obligated under section 28-711 to report such information to the authorized child abuse and neglect reporting agency and shall report such information unless the information has been previously reported. The mediator shall have access to court files for purposes of mediation under the Parenting Act. The mediator shall be impartial and shall use his or her best efforts to effect an agreement or parenting plan as required under the act. The mediator may interview the child if, in the mediator's opinion, such an interview is necessary or appropriate. The parties shall not bring the child to any sessions with the mediator unless specific arrangements have been made with the mediator in advance of the session. The mediator shall assist the parties in assessing their needs and the best interests of the child involved in the proceeding and may include other persons in the mediation process as necessary or appropriate. The mediator shall advise the parties that they should consult with an attorney.

(5) The mediator may terminate mediation if one or more of the following conditions exist:

(a) There is no reasonable possibility that mediation will promote the development of an effective parenting plan;

(b) Allegations are made of direct physical or significant emotional harm to a party or to a child that have not been heard and ruled upon by the court; or

(c) Mediation will otherwise fail to serve the best interests of the child.

(6) Until July 1, 2010, either party may terminate mediation at any point in the process. On and after July 1, 2010, a party may not terminate mediation until after an individual initial screening session and one mediation or specialized alternative dispute resolution session are held. The session after the individual initial screening session shall be an individual specialized alternative dispute resolution session if the screening indicated the existence of any condition specified in subsection (1) of this section.

Source:Laws 2007, LB554, § 20.

43-2940. Mediation; uniform standards of practice; State Court Administrator; duties; mediation conducted in private.

(1) Mediation of cases under the Parenting Act shall be governed by uniform standards of practice adopted by the State Court Administrator. In adopting the standards of practice, the State Court Administrator shall consider standards developed by recognized associations of mediators and attorneys and other relevant standards governing mediation and other dispute resolution processes of proceedings for the determination of parenting plans or dissolution of marriage. The standards of practice shall include, but not be limited to, all of the following:

(a) Provision for the best interests of the child and the safeguarding of the rights of the child in regard to each parent, consistent with the act;

(b) Facilitation of the transition of the family by detailing factors to be considered in decisions concerning the child's future;

(c) The conducting of negotiations in such a way as to address the relationships between the parties, considering safety and the ability to freely negotiate and make decisions; and

(d) Provision for a specialized alternative dispute resolution process in cases where any of the conditions specified in subsection (1) of section 43-2939 exist.

(2) Mediation under the Parenting Act shall be conducted in private.

Source:Laws 2007, LB554, § 21.

43-2941. Mediation subject to other laws; claim of privilege; disclosures authorized.

Mediation of a parenting plan shall be subject to the Uniform Mediation Act and the Dispute Resolution Act, to the extent such acts are not in conflict with the Parenting Act. Unsigned mediated agreements under the Parenting Act are not subject to a claim of privilege under

subdivision (a)(1) of section 25-2935. In addition to disclosures permitted in section 25-2936, a mediator under the Parenting Act may also disclose a party's failure to schedule an individual initial screening session or a mediation session.

Source:Laws 2007, LB554, § 22.

Cross References

Dispute Resolution Act, see section 25-2901.

Uniform Mediation Act, see section 25-2930.

43-2942. Costs.

The costs of the mediation process shall be paid by the parties. If the court orders the parties to mediation, the costs to the parties shall be charged according to a sliding fee scale as established by the State Court Administrator.

Source:Laws 2007, LB554, § 23.

43-2943. Rules; Parenting Act Fund; created; use; investment.

(1) The State Court Administrator may develop rules to implement the Parenting Act.

(2) The Parenting Act Fund is created. The State Court Administrator, through the Office of Dispute Resolution, approved mediation centers, and court conciliation programs, shall use the fund to carry out the Parenting Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source:Laws 2007, LB554, § 24; Laws 2008, LB1014, § 66.

Operative Date: April 17, 2008

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

Appendix C: Instructions for Coding

Instructions Data Extraction Form for Court File Analysis

Guiding Principles

1. **Code all that meet Criteria:** When during the first sequence, the initial Complaint/Petition meets the project's criteria (has children; requests determination for custody, parenting time, visitation, access), this case is coded, no matter what the "final" decree or order is: such as "Dismissed for Lack of Prosecution" "Dismissed by Parties" "Final Decree" "Order" etc.
2. **First Sequence Only; Exception:** With the exception of Question 20 (Case reopened) and Question 21 (Conflict Indicators) all other Coding Sheet questions pertain solely to the activities and filings in the first sequence: between the initial filing of the first Complaint/Petition/Motion and the final order for that first sequence.
 - a. Example: parenting education not ordered until 2nd sequence and did not show up under 1st sequence: this is not coded as "yes" under Question 13: Parenting Education; rather it is "no"
 - b. Example: parents not ordered to mediate during 1st sequence, but were ordered to mediate in a later modification under 2nd sequence; Question 11: Ordered to Mediate? Would be answered "no."

Appendix D: Nebraska Custody Court File Coding Document