

# An Evaluation of Nebraska's Parenting Act

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This evaluation process spanned three years, beginning with production of the Program Evaluation Protocol in April 2012. The individuals listed below may be in different positions and have different titles in 2015; for purposes of this report, however, they are identified by the capacity in which they served at the time of their involvement with the evaluation process.

That process began with the formation of a Parenting Act Evaluation Advisory Panel (see page xi), that assisted with the development of the Program Evaluation Protocol and oversaw the release of *Nebraska's 2002-2012 JUSTICE Court File Custody Research Study* (Nebraska's JUSTICE Custody Study, 2013) written by Dr. Michael Saini in December 2013. A subset of the Parenting Act Evaluation Advisory Panel volunteered to assist with the RFP process, which culminated in the selection of the National Center for State Courts (NCSC) to complete the evaluation process and produce this final evaluation.

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and consideration. As a result of Dr. Saini's study, and in recognition of the NCSC's 18-month comprehensive evaluation of Nebraska's Parenting Act, the Nebraska Supreme Court authorized the creation of the Parenting Act Subcommittee of the Nebraska Supreme Court Commission on Children in the Courts on June 25, 2014. The Parenting Act Subcommittee will participate in the release of the final evaluation report and will be responsible for consideration of report findings and recommendations, as well as for recommending priorities and strategies to the Nebraska Supreme Court through the Commission on Children in the Courts.

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## Executive Summary

The objective and driving force behind Nebraska's initial 1993 Parenting Act (Parenting Act) and its subsequent revisions is to have the best interests of children as the standard by which child custody and parenting conflicts are resolved, placing the children at the center of parental decision-making rather than leaving them caught in the middle of parental disputes. It was premised upon a belief that promoting a legal environment that fostered a child-centered decision-making process in custody and parenting time matters would improve long-term well-being for parents and children by decreasing parental conflict and children's exposure to such conflict, increasing safety for parents and children, and increasing compliance with parenting plans.

Comprehensive revisions were made with the enactment of the 2007 Parenting Act revisions in which the Legislature's findings in Neb. Rev. Stat. § 43-2921 focused upon the best interests of the child as having a "safe, stable, nurturing environment." The Legislature, through the Parenting Act, further found that "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." The findings further included "a heightened standard of the safety and well-being of the child in situations of high conflict, domestic intimate partner abuse." Finally, the Legislature found that 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."

The Parenting Act, which first took effect in 1994, articulated the “best interests of the child” standard as the basis for resolving child custody and parenting time issues and explicitly recognized the importance of maintaining parent-child relationships while at the same time protecting victims of abuse and neglect. It has been amended several times since then, most significantly in 2007. The Parenting Act reflects a public policy focus on reducing the impact of parental conflict upon children in divorce, custody, and parenting time cases. The general intent of the Parenting Act is to create a legal environment that places the child’s best interests at the center of parental and judicial decision-making.

In 2011, the Office of Dispute Resolution (ODR), within the Nebraska Administrative Office of the Courts (AOC), appointed a Parenting Act Evaluation Advisory Panel to develop a plan to empirically evaluate the implementation and impact of the 2007 Parenting Act revisions. The Parenting Act Evaluation Advisory Panel consisted of judges, mediators, family law attorneys, court and AOC staff, researchers, mental health professionals, parenting educators, representatives of children’s advocacy groups, domestic violence agencies, law enforcement, relevant state agencies, and members of the Nebraska Legislature’s Judiciary Committee. The breadth and scope envisioned by the Parenting Act Evaluation Advisory Panel is impressive. An informal survey of the national community of family and conciliation courts indicates that an evaluation of this degree has not been performed by another jurisdiction.

In 2013, the ODR contracted with the National Center for State Courts (NCSC) to conduct a comprehensive, multi-method evaluation of the 2007 Parenting Act revisions by working with

and following the Program Evaluation Protocol developed by the Parenting Act Evaluation Advisory Panel. The scope of the evaluation was agreed upon as follows:

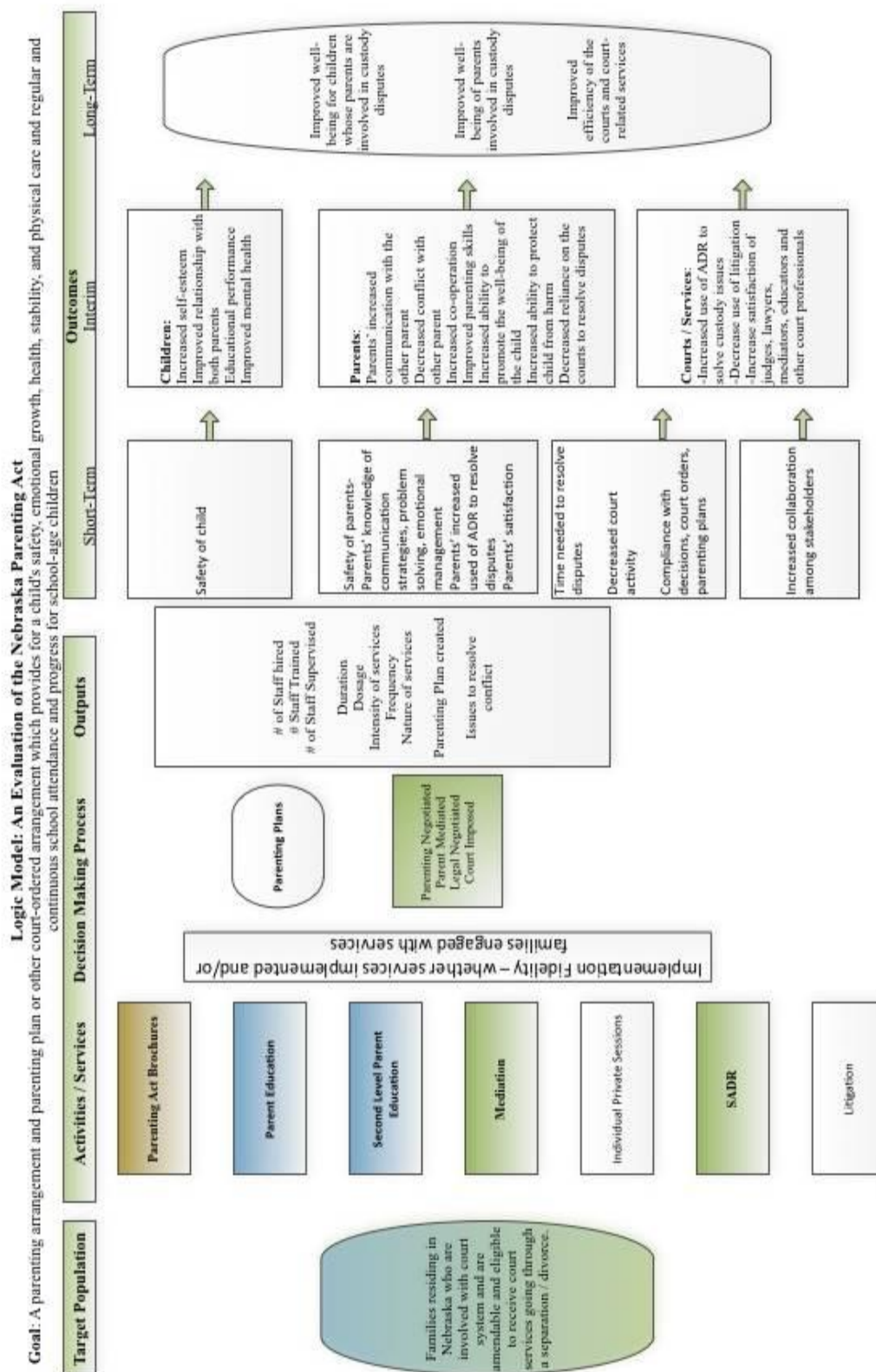
- A. Conduct a process evaluation to assess whether the Parenting Act was implemented in compliance with provisions of the legislation and the intentions of the Parenting Act's designers.
- B. Conduct an outcome evaluation that will evaluate the short-term and interim outcomes of the Parenting Act on targeted cases, and the long-term impact of the Parenting Act on such cases.
- C. Evaluate parenting plans, considering the features of the plans and how well they meet the needs of both children and parents.
- D. Evaluate the Parenting Act Information Brochure to determine quality, utility, effectiveness, and impact of the information provided.
- E. Evaluate parenting education classes in order to assess the effectiveness and impact of the classes.
- F. Evaluate the Temporary Child Information Affidavit.
- G. Evaluate mediation services to examine the effectiveness and impact of mandatory mediation in contested custody cases prior to trial, as well as to examine the available data regarding the effectiveness and impact of mediation on reducing contested custody trials.
- H. Evaluate Specialized Alternative Dispute Resolution services to examine the impact of specialized facilitation, in particular, whether its use serves to mitigate conflict and

increase child-focused communication between parents identified with high conflict and or domestic intimate partner abuse.

- I. Conduct cost efficiency analysis to calculate possible savings by coupling program costs with effectiveness data.
- J. Provide conclusions and recommendations.

The NCSC worked with the Parenting Act Evaluation Advisory Panel and ODR to conduct the evaluation, informed by a well-considered logic model (see Figure 1. Logic Model), identifying potential short-term, interim, and long-term outputs, and outcomes.

Figure 1. Logic Model



The NCSC reviewed case data and case files, conducted interviews of judges and attorneys, and held focus group sessions with parents. The NCSC also attempted to survey parents and children of divorce over 13 years old, but response rates were too low to be helpful for purposes of this evaluation. While unforeseeable limitations on available data limit the conclusions that can be drawn, the NCSC Evaluation Team explored all available data to attempt to answer the key questions of this study. Although a number of important conclusions can be drawn from the project, great caution must be exercised in interpreting some of the elements contained here as additional study is needed. The NCSC presents a summary of findings below as well as recommendations for future study efforts to augment the conclusions presented here.

A. Conduct a process evaluation to assess whether Nebraska's Parenting Act was implemented in compliance with provisions of the legislation and the intentions of Nebraska's Parenting Act's designers.

The NCSC conducted a process evaluation to assess whether the Parenting Act was implemented in compliance with the provisions of the legislation and intentions of the Parenting Act's designers. The primary components of the Parenting Act examined during the course of the evaluation included the Parenting Act Information Brochure; parenting education; the Temporary Child Information Affidavit; mediation, including screening for conflict and Specialized Alternative Dispute Resolution; and the requirement of a parenting plan.

***1) Parenting Act Information Brochure***

The Parenting Act requires the AOC to:

- Develop an information sheet that:
  - Provides information regarding parenting plans, child custody, parenting time, visitation, and other access.
  - Informs the parties that they are required to attend a basic level parenting education course.
  - Includes information on available resources for parents, such as legal self-help services, domestic violence services, and sources for assistance in developing a parenting plan.
- Take reasonable steps to ensure that it is distributed statewide and made available to parties in parenting cases.

The AOC, through the ODR, developed a 16-page Parenting Act Information Brochure (Brochure). The Brochure is intended to provide a general overview of the child custody litigation process. The Brochure lists additional resources such as sources of legal assistance, parenting education providers, and suggested reading for parents and children.

The Brochure complies with the legislation. It includes all content required by statute. The Brochure can be read by most persons involved in parenting cases: its readability was calculated at 8.9, meaning that most parents who have at least some high school education should be able to comprehend the Brochure. The Brochure is available in English and Spanish. The clerks of the court have distributed the Brochure regularly, documenting that in 72% of the cases, both parents received the Brochure.

## **2) *Parenting Education***

The Parenting Act requires attendance at a parenting education class for all parties. The AOC has implemented this provision of the Parenting Act. The ODR created a Parenting Education Policy that specifies learning objectives and course standards. The basic level parenting education course is designed to educate the parties about the impact of the pending court action upon the child and appropriate parenting functions. The courses include 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.

Parenting education providers must demonstrate on an annual basis that their courses meet these objectives in order to receive approval. As of April 2015, a total of 41 in-state organizations were approved to provide basic-level parenting education; 16 of these providers offer on-line courses in addition to in-person sessions, and 19 are approved to provide second-level parenting education.

## **3) *Temporary Child Information Affidavit***

The Parenting Act requires each party seeking a temporary parenting order to provide a Temporary Child Information Affidavit to the court. The Temporary Child Information Affidavit must include information about where the child has lived, how the parents have divided responsibility for the parenting functions, the parents' work and childcare schedules, and the



child's school and extracurricular schedule and transportation. It may also include 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.

This requirement has been implemented. The Temporary Child Information Affidavit form has been developed and is being used. While the NCSC was not able to document whether the Temporary Child Information Affidavit was actually being filed in every case, the NCSC did find "affidavits" in 24% of the case files in which a motion for temporary custody had been filed. However, the NCSC learned that the required information often is contained in other affidavits, and that in some jurisdictions, the Temporary Child Information Affidavit is returned to the attorneys or kept by the judges and not maintained in the court file, and thus not scanned into JUSTICE (the Nebraska Supreme Court's case file data system) or retained in the case files.

#### ***4) Mediation and Specialized Alternative Dispute Resolution***

The Parenting Act requires the court to order mediation if the parents cannot agree on a parenting plan and request a trial on the issue of custody or parenting time. The AOC, through its ODR, and the courts have implemented this provision. The ODR is responsible for approving mediators. In many districts, local rules require the parties to attend mediation before a trial date will be scheduled.

The NCSC could not determine all cases in which a mediator was involved. The information is not required to be collected and therefore it is not consistently contained in the case file. The parties are not required to report to the court whether they attended mediation or whether the

parenting plan was developed through mediation. Mediated parenting plans do not always list the name of the mediator or mediation center involved.

If the initial private screening reveals signs of domestic intimate partner abuse or “unresolved parental conflict” (interpreted in practice as a power imbalance that interferes with the parties’ ability to negotiate freely), the mediator must refer the case to Specialized Alternative Dispute Resolution (SADR). Mediation centers reported that 424 cases were referred to SADR between July 2012 and March 2014. Of the cases referred, 288 (68%) of the cases underwent SADR facilitation. SADR proceeds in separate sessions, as opposed to the joint sessions typically used in standard mediation. Facilitators must receive all of the training required of mediators plus an additional 24 hours of SADR training.

### **5) *Parenting Plan***

The 2007 Parenting Act revisions require a parenting plan approved by the court in any proceeding in which parenting functions for a child are at issue. This provision has been implemented. Case-level data show that a parenting plan was filed in 82% of the cases, either as a separate document or as part of the final decree.

The parenting plan must serve the best interests of the child and must address specific elements. The NCSC found that parenting plans address many of the elements required under the Parenting Act, but do not consistently address all of them. Parenting plans evaluated reflect the following level of compliance to the Parenting Act:

- Legal and physical custody of the child(ren) – 100%.
- The apportionment of parenting time – 89%.
- Location of the child during the week – 87%.
- A transition or transportation plan – 74%.
- Procedures for making decisions regarding day-to-day care and control of the child(ren) – 74%.
- A requirement that the parties notify each other of a change in address – 64%.
- A provision for regular and continuous school attendance and progress – 46%.
- An arrangement to maximize the safety of all the parties and the children(ren) combined with provisions for safety when a preponderance of the evidence establishes child abuse or neglect, domestic intimate partner abuse, unresolved parental conflict or criminal activity that is directly harmful to a child – 22%.

In many courts, it is also standard practice for parenting plans to include language requiring the parents to cooperate, treat each other in a civil manner, and avoid using the children as intermediaries.

- B. Conduct an outcome evaluation that will evaluate the short-term and interim outcomes of Nebraska's Parenting Act on targeted cases, and the long-term impact of Nebraska's Parenting Act on such cases.

**1) *Time to Disposition***

The average time from filing to final order or decree for cases filed after the 2007 Parenting Act revisions is 261 days, as compared with 293 days for cases finalized prior to the 2007 Parenting Act revisions.

**2) *Relitigation***

Relitigation is an important impact measure because it represents multiple, potentially significant post-decree activities within a single case, which can tax judicial resources considerably. The estimated effect of the 2007 Parenting Act revisions on relitigation is not statistically significant.

**3) *Child Well-Being***

Because the NCSC could not access data on child well-being in cases filed prior to implementation of the 2007 Parenting Act revisions and because of the low response rate to the parent and child survey, the NCSC could not draw any conclusions about the 2007 Parenting Act revisions' impact on child well-being.

- C. Evaluate parenting plans, considering the features of the plans and how well they meet the needs of both children and parents.

Of the few parents who responded to a NCSC survey, the vast majority indicated that they always follow their parenting plans closely, and that they can realistically adhere to all of the

requirements of their plans regarding parenting time. More than two-thirds agreed or strongly agreed that the parenting plan is most useful when the parents are unable to find solutions on their own. This finding is consistent with judges', attorneys', and mediators' frequent characterization of the parenting plan as a "safety net" or "fallback position," to be relied upon primarily in case of disagreement between the parents.

Overall, about two-thirds of parents found the parenting plan useful. About half agreed that the plan had improved coordination with the co-parent. Two-thirds did not feel that the plan had improved communication. Parents' opinions about whether the parenting plan had decreased stress were mixed. Some parents in the focus groups valued the clarity of the parenting plan, preferring sufficient specificity to leave no room for interpretation.

#### **D. Evaluate the Parenting Act Information Brochure to determine quality, utility, effectiveness, and impact of the information provided.**

Of the few parents who responded to a NCSC survey, 18% indicated that they had referred back to the Brochure during the litigation process. Some attorneys remarked that they review the Brochure with each client. Most of the parents in the focus groups who received the Brochure remembered it as a source of information on where to find a parenting education class.

In terms of content and readability, distribution, and utility of the information provided, the Brochure appears to provide helpful, readable content in accordance with its purpose.

#### E. Evaluate parenting education classes in order to assess the effectiveness and impact of the classes.

Despite the requirement in the 2007 Parenting Act revisions, not all parties were documented as attending parenting education classes. In post-revision cases, attendance has been documented for both parties in 42% of the cases, and for the plaintiff alone in 23% of the cases, and for the defendant alone in 4% of the cases. In 31% of the cases, no documentation of attendance by either party exists.

The quality of parenting education courses offered in Nebraska appears to be highly variable. More than half (54%) of the parents responding to a NCSC on-line parent survey indicated that they had learned something in parenting education that they had been able to use later, though few of the parent focus group participants affirmatively stated that the parenting education class had been helpful. Several parents thought the material was too basic; some noted that the content did not take into account the varying ages of participants' children.

Attorneys were somewhat skeptical about the usefulness of parenting education, but most conceded that it has potential value for parents. Judges were largely unaware of parenting education's impact on the parties.

#### F. Evaluate the Temporary Child Information Affidavit.

When a motion for a temporary order on custody or parenting time has been filed, the Parenting Act requires each party to file the Temporary Child Information Affidavit. The purpose of the Temporary Child Information Affidavit is to provide the judge facts regarding the pre-separation

allocation of parenting functions, in order to make a best interests decision for the child during the transition period.

A motion for temporary custody was filed in 165 of 261 (63%) of the post-revision cases in the case-level data set. In only 39 (24%) of these cases did one or more Temporary Child Information Affidavits appear in the case file. In some jurisdictions, the Temporary Child Information Affidavit is reportedly not maintained in the court file and thus not scanned into JUSTICE.

Attorneys reported that the process for obtaining a temporary order on custody or parenting time, including the submission of the Temporary Child Information Affidavit and other affidavits, tends to increase conflict between the parties. Specific allegations in the affidavits, along with the confrontational nature of the entire process, can intensify resentment and conflict between the parties and sometimes within the extended family. Such conflict can persist long after the temporary order is entered, negatively impacting negotiation and/or mediation regarding the final parenting plan.

Given the generally uniform concern among stakeholders about the use of the Temporary Child Information Affidavit and other affidavits in determining temporary custody allocations, Nebraska policymakers should carefully consider how the affidavits are used, and whether to continue requiring them.

G. Evaluate mediation services to examine the effectiveness and impact of mandatory mediation in contested custody cases prior to trial, and to examine the available data regarding the effectiveness and impact of mediation on reducing contested custody trials.

Because the case-level data set does not contain complete information on mediation, the NCSC used aggregate data from the regional dispute resolution centers to evaluate the mediation process. Each regional dispute resolution center asks parents to complete a satisfaction survey following mediation. The 1,300 responses were predominantly positive regarding the fairness of the mediation process, the neutrality of the mediator, and overall satisfaction with the mediation process. Of all participants, 74% rated their overall satisfaction level with the mediation process as high or very high; 7% rated their overall satisfaction as low or very low.

A very small number of parents actually responded to an NCSC survey. However, those who did respond were positive in their perception of the value of the process.

H. Evaluate Specialized Alternative Dispute Resolution services to examine the impact of specialized facilitation, in particular, whether its use serves to mitigate conflict and increase child-focused communication between parents.

If the initial private screening reveals signs of domestic intimate partner abuse or “unresolved parental conflict” (interpreted in practice as a power imbalance that interferes with the parties’ ability to negotiate freely), the mediator must refer the case to SADR.



From July 2012 through March 2014, 288 cases underwent SADR facilitation. The overall rate of agreement was lower for SADR (55%) than for standard mediation (60%), and the rate of full agreement was substantially lower—17% for SADR versus 41% for standard mediation.

The 230 responses to the participant satisfaction survey administered by the regional dispute resolution centers were mostly positive. Of all participants, 63% rated their overall satisfaction level with the process as high or very high; 10% rated their overall satisfaction as low or very low.

#### I. Conduct cost efficiency analysis to calculate possible savings by coupling program costs with effectiveness data.

The NCSC sought to conduct a cost-efficiency analysis comparing costs and benefits generated by the statutes and policies that governed Parenting Act cases before implementation of the 2007 Parenting Act revisions to those in place after implementation. Unfortunately the appropriate data were not available to perform this analysis completely; some costs could easily be identified (as seen below) but the data required to estimate in monetary terms the numerous benefits of the program identified in other parts of this evaluation were missing. Thus, a comparison of the benefits and costs was not possible. However, key data elements necessary for future analysis of this type were identified in the process.

##### ***1) Marginal Costs***

**Producing the Brochure.** The state incurs the cost of producing the Brochures provided to parents. In 2014, Brochures were ordered twice, once in March and again in October. At each

time, 5,000 copies were ordered at a price of \$825.00 in March and \$826.82 in October. The marginal cost of producing one brochure in 2014 was about \$0.17. Assuming each case involves two parents, the marginal cost per case is \$0.34.

**Parenting education courses.** The parties, through fees, incurred the primary cost of parent education. The fee for most parents is \$50.00, although due to the availability of sliding fee scales, some parents pay less than \$50.00, reducing the cost in some cases to an amount less than \$100.00 per case.

**Mediation.** Parents pay the fees for mediation, totaling \$300.00 per party or \$600.00 per case, assuming two parties in every case. Some parents pay less as a result of sliding fee scales. Prior to implementation of the 2007 Parenting Act revisions, parties attended mediation in approximately 2.9% of the 347 cases in the database. After implementation, court records indicated that the parties attended mediation in 9.6% of cases.

**Legal representation.** The NCSC could not make a determination of any change in cost of legal representation as a result of changes to the Parenting Act.

## **2) *Marginal Benefits***

**Time spent in court proceedings.** Judges' responses to an NCSC survey indicate that they are spending 1.7 fewer hours per case after passage of the Parenting Act revisions. The decrease in the amount of time spent on court proceedings results in *avoided costs* (or, put another way, *savings*) realized by both the parties to the case and the state as a result of less time spent in court

proceedings on Parenting Act cases. The NCSC was not able to determine the exact value of these savings.

#### **J. Provide conclusions and recommendations.**

In consideration of all of the information gathered and analyzed, it is clear that the 2007 Parenting Act revisions have resulted in processes intended to put children at the center of the decision-making instead of putting them in the middle of parental conflict. These processes seek to mitigate the impact of conflict on children and may save parties and the courts valuable time and financial resources. The degree to which these processes have supported the Parenting Act's goals related to improved parental behavior and less conflict are challenging to measure. The research sought to consider impact on contested trials, disposition rates, post-disposition relitigation, increased safety from domestic violence, reduction in court resources, and improved long-term well-being for both parents and children. While the findings indicate that some benefits have been realized, there are some potential benefits that could not be measured due to a lack of uniform documentation, or in some cases, lack of access to or participation by enough stakeholders to collect sufficient information to render supportable positions. Opportunity lies in considering the various components of the 2007 Parenting Act revisions as implemented to determine which components are rendering benefit and which need to be changed or applied more uniformly statewide in order to better enhance and measure the impact intended. More evaluation and uniform documentation needs to take place in order to more fully document the impact of the provisions.

In consideration of all of the information gathered and analyzed, the NCSC presents this list of recommendations, set forth in greater detail in the body of the report:

***1) Parenting Act Components***

***a. The Parenting Act Information Brochure***

- Encourage court clerks to distribute the Brochure at filing to each party in every divorce, custody, and parenting time-related case and document the same in JUSTICE.
- Review brochure content periodically.

***b. Parenting Education***

- Review the content for both in-person and on-line parenting education classes periodically to provide greater oversight of the quality of the curriculum and format.
- Consider a standard curriculum to address the provisions of the Parenting Act, how to help parties deal with co-parenting under changed or special circumstances including age and development of children, issues of distance, different size communities, or incarceration, to name a few.
- Regularly audit classes to ensure consistency and quality.
- Ensure uniform data entry and documentation confirming compliance with mandatory parenting education as well as waivers of parenting education by court order in JUSTICE.

***c. Temporary Child Information Affidavit***

Submission of the Temporary Child Information Affidavit is required for all custody and parenting time cases in which a temporary order on parenting functions or custody, parenting

time, visitation or other access is requested. Given the generally uniform concern among stakeholders about the use of the Temporary Child Information Affidavit and other such affidavits for temporary custody motions, Nebraska policy makers should consider whether and how to continue requiring their submission for temporary orders. At the very least, a study committee should be formed to explore the findings presented in this report and consider other potential judicial processes when dealing with temporary custody matters.

*d. Mediation*

As the central tenet of the Parenting Act is to establish a plan that focuses on the children's welfare and diminishes conflict, mediation is key to fulfilling the Parenting Act.

- Provide additional mediator training and support statewide, particularly in non-urban areas.
- Highlight and share effective practices statewide.
- Give attorneys and other stakeholders an opportunity through legal education to learn more about mediation generally as well as SADR, and how mediation processes accomplish the spirit of the Parenting Act.
- Provide additional training to mediators in order to increase statewide consistency in conducting IPS, knowledge of family law, understanding of individual circumstances of parents, and understanding of the unique issues that unmarried parents face.
- Develop strategies to better identify the involvement of mediation in the development of a parenting plan.
- Create a separate field in the JUSTICE database for documentation of mediation.

- Create and share clear guidelines for clerks of the court to utilize a mediation field in JUSTICE.
- Implement an improved evaluation system for mediators, perhaps having evaluations submitted through the ODR.
- Strengthen statewide oversight of dispute resolution centers to improve consistency in procedures and practices.
- Encourage greater judicial supervision of the mediation process to the extent that it is ethically permissible to reduce delays and the ability of one parent to manipulate the legal process to their advantage. Some courts have tickler processes for identifying when mediation should have occurred, and if it has not, parties are required to show cause.
- Establish a judicial review committee to consider more uniform procedures for judges to rely upon and enforce when parties refuse to participate in mediation in order to avoid delaying finality.
- Where practicable, ensure that the mediator handling the initial screening is also the ongoing mediator, unless there are caseload deterrents or when screening identifies a need for SADR with a different mediator.
- Develop a mechanism for the mediator to receive a copy of the final decree and parenting plan.

*e. Specialized Alternative Dispute Resolution*

Implementation of SADR has been exemplary in Nebraska.

- Continue recruitment and training for SADR mediators, including screening for the presence of domestic intimate partner abuse and issues of power and control.
- Explore the possibility of having court-based SADR mediators statewide who are affiliated with the mediation centers, but available on-site, as Douglas County has implemented.

*f. Parenting Plan*

Regular review and training of attorneys, mediators, and judges on the required elements of a parenting plan should increase compliance with these provisions of the Parenting Act. There should be uniformity in policies and procedures for filing parenting plan documents, coding them in JUSTICE, and ultimately being able to track the presence of a parenting plan in each case.

**2) *Recommendations for Family Law Practitioners***

- Provide education opportunities for family law practitioners to recognize and understand the impact of child abuse or neglect, domestic intimate partner abuse, and unresolved parental conflict to guide their work with families on parenting plans and allocation of custody and parenting time.
- Provide a screening tool for attorneys representing a party or child to screen for domestic intimate partner abuse.
- Establish more uniform statewide policies regarding application of the use of the Temporary Child Information Affidavit, mediation, and SADR.

### **3) Court Operations and Data Management**

While the findings of this evaluation were challenged in several areas due to data limitations or lack of uniformity of data collection, a baseline has now been drawn and important lessons learned can be utilized in making future improvements. The following recommendations will ensure that the Parenting Act continues to evolve to better meet the needs of the children it was designed to serve:

- Regular collection of process and impact evaluation data would enable the Office of Dispute Resolution to measure and adjust procedural changes more regularly.
- Adding several fields to the JUSTICE database and improving consistent use of other fields will be important for ongoing analysis. These fields should enable easier documentation of:
  - Parenting plan.
  - Mediation.
  - Brochure notification.
  - Parenting education completion or waiver.
  - Temporary custody orders.
  - Contested custody or parenting time trials.
  - Appointment of a guardian ad litem.
  - Child support calculations.
- Take steps to collect data that would enable more precise cost and benefit estimates to be established for future consideration.



- Provide ongoing education for district court judges regarding signs of child abuse or neglect, domestic intimate partner abuse, and unresolved parental conflict and how to tailor parenting plans accordingly.
- Establish uniform statewide policies and application of the use of the Temporary Child Information Affidavit, mediation, and SADR as well as training for district court judges to help them consider which parties would most benefit from tools such as the Temporary Child Information Affidavit, mediation, and SADR.
- Consider the development of a differentiated case management or triage approach in custody, parenting, and family cases.

#### ***4) Cost and Benefit Considerations***

- Modify current data systems and consider new mechanisms to measure the benefits of the 2007 Parenting Act revisions.
- Add new fields to JUSTICE to provide more uniform and consistent data recording to enable future researchers to better quantify changes in the number of custody and parenting time trials and modification actions.

#### ***5) Differentiated Case Management or Triage Approach***

- Examine the use of a differentiated case management or triage approach for custody, parenting time and family cases.
- Review differentiated case management approaches in other jurisdictions and consider what elements could be beneficial in Nebraska.

While the Parenting Act may continue to be an active topic for discussion, it is significant and beneficial that parenting time matters are in the public eye. The Parenting Act, its requirements, and its unequivocal focus on the best interests of the child are known, implemented, and very much the focus of attention by judicial officers, attorneys, and the community at large. From a procedural standpoint, stakeholders expressed hope for the increased use of formal mediation processes, greater consistency between judicial districts and professionals, and more education for attorneys and parties regarding the Parenting Act, its benefits, and how the spirit of the Parenting Act can truly be met. Nebraska is encouraged to consider a differentiated family case management or triage approach for custody, parenting, and family cases, which is being used effectively in domestic relations dockets in a number of jurisdictions. The NCSC expresses its appreciation for being able to participate in among the first studies of a tremendously important area. If the past is any indication, additional improvements are in store for Nebraska that will ensure that children are placed even more at the center of decision-making in domestic relations matters.

## Part 1: Background and Objectives

To mitigate the impact of parental conflict on the children of divorcing and separating parents, the Nebraska Legislature enacted the first version of Nebraska's Parenting Act (Parenting Act) in 1993. In 2007, the Parenting Act underwent substantial revisions to strengthen the "best interests of the child" standard, require parenting plans, mandate basic parenting education, expand the use of mediation, incorporate additional protections for parents and children in high-conflict and domestic intimate partner abuse cases, and standardize procedures, requirements, and information in custody and parenting time cases.

The dissolution of a family unit represents a significant transition in the lives of both parents and children. Parents must determine how to share parenting time, parenting functions, and decision-making responsibilities, as well as how to maintain open lines of communication. When parents are able to make these decisions and adjust to these new realities in a way that insulates their children from conflict, children are often able to adapt to their new family situations in a healthy way. For 10% to 15% of families, however, a high level of parental conflict persists for years after separation, subjecting the children to an increased risk of long-term maladjustment (Saini and Birnbaum 2007).

In 2011, the Office of Dispute Resolution (ODR) within the Nebraska Administrative Office of the Courts (AOC) appointed a Parenting Act Evaluation Advisory Panel (Evaluation Advisory Panel) to develop a plan for empirically evaluating the implementation and impact of the 2007 Parenting Act revisions. The Evaluation Advisory Panel consisted of judges, AOC staff, mediators, family law attorneys, court staff, researchers, mental health professionals, parent

educators, representatives of children's advocacy groups, domestic violence agencies, law enforcement, relevant state agencies, and members of the Judiciary Committee of the Nebraska Legislature. After reviewing the relevant literature, the Evaluation Advisory Panel, working with evaluation consultant Dr. Michael Saini, formulated the Program Evaluation Protocol (Evaluation Protocol) to guide the evaluation.

The Evaluation Advisory Panel identified five key questions to be addressed in the evaluation:

1. **Relevance:** Is the Parenting Act relevant to the operation of the justice system in Nebraska?
2. **Program Implementation:** How have the 2007 Parenting Act revisions been implemented with reference to the original objectives and design?
3. **Costs and Productivity:** What are the costs of delivering the services directed within the Parenting Act?
4. **Program Administration and Operation:** Are the services as directed by the Parenting Act administered and operated satisfactorily from the viewpoint of clients and stakeholders?
5. **Impact:** What impact has the Parenting Act had on the families, legal and physical custody decisions, parenting time, courts, and stakeholders engaged in parenting matters in Nebraska?

The Evaluation Protocol also specifies a number of more detailed questions to be answered during the course of the evaluation, and suggests data sources and methods through which these questions may be answered.

In 2013, the ODR contracted with the National Center for State Courts to implement the Evaluation Protocol through a comprehensive, multi-method evaluation of the 2007 Parenting Act revisions. This evaluation consists of three components:

1. A **process evaluation** that examines the implementation and outputs of the Parenting Act as revised in 2007. The process evaluation answers the questions of whether the statutory changes have been implemented according to their design and whether such changes are being operated and administered in a satisfactory manner from the perspective of families involved in custody litigation and justice system stakeholders.
2. An **impact evaluation** that examines the short-term and long-term outcomes of Parenting Act requirements as revised in 2007. These impacts include time to disposition and the rate of relitigation of custody matters.
3. A **cost and benefit analysis** that compares the costs to taxpayers and litigants of the services provided under the Parenting Act with the monetary value of some of the Parenting Act's benefits as identified during the impact evaluation.

The evaluation draws on numerous sources of qualitative and quantitative data, including interviews, focus groups, surveys, observations, program documents, court case files, and mediation center statistics. The evaluation's final conclusions and recommendations address the

question of the Parenting Act's relevance to justice for children and parents involved in domestic relations matters as well as the complexities involved in evaluating the environment of families going through separation processes.

The remainder of this chapter summarizes the legislative history and provisions of the Parenting Act, describes the specific objectives of the Parenting Act and the mechanisms through which the Parenting Act seeks to achieve those objectives, reviews the relevant literature, and provides an overview of the goals of the evaluation. Part 2: Evaluation Data and Methods describes in detail the data sources and research design for the evaluation. Part 3: Process Evaluation examines whether the Parenting Act was implemented in accordance with its design. Part 4: Impact Evaluation explores the Parenting Act's impact on case outcomes, trial rates, time to disposition, relitigation, and child well-being. Part 5: Cost and Benefit Considerations investigates the Parenting Act's cost and benefit to the State of Nebraska and the parties involved in a custody and parenting time case. Part 6: Conclusions and Recommendations summarizes the evaluation's primary findings and provides recommendations for more effectively implementing the intent of the Parenting Act into the future.

#### **A. History of Nebraska's Parenting Act**

Reducing the impact of parental conflict upon children in divorce, custody, and parenting time cases has been a focus of public policy in Nebraska for more than two decades. In 1991, members of the Nebraska State Bar Association and Voices for Children in Nebraska, a child advocacy organization, began calling for changes to Nebraska's dissolution statutes. In that same year, the Legislature unanimously enacted the Dispute Resolution Act, which created the ODR

within the judicial branch. The ODR's responsibilities included establishing nonprofit regional dispute centers throughout the state, as well as overseeing training, certification, and ethical standards for mediators. The Dispute Resolution Act also established a uniform definition of mediation and explicitly identified divorce and custody disputes as amenable to mediation (Nebraska's 2002-2012 JUSTICE Court File Custody Research Study, 2013 [Nebraska's JUSTICE Custody Study, 2013], 13).

### ***1) Original Parenting Act***

In 1993, the Nebraska Legislature enacted the original version of the Parenting Act, which had been drafted by a coalition that included parents, attorneys, judges, advocates against domestic violence, and mental health professionals, and introduced by Senator Brad Ashford as LB629 in 1992 (Nebraska's JUSTICE Custody Study, 2013, 14). The Parenting Act was enacted in 1993 and took effect in 1994. It strengthened the "best interests of the child" standard as the basis for resolving child custody and parenting time issues and explicitly recognized the importance of maintaining parent-child relationships while at the same time protecting victims of abuse and neglect. The original Parenting Act defined the concept of a parenting plan and encouraged, but did not require, parents to create parenting plans. The Parenting Act also required trial courts to provide all divorcing parents with information about the effects of divorce on children, available resources for divorcing families, and the availability of mediation services to assist parents in developing parenting plans (Nebraska's JUSTICE Custody Study, 2013, 14). The 1993 Parenting Act encouraged the voluntary use of mediation to help create parenting plans, but did not require mediation. Furthermore, it prohibited mediation in dissolution cases involving domestic violence.

## **2) 1998 Amendment - Parenting Education Requirement**

In 1998, LB777 amended the Parenting Act to encourage individual trial courts to locally mandate parenting education classes for parents involved in custody disputes. These courses were designed to educate parents about the negative effects of parental conflict on children and to provide them with strategies for minimizing their children's exposure to conflict. Because of concerns about the availability of parenting education courses throughout the state, especially in rural areas, the new statutory provision did not require courts to mandate parenting education in all cases (Nebraska's JUSTICE Custody Study, 2013, 14).

## **3) 2007 Revisions**

In 2006, Voices for Children in Nebraska asked the ODR to convene a coalition of child advocates, attorneys, parenting educators, family mediators, and advocates against domestic violence to construct a proposal to strengthen the Parenting Act. The group began by reviewing existing research on divorce, custody, parenting, mediation, domestic abuse, and child abuse. The coalition's proposal was designed to strengthen the "best interests of the child" standard, increase certainty about parenting time and responsibilities, expand the use of mediation and parenting education, promote safety for victims of domestic intimate partner abuse, and allow for the use of specialized mediation in cases involving domestic intimate partner abuse (Nebraska's JUSTICE Custody Study, 2013, 14-15).

The proposal was based in part on local court rules previously established in Douglas County mandating parenting education in every case. It was also heavily influenced by the Douglas County District Court Conciliation and Mediation Office's work in developing mediation



techniques designed to ensure safety and neutralize power imbalances in high-conflict cases, including those involving domestic abuse. At the same time, Speaker of the Legislature Mike Flood called for a legislative study on insulating children from adult conflicts such as custody litigation and drafted his own legislative proposal to expand the use of mediation in custody cases. Senator Flood's proposal was merged with the coalition's proposal to become LB554, which was enacted in 2007 (Nebraska's JUSTICE Custody Study, 2013, 15).

In the enactment of the 2007 Parenting Act revisions, the Legislature's findings focused upon the best interests of the child to have a "safe, stable and nurturing environment." It further found that "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." The findings further included "a heightened standard of the safety and well-being of the child in situations of high conflict, domestic intimate partner abuse." Finally, the Legislature found that 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."<sup>1</sup>

The Legislative findings for the 2007 Parenting Act revisions also included the following additional provisions regarding the best interests and safety of children:

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

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<sup>1</sup> Neb. Rev. Stat. § 43-2921.

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.<sup>2</sup>

In order to carry out its findings, the Legislature's 2007 Parenting Act revisions included the following components. (Those marked with an asterisk (\*) were repealed in conjunction with additional revisions that took place in 2008.)

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<sup>2</sup> Ibid.

- New and revised definitions of terms.
- Expansion and further definition of the “best interests of the child” standard.
- Expanded definition and description of informational materials that must be provided to all parents involved in custody disputes, along with a requirement that the clerk of the court and counsel for both parties document that these materials have been provided.
- Mandatory basic parenting education for all parents involved in custody disputes, unless waived by the trial judge.
- The creation of a second level of parenting education for high-conflict cases.
- A requirement that the Temporary Child Information Affidavit be filed and served by every party seeking a temporary or final order\* relating to parenting functions, custody, parenting time, visitation, or other access to a child.
- A requirement that a parenting plan covering legal custody, apportionment of parenting time, allocation of responsibility for specific parenting functions, specifics of parental communication and child transitions, and any necessary provisions for ensuring the safety of parents and children, be developed by the parties or the judge in every case involving issues of child custody, child support, or parenting time.
- Special provisions regarding parenting time, visitation, or access to the child under the parenting plan for parents who are registered sex offenders, who have committed child abuse, child neglect, child abandonment, or domestic intimate partner abuse, or have persistently interfered with the other parent’s access to the child.
- A requirement that the parenting plan be accompanied by a financial plan\* including apportionment of expenses such as medical care, child care, education, and extracurricular activities.

- The establishment of Specialized Alternative Dispute Resolution (SADR) for use in high-conflict cases, including those involving domestic intimate partner abuse.
- Screening for issues of conflict and domestic intimate partner abuse by attorneys\* and at the outset of the mediation process.
- Mandatory training related to screening for issues of conflict and domestic intimate partner abuse for judges\*, attorneys\*, court-appointed attorneys and guardians\*, and mediators involved in custody and parenting time cases.
- Expanded training and credentialing requirements for mediators conducting standard and SADR in custody and parenting time cases.
- Mandatory mediation before trial in contested custody cases.

#### **4) 2008 Revisions**

In 2008, the Legislature made further revisions to the Parenting Act through introduction of LB1085, which was amended onto LB1014 along with several other bills and passed. The LB1014 amendments were brought by a group of family law attorneys who questioned the Legislature's power to mandate specific educational requirements for lawyers and judges (Nebraska's JUSTICE Custody Study, 2013, 15-16).

The 2008 revisions in summary:

- Changed the definition of a mediator to conform with Neb. Rev. Stat. § 43-2938 for training and credentialing purposes.

- Added regular and continuous school attendance and progress for school-age children to the best interests requirements as well as the provisions in a parenting plan.
- Eliminated training requirements for judges, attorneys, and court-appointed attorneys and guardians to recognize child abuse or neglect, domestic intimate partner abuse, and unresolved parental conflict and its potential impact upon children and families.
- Eliminated the responsibility for each attorney representing a party or child under the Parenting Act to screen for domestic intimate partner abuse.
- Removed the provision allowing the court to order a child of parties to attend a child of divorce education course.
- Removed the requirement that a parenting plan be accompanied by a financial plan providing for apportionment of medical, day care, education and extracurricular expenses and therefore, removing that from consideration when applying for child support or modifications.
- Removed the requirement for the Child Information Affidavit when filing for a final judicial allocation of parenting functions.

### ***5) 2010-2013 Revisions***

In 2010, the Parenting Act was again amended through passage of LB901 to permit the trial judge to waive mediation based upon evidentiary findings that mediation is not possible without undue hardship or delay (Nebraska's JUSTICE Custody Study, 2013, 16). In 2011, the Legislature enacted LB673 to facilitate the preservation of the parent-child relationship during the deployment of a military parent, and in 2013 a small technical change was made to the Temporary Child Information Affidavit section with passage of LB561.

## B. Goals of Nebraska's Parenting Act

The ultimate goal of the Parenting Act is to improve the well-being of both parents and children involved in divorce, custody and parenting time cases. The target population includes both divorcing and never-married parents. The spirit of the Parenting Act could be characterized as creating a legal environment that places the child's best interests at the center of parental and judicial decision-making. Utilizing parenting education, mediation, and the Parenting Act Information Brochure, the Parenting Act strives to educate parents about the negative effects of exposure to conflict on children. The Parenting Act then provides parents with strategies for healthy communication with the child and former partners, aiming to change parents' behavior both during and after a divorce or separation, reducing their child's exposure to conflict.

The use of mediation to facilitate voluntary agreement on issues of child custody and parenting time is also intended to reduce conflict, increase communication between parents, encourage cooperation between the parents, and establish parenting plans that are responsive to the unique needs of the child and family. The expanded use of mediation is expected to increase the rate of voluntary agreement, thereby reducing the frequency of contested custody trials. Increased information about the court process provided through parenting education, the Parenting Act Information Brochure, and mediation is also expected to decrease time to disposition for cases involving issues of child custody and parenting time. Detailed parenting plans are designed to reduce conflict and facilitate communication and cooperation between parents. Voluntary agreement on child custody and parenting time issues, a decrease in parental conflict, and robust parenting plans that provide parents with clear guidance as their child's needs evolve over time,

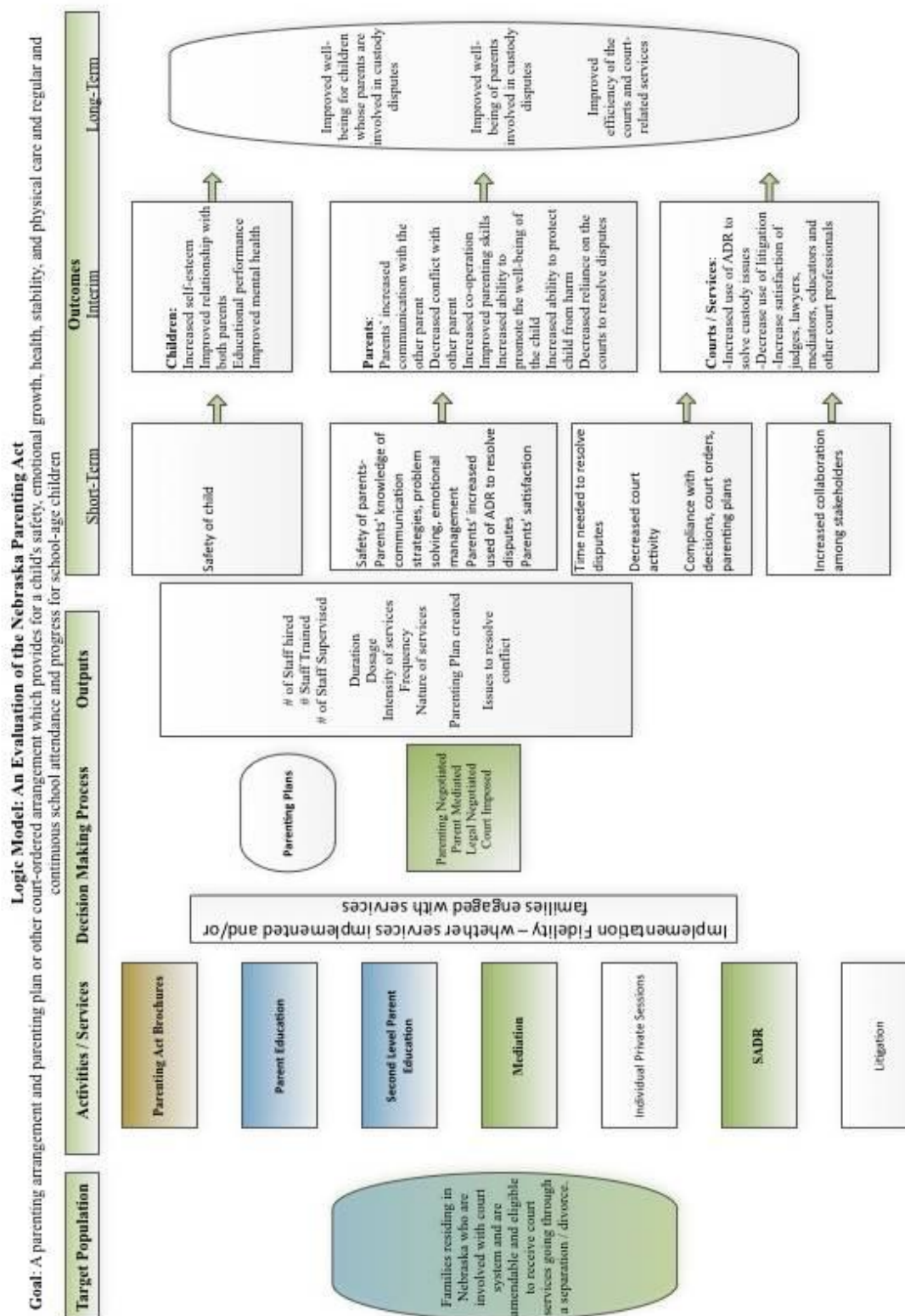
are also expected to increase compliance with parenting plans and reduce the rate of post-disposition relitigation of custody issues.

Several provisions of the Parenting Act are designed to increase safety for parents and children in high-conflict cases, such as those involving domestic abuse. Individual private screening and SADR are intended to provide high-conflict parents with the opportunity to participate safely in mediation. The requirement for safety provisions in the parenting plan, such as procedures for the safe exchange of children and safe communication between parents, is also designed to promote the safety of both parents and children.

By decreasing parental conflict and children's exposure to such conflict, increasing safety for both parents and children, and increasing compliance with parenting plans, the Parenting Act ultimately aims to improve long-term well-being for both parents and children. Other intended benefits of the Parenting Act include a reduction in the amount of court resources devoted to resolving contested custody issues, along with an increase in satisfaction for all participants in the child custody and parenting time dispute resolution process, including parents, judges, attorneys, mediators, educators, and court staff.

Figure 2. Logic Model shows the Parenting Act Logic Model developed by the Evaluation Advisory Panel. The Parenting Act Logic Model provides a graphic illustration of the various provisions of the Parenting Act, the desired outcomes, and the mechanisms through which the Parenting Act is predicted to achieve those outcomes.

Figure 2. Logic Model





### C. Provisions of Nebraska's Parenting Act to Be Evaluated

The Parenting Act is complex in that it imposes a number of separate requirements in cases involving the custody of minor children. The primary components of the Parenting Act to be examined during the course of the evaluation include the Parenting Act Information Brochure; parenting education; the Temporary Child Information Affidavit; mediation, including screening for conflict and SADR; and the requirement of a parenting plan.

#### ***1) The Parenting Act Information Brochure***

Under Neb. Rev. Stat. § 43-2926, “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.” This “information sheet” has come to be known as the Parenting Act Information Brochure. Produced by the ODR and distributed through clerks of the court offices, private attorneys, and the regional dispute resolution centers, the Parenting Act Information Brochure includes information about mediation, how to obtain assistance in resolving a custody case, available court-based self-help services, domestic violence service agencies, and other sources of assistance in developing a parenting plan.

#### ***2) Parenting Education***

Under Neb. Rev. Stat. § 43-2928, attendance at a parenting education class is required for all parties to a proceeding under the Parenting Act (including modifications). Learning objectives and course standards are specified in a Parenting Education Policy developed by the AOC, and

parenting education providers must attest on an annual basis that their courses meet these objectives to receive approval. Participation in the class may be delayed or waived by the court for good cause. Courses are offered by a variety of providers, including the regional dispute resolution centers, the University of Nebraska—Lincoln Extension, and commercial providers, in both in-person and on-line formats. The duration of the class is approximately two hours.

The basic level parenting education course is designed to educate the parties about the impact of the pending court action upon the child and appropriate application of parenting functions. The courses include 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. In high-conflict cases, the court may order the parties to attend a second-level parenting education course pursuant to this section that covers topics such as the 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. Each party is responsible for the costs of attending court-ordered parenting education, although some providers offer an income-based sliding fee scale.

### **3) *The Temporary Child Information Affidavit***

Under Neb. Rev. Stat. § 43-2930, “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 verified child information affidavit before the court.” The Temporary Child Information Affidavit is to include information about where the child has lived for the preceding 12 months (unless safety concerns exist), how the parents have divided responsibility for the parenting functions relating to the daily needs of the child in the past 12 months, the parents’ work and child care schedules, and the child’s school and extracurricular schedule and transportation. The Temporary 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.” The Temporary Child Information Affidavit is intended to assist the court in crafting a temporary order that will preserve as closely as possible the division of parental responsibilities that existed prior to the separation, maintaining stability for the child during the transitional period.

### **4) *Mediation and Specialized Alternative Dispute Resolution***

Mediation is a central component of the Parenting Act as revised in 2007. Neb. Rev. Stat. § 43-2936 requires the court to order mediation if the parents cannot agree on a parenting plan and request a trial on the issue of custody or parenting time. Parents may also participate in mediation on a voluntary basis.

Under Neb. Rev. Stat. § 43-2938, the ODR is responsible for the approval of Parenting Act mediators. A mediator under the Parenting Act may be a court conciliation program counselor or

mediator, a mediator affiliated with a regional dispute resolution center, or a mediator in private practice. Parenting Act mediators must undergo basic mediation training and family mediation training approved by the ODR. The training provides mediators with a general knowledge of family law, especially regarding custody, parenting time, visitation, and calculation of child support using the child support guidelines. It also covers child abuse and neglect, and domestic intimate partner abuse and their potential impact upon the safety of family members, including provisions for safety, transition plans, domestic intimate partner abuse screening protocols, and mediation safety measures. Following training, each new mediator must complete a number of mediations supervised by a qualified mediator.

The first step in the mediation process is an individual private screening with an approved parenting mediator, either in-person or by telephone, to determine whether the case is a high-conflict one involving power and control dynamics or issues of domestic intimate partner abuse that require the application of SADR processes. If the case does not involve such issues, mediation proceeds in a traditional face-to-face setting. In certain high-conflict and domestic abuse cases, SADR is used to provide for the safety of the parties and to help mitigate power imbalances. Providers of SADR must complete extensive training and meet additional certification requirements. During SADR, the mediator meets with the parties in separate rooms or on separate days.

The parties are not required to participate in mediation if they are able to craft a parenting plan on their own or by negotiating through their attorneys. Based on an evidentiary finding, the judge may also find that mediation is not possible without undue hardship or delay and waive the

mediation requirement. The parties are responsible for the costs of mediation, although an income-based sliding fee scale, including waiver of fees, is available through the regional dispute resolution centers.

### **5) *The Parenting Plan***

Under Neb. Rev. Stat. § 43-2929, “in any proceeding in which parenting functions for a child are at issue, a parenting plan shall be developed and shall be approved by the court.” The parents may develop a parenting plan on their own, by negotiating through their attorneys, or through mediation. If the parents cannot develop their own plan and mediation fails to produce a plan, the court must create a parenting plan following a trial. The parenting plan must serve the best interests of the child and must address the following issues:

- Legal custody and physical custody of each child.
- 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.
- Location of the child during the week, weekend, and given days during the year.
- 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.

- 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.
- Provisions for a remediation process regarding future modifications to such plan.
- Arrangements to maximize the safety of all parties and the child.
- Provisions to ensure regular and continuous school attendance and progress for school-age children of the parties.
- 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.
- Requirement 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.

#### **D. Literature Review**

The research literature provides evidence that exposure to parental conflict in the context of divorce is associated with decreased child well-being, and that parenting education and mediation can have a positive outcome on divorce, custody, and parenting time cases.

##### ***1) Effects of Divorce and Parental Conflict on Children***

Over the past few decades, much research has been conducted to assess the effects of marital conflict, divorce, and post-divorce conflict on children. Historically, research found that children of divorce experienced more psychological, social, and behavioral difficulties than those of non-

divorced parents (Amato and Keith 1991). Yet conflict, whether in divorced or still-married families, was also found to be an important predictor of child functioning (Amato and Keith 1991; APA 2004; Ayoub, Deutsch, and Maraganore 1999). In fact, recent literature suggests that the differences in outcomes and adjustment in children of divorced parents compared to those of intact families are less pronounced than previously believed, and that the level of conflict in marriage or divorce is a more important predictor of negative child outcomes than whether the parents remain married (APA 2004; Amato 1993; Ayoub, Deutsch, and Maraganore 1999). According to the American Psychological Association (APA)'s review of the literature, "children in high-conflict marriages are more likely to experience behavioral and academic problems including, but not limited to, disobedience, aggression, delinquency, poor self-esteem, antisocial behaviors, and depression (APA 2004, 1)." Similarly, research shows that children who are involved in high-conflict divorce or custody battles suffer significant negative emotional consequences (Ayoub, Deutsch, and Maraganore 1999). Other studies have found that children in low-conflict divorced families have fewer emotional and behavioral problems than those in families with a high level of conflict (APA 2004).

It appears that the way in which parents resolve their conflicts can impact outcomes for their children; for example, the incidence of poor emotional functioning in children is reduced when parents use compromise and negotiation instead of verbal attacks. Some recent research has found that certain buffers can mediate the effects of high conflict on children, both in married families and post-divorce. These buffers include a good relationship with one parent or caregiver, sibling and peer support, and parental warmth (APA 2004). Further, the APA summarizes recent literature to suggest that parents who provide emotional support, monitor

their children's activities, and discipline authoritatively can contribute to healthier adjustment for their children after divorce. Custody arrangements, low parental conflict, and access to the non-residential parent are other factors that can have a positive influence on children (APA 2004).

## **2) *Parenting Education***

Court-affiliated parenting education courses are widely used as part of the divorce, custody, and parenting time process, with the first implementations occurring in the 1970s (Bacon 2004) and major growth taking place in the 1990s (Geasler and Blaisure 1998). A 1998 study reported that 46 states had implemented some type of parent education program (Pollet and Lombreglia 1998). The overall intent of these programs is to provide a preventative approach to failed parenting agreements and court orders through parental education that reduces conflict between parents and helps children (Thoennes and Pearson 1999).

The specific goals of parenting education courses most often include increased parental awareness of children's trauma that results from divorce or separation, increased parental knowledge of their children's needs, reduced conflict between parents, improved parental problem-solving skills, and ultimately, decreased relitigation (Artouthnot and Gordon 1996; Bacon 2004; Pedro-Carroll et al. 2001; Geasler and Blaisure 1999; Sigal et al. 2011).

Topics commonly covered in parenting education classes:

- Parent and child reactions post-divorce.
- Physical and emotional needs of children at various developmental stages.



- Parental rights and responsibilities.
- Effects of parental cooperation versus parental conflict on children.
- Co-parenting plans.
- Child support guidelines.
- Dispute resolution options.
- Communication and conflict management skills.
- Family violence issues (Bacon 2004; Geasler and Blaisure 1999).

Very few parent education programs cover the legal aspects of divorce (Braver et al. 1996).

While most parenting education programs seek to accomplish similar goals, they are implemented in a variety of ways. Oregon's Guide for Developing a Parent/Divorce Education Program includes several key components for developing and implementing a program, aspects of which vary greatly across jurisdictions and states. These include:

- Mandatory or voluntary participation.
- Curriculum (court developed, local provider developed, standardized, varied, interactive, skills-based, lecture, on-line or in-person).
- Parent educators (who will teach the courses—court staff, private, or non-profit staff).
- Program management (court managed or contracted out).
- Program features (size, location, length, cost, funding).
- Domestic violence issues (how domestic intimate partner abuse is incorporated into the curriculum).

- Cultural sensitivity (language availability, access to classes).
- Program evaluation (pre/post assessment, customer satisfaction, outcome evaluation, follow-up study, relitigation rates) (Oregon Judicial Department 1999).

Several studies have examined the characteristics of parenting education programs, their implementations, and how well they met the intended goals. Most of the studies focus on user satisfaction and generally have found that participants had a positive experience with parent education, valued the program, and felt that they learned useful parenting and communication skills (Arbuthnot and Gordon 1996; Bacon 2004; Pedro-Carroll et al. 2001). Participants valued a more interactive, participatory, and skills-oriented style of class (Arbuthnot et al. 1997). Additionally, many participants felt that attendance should be mandatory for parenting education programs (Thoennes and Pearson 1999; Bacon 2004).

Some researchers have also conducted follow-ups with participants to measure how they were using or planned to use the information provided in the parenting education class. Findings from these studies include self-reports that participants were dealing better with their own feelings and reactions as well as dealing more effectively with their children's needs and reactions to divorce (Bacon 2004). Other study participants reported intentions to use skills for reducing conflict with their co-parent and to support the child's relationship with both parents. They reported feeling more likely to settle things with the other parent rather than going to court, after the parenting class (Pedro-Carroll et al. 2001). Another follow-up study found that class attendees reported handling conflict with the other parent more effectively and felt better at protecting their children from parental conflict (Arbuthnot and Gordon 1996).

While rigorous outcome evaluations are less common for parenting education courses, especially those using a control group for comparison purposes, there have been some conducted as the courses have become more prevalent. A meta-analysis published in 2011 examined 28 evaluation studies of parenting education programs to answer the question, “Are court-affiliated divorce education programs improving the outcomes of divorce?” This research concluded that, overall, those who participated in divorce education programs showed a significant moderate positive effect, compared to those who didn’t participate in the programs (Fackrell et al. 2011).

The meta-analysis examined five outcomes from the 28 studies: 1) co-parenting conflict; 2) parent-child relationships and parental discipline; 3) child well-being; 4) relitigation; and 5) parent well-being. The study found that the divorce education programs contributed to improvements in four of the five outcome areas for participants. Relitigation did not appear to be affected by the divorce education programs; however, only six of the studies included data on rates of relitigation, which likely contributed to this finding (Fackrell et al. 2011). Other notable findings included that there was no significant difference in outcomes between brief interventions (less than four hours of instruction) and longer interventions (10 or more hours), that there was no significant difference between mandated and voluntary programs, and few programs dealt directly with the topic of domestic violence.

In general, there have been positive research findings that support the implementation of court-affiliated parent education programs. Participants consistently report being satisfied with the courses and their content, and to a large extent, report that they have increased knowledge and skills that they plan to use in navigating conflict and the well-being of their children going

forward. Findings on whether the courses have actually met their goals and decreased conflict and relitigation, while less prolific, do exist to a small extent. Some research suggests that the effectiveness of parent education courses “may vary according to: (1) the level of conflict that parents report... (2) the timing of a parent’s attendance at the divorce education program... or (3) the content and teaching strategies used in the program” (Geasler and Blaisure 1998, 2).

### **3) *Mediation***

Mediation, a form of alternative dispute resolution, has historically been used in family (divorce, custody, parenting time, visitation, paternity) cases with the intention for parties to self-determine the outcome of their case through communication with each other, while reducing the emotional and economic costs of custody disputes (Press 2013). Family mediation has officially been defined by the Association of Family and Conciliation Courts (AFCC) as “a process in which a mediator, an impartial third party, facilitates the resolution of family disputes by promoting the participants’ voluntary agreement” (Model Standards 2000). While there have been research findings that demonstrate participants’ benefits of mediation—higher satisfaction, more flexibility in adapting to their children’s needs, and more involvement with their children following divorce compared to those who litigate their case (Beck, Sales, and Emery 2004; Depner, Cannata, and Ricci 1994; Emery et al. 2001 in Ballard et al. 2011)—there remain components of family mediation that are debated by the field. Some of the history and key research findings are included here.

California was the first state to allow judges to mandate mediation in 1980; by 1995, 33 states mandated mediation. As of 2004, 92% of family court service agencies across the country

offered mediation (Berman and Alfini 2012). In response to the growing use of mediation in family cases, the AFCC—in partnership with the American Bar Association and others—promulgated a set of Model Standards of Practice for Family and Divorce Mediation (Standards) in 2000 (Berman and Alfini 2012). The Standards include guidance on several aspects of mediation, including theoretical basis, qualifications of mediators, components of good mediation practice, fees, confidentiality, how to promote the best interests of children, and recognizing the appropriateness of mediation for families (e.g., child abuse or intimate partner abuse). While the Standards recognize that mediation is “not a substitute” for the legal advice, therapy, or counseling, and may not be appropriate for all families, they state that the primary goals of mediation are to:

- Increase the self-determination of participants and their ability to communicate.
- Promote the best interests of children.
- Reduce the economic and emotional costs associated with the resolution of family disputes.

Given the broad adoption of mediation for family cases across the country, several research studies have been conducted to assess whether programs are meeting the goals they set out to accomplish. Drawing from Beck and Sales in their 2000 examination of mediation research and policy, some of the key research findings and divorce, custody, and parenting time mediation issues are summarized below.

*a. Increased Self-Determination and Communication between Participants*

As mentioned above, self-determination and empowerment are the key tenets of mediation. This goal is often achieved by giving the parties an opportunity to discuss all of their concerns openly and in detail with the other parent present (Beck and Sales 2000). The majority of research has found that participants find great benefit in the opportunity to air concerns that mediation provides and often credit this as a key to their satisfaction with the process overall. Yet, there have also been some findings that participants felt too rushed and were not able to fully express themselves during their limited mediation time (Pearson and Thoennes 1985, 1986, 1988, 1989 in Beck and Sales 2000). One study comparing those who participated in mediation with a group who litigated their custody dispute found that there was no difference in the outcome of the case for the two groups; however, decision control—self-determination—was a significant predictor of satisfaction, overall, particularly with the mediation group (Kitzmann and Emery 1993). Mediation has also been a way to encourage communication and dispute resolution skills between parents (Beck and Sales 2000).

There is a significant amount of literature that examines the tension and balance between preserving self-determination in mediation and administrative efficiency. There is concern that some court mediation programs are so focused on short-term outcomes such as freeing up court dockets and conserving resources that the goals of mediation are sacrificed, and more dangerously, that a coercive, non-neutral, non-voluntary environment is created (Boyarin 2012). Recommendations for avoiding this include clearly stating court mediation programs' goals and practices not only for how mediation is conducted, but also mediation's part in the larger court process (Boyarin 2012).

*b. Promotion of Children's Best Interests*

According to the Standards, part of a family mediator's role is to help parents determine how to promote the best interests of their children. This can be done in the context of discussing parenting agreements and should include topics such as: community resources to help children cope, problems that result from continued conflict, parenting plans that address decision-making responsibilities and living situations, developmental needs of the children, and approaches and strategies for revising parenting plans without dispute (ABA 2000). Theoretically, when a parenting agreement is developed through mediation, the parents should be more satisfied with it, since it was something they agreed upon together, and they are more likely to abide by the agreement, therefore creating less conflict for the children involved (Beck and Sales 2000).

*c. Reduced Time and Economic and Emotional Costs*

A benefit of mediation has been thought to be a decrease in the amount of time it takes the parties to come to an agreement. Additionally, by reducing court and attorney involvement, costs to resolve cases are also reduced. While this has been demonstrated in some research, it is not universally true. In fact, several studies have found that mediated cases can actually increase the time and cost of coming to resolution (Ballard 2011; McEwen et al. 1994; Wissler 2002).

Looking at time to resolution, one study found that cases that were resolved in one mediation session were more likely to reach full agreement than those that took more than one session (Ballard 2011). Another study found that mediated cases were more highly contested than non-mediated cases and took longer than non-mediated cases. In fact, this state's mediated cases actually had more motions, hearings, and temporary orders than non-mediated cases (McEwen et al. 1994). These examples seem to show that the case characteristics, as well other factors about the mediation process, are the real predictors of time, and therefore potential cost savings.

The approach of the mediator can have a strong impact on the time it takes to come to agreement, whether agreement is reached, and whether the agreement is accepted by the court. There is evidence on both sides of the debate about whether the mediator should be a truly neutral third party, letting the participants come to agreement on their own, or whether the mediator should take a more directive approach to helping parties come to an agreement. Some believe that a directive approach, versus the traditional facilitative approach, is more common now, due to fiscal restraints of courts and an emphasis on settling the case (Berman and Alfini 2012; Boyarin 2012). Interestingly, another study found that long-term success—compliance, long-term satisfaction, etc.—in mediation was related to the amount of problem-solving during the mediation session, and not related to whether an agreement was reached or the initial satisfaction with the agreement (Pruitt 1995 in Beck and Sales 2000).

Beck and Sales (2000, 20) cite several studies that link the adversarial process of lawyer negotiations to negative effects such as acrimony between parties and psychological distress in parents. It is thought that this process promotes competition between parties versus joint-decision making for the family as a whole (Beck and Sales 2000, 25). In general, mediation is considered less adversarial than the traditional litigation process and has been found to provide an opportunity to lessen conflict and improve psychological functioning in parties. One study found that those who litigated their divorce case were more likely to report that the divorce proceedings “intensified or increased their anger” than those who mediated (Beck and Sales 2000, 22). Some studies have found that mediation is able to reduce, at least moderately, the amount of conflict in a situation. However, others have not produced such findings. It is believed that the



level of conflict is too deeply rooted to be addressed by a short-term intervention such as mediation (Beck and Sales 2000).

It is unclear whether attorney involvement in mediation affects the amount of conflict and distress involved for the parties. There is disagreement about the benefit of and the optimal extent of involvement of attorneys in mediation. In one study that measured agreement rates in divorce mediations, full agreement rates were the lowest when attorneys for both parents were present in the mediation sessions and highest when neither parent was represented (Ballard 2011). In contrast, a study in Maine, where attorney participation in mediation is standard and is seen as beneficial to clients by providing legal guidance and expertise throughout the process, found that attorneys felt mediation encouraged a focus on settlement and that gathering lawyers and clients in the same place improved the “clarity and efficiency of communication” (McEwen et al. 1994, 158). It is possible that the lawyers’ participation and guidance is, in fact, the reason why mediations are less likely to come to agreement (Ballard 2011). It does appear that the attorneys’ attitudes toward mediation and case specifics affect whether an involved attorney is an asset or barrier to mediation (Ballard 2011).

#### *d. Mediation with Self-Represented Litigants*

The increasing numbers of pro se litigants involved in domestic relations litigation introduces some additional considerations. Unrepresented parties are more at risk of lacking a basic understanding of the legal process and the legal protections they are entitled to (Ballard 2011). In the same study, however, full agreement rates were highest when both parents were unrepresented by attorneys (Ballard 2011). Many pro se litigants prefer a lawyer mediator so they are reassured that their agreements comply with the law (Berman and Alfini 2012).

*e. Mediation and Domestic Intimate Partner Abuse*

Domestic intimate partner abuse presents special challenges in the context of mediation, including assuring the safety of the parties and parity of negotiating power. A study that examined the factors predicting outcomes of divorce mediation found that mediations with couples where intimate partner violence was detected were less likely to reach a full agreement (Ballard et al. 2011). Additionally, research has shown that certain types of relationships, particularly those involving domestic violence, are not conducive to being able to openly air concerns in front of the other parent and are less successful in mediation settings (Grillo 1991; Fischer, Vidmar, and Ellis 1993; Kressel et al. 1980 in Beck and Sales 2000; Ballard et al. 2011).

## Part 2: Evaluation Data and Methods

This evaluation of the 2007 revisions to Nebraska's Parenting Act (Parenting Act) relies on numerous sources of qualitative and quantitative data. Quantitative data can be expressed in numerical form, such as the number of custody and parenting time cases referred to mediation. Qualitative data, in contrast, describe the essential qualities of an object or experience; for example, a parent's description of the mediation process. This evaluation's mixed methods design is intended to provide a more complete view of the services delivered under the Parenting Act and their outcomes. Qualitative data can provide valuable context for quantitative findings, whereas quantitative data permit the testing of hypotheses generated from qualitative data. Data sources include court records for custody and parenting time cases filed before and after the implementation of the 2007 Parenting Act revisions, dispute resolution center records, web-based surveys of parents, web-based surveys of judges and attorneys regarding the cost of Parenting Act litigation, site visits that included interviews with Parenting Act stakeholders as well as observation of Parenting Act activities, parent focus groups, and a wide variety of documents.

### A. Case-Level Data Set

The evaluation's primary source of quantitative data was the case-level data set assembled by the Office of Dispute Resolution (ODR) for its 2013 analysis of custody cases.<sup>3</sup> In this evaluation, the data are used solely for the purpose of evaluating the implementation and impacts of the 2007 Parenting Act revisions. This report is not intended to replicate or update the 2013 custody report.

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<sup>3</sup> [Nebraska's 2002-2012 JUSTICE Court File Custody Research Study](#), 2013 (Nebraska's JUSTICE Custody Study, 2013).

***1) Case-Level Data Collection***

The original data set consisted of 392 cases in which custody or parenting functions for a child were at issue. The sampling frame included dissolution of marriage, annulment, legal separation, and never-married support/custody/visitation cases involving children in which the first sequence was closed between 2002 and 2012. A random sample of 600 cases was selected. Of those, 208 child support cases that did not involve custody and parenting time issues in the first sequence were subsequently excluded from the sample.

To provide additional data for this evaluation, a second round of data collection was conducted in 2014 using the same parameters within the same data set as the first round. The second random sampling yielded 216 additional custody and parenting time cases, providing a total of 608 cases for analysis. Of those cases, 347 (57%) were filed prior to the implementation of the major Parenting Act revisions on January 1, 2008, with the remaining 261 cases (43%) filed after the revisions took effect. Throughout this report, cases filed before January 1, 2008 are referred to as “pre-revision” cases; cases closed on or after that date are referred to as “post-revision” cases.

Using electronic files maintained in JUSTICE (the statewide case management system used by Nebraska's trial courts) and paper case files for older cases not available on JUSTICE, four contract staff coded more than 180 data elements for each case. Data elements included general case information (e.g., case type, filing date), information about the parties and children, dates and outcomes of case events, evidence of compliance with the Parenting Act requirements,

content of the parenting plan, information regarding child support, indicators of high inter-parental conflict and dates and types of relitigation events.<sup>4</sup>

The JUSTICE database presented certain limitations for the contract coders. Not all aspects of the Parenting Act are easily identified with specific fields in the database and not all courts uniformly use the same coding or methods of documentation. For instance, some parenting plans are stand-alone documents while others are imbedded in a final decree or settlement agreement. Even a stand-alone parenting plan might be combined in a file called final decree or a settlement agreement or simply marked exhibit along with numerous other exhibits. This required the National Center for State Courts (NCSC) Evaluation Team to read several documents to answer the question: “Is there a parenting plan?” Areas in which there were similar filing or coding inconsistencies included:

- Parenting Act notification, particularly by the parties’ attorneys.
- Parenting education certificates or waiver.
- Whether mediation occurred.
- Temporary orders.
- Parenting plans.
- Whether a case went to trial.
- Whether a guardian ad litem was appointed.
- Child support calculations.

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<sup>4</sup> See Definitions of Data Elements for a definition of data elements and values and Appendix H.

To maximize consistency, coders maintained regular communication to clarify coding rules and cross-check coding. In some instances, coding was re-checked for consistency. After coding, frequencies were checked for each variable; outlying or inconsistent values were investigated and corrected.

## ***2) Demographics of Case-Level Data***

Background data collected on each case included, but was not limited to:

- Case type.
- District of filing.
- Parties' relationship to the child(ren).
- Number and ages of child(ren).
- Parties' incomes.
- Legal representation of parties.
- Physical custody at time of filing, temporary order and decree.
- Indicators of parental conflict.

Of the cases in the data set, 558 cases (92%) were for dissolution of marriage. Nine cases were for legal separation and separate maintenance, and the remaining 41 cases (7%) were for an order of support/custody/visitation. Table 1 shows the district of filing for cases in the data set. All 12 of Nebraska's judicial districts are represented.

**Table 1. District of Filing, Case-Level Data**

<b>District</b>	<b>N</b>	<b>%</b>
1	43	7
2	99	16
3	66	11
4	48	8
5	62	10
6	42	7
7	47	8
8	22	4
9	53	9
10	34	6
11	59	10
12	33	5
Total	608	100%

Note: Percentages may not sum to 100 due to rounding.

Mothers were plaintiffs in the majority of cases (68%), whereas fathers were plaintiffs in 30% of cases. The State of Nebraska was the plaintiff in eight child support cases (1.3%), and in two cases (0.3%), another party was the plaintiff.

The number of children documented in each case ranged from one to five, with a mean of 1.76 (sd = .83). Of the 1,076 children represented in the data set, 528 children (49%) were boys and 548 children (51%) were girls.

Mothers reported an average monthly income of \$1,360.38 (sd = \$1,238.50), whereas fathers reported an average monthly income of \$1,929.57 (sd = \$3,142.56).<sup>5</sup> The difference in incomes between mothers and fathers was significant at the .01 level.<sup>6</sup>

<sup>5</sup> Incomes are reported in nominal dollars. Note that the figures listed cite to "sd." In statistics, the standard deviation (sd) is a measure of the amount of variation or dispersion of a set of data values. A standard deviation close to 0 indicates that the data points tend to be very close to the mean (also called the expected value) of the set, while a high standard deviation indicates that the data points are spread out over a wider range of values.

Table 2 shows the representation status of the parties for cases filed before and after the 2007 Parenting Act revisions took effect. Plaintiffs were more likely to be represented than defendants, both at the time of filing and at the time of the decree. Rates of representation declined between pre-revision and post-revision cases; these declines were statistically significant for plaintiffs at filing and decree, and for defendants at filing. These changes are likely related to changing economic conditions and general increases in rates of self-representation across all case types, including family law.<sup>7</sup> As a result of these trends, it is not possible to infer a causal relationship between the 2007 Parenting Act revisions and any changes in the rate of self-representation.

**Table 2. Representation Status of Parties  
Before and After 2007 Parenting Act Revisions**

	Filing date		p-value
	2007 or earlier (%)	2008 or later (%)	
Plaintiff represented at filing	95	82	<.01
Plaintiff represented at decree	92	80	<.01
Defendant represented at filing	58	44	<.01
Defendant represented at decree	52	47	.25

n = 608

Table 3 shows the physical residence of children at the time of filing, as alleged by parents in initial pleadings. The majority of children resided solely with their mothers at the time of filing. In post-revision cases, there was a slight increase in the number of children who reside solely

<sup>6</sup>  $t = -4.06$ ,  $df = 754.62$ ,  $n = 580$  in each group. Statistically significant means that a result is probably true and not due to chance. A finding can be statistically significant and substantively meaningless or of no value for decision making. Saying something is statistically significant at  $p < 0.05$  means that it is 95% probable that the result is not due to random chance, or the inverse, there is a 5% chance that the result is simply due to chance. The larger the sample size, the easier it is to reach statistical significance. With small sample sizes, it is more difficult. This is due to the nature of the statistical mathematics that underlies that test of significance.

<sup>7</sup> See, e.g., ABA Coalition for Justice, Report on the Survey of Judges on the Impact of the Economic Downturn on Representation in the Courts (2010), available at [http://www.abajournal.com/files/Coalition\\_for\\_Justice\\_Report\\_on\\_Survey.pdf](http://www.abajournal.com/files/Coalition_for_Justice_Report_on_Survey.pdf).



with their fathers. The overall differences in the distribution of children's residence at the time of filing between pre-revision and post-revision cases, however, were not statistically significant.

**Table 3. Residence of Children at Case Filing,  
Before and After 2007 Parenting Act Revisions**

Residence at filing	Filing date	
	2007 or earlier (%)	2008 or later (%)
Residence with mother	64	60
Residence with father	8	11
Joint residence	23	22
Other	6	7
Total	100%	100%

Note: Percentages may not sum to 100 due to rounding.

$\chi^2 = 1.285$ ,  $df = 3$ ,  $n = 466$

As set forth in Part 1: Background and Objectives, the research compellingly demonstrates that a high level of conflict in marriage or divorce is an important predictor of negative child outcomes. For this reason, 11 indicators of high conflict were coded, including previous court involvement, noncompliance with court orders, a child's exposure to inter-parental conflict, child abuse and/or neglect, child abduction concerns, domestic violence, stalking, intimidation or threats, restraining orders or protection orders, concerns about a party's parenting ability, interference with parent-child contact, and a child's refusal to visit the noncustodial parent. Coding for some indicators differentiated between alleged and substantiated instances of high-conflict behavior and/or between past and ongoing conduct. The Cronbach's alpha score for 10 of the conflict indicators is 0.81, indicating that the measures are internally consistent.<sup>8</sup>

<sup>8</sup> Cronbach's alpha is a summary statistic measuring the degree to which a set of items are internally consistent; a score of 0.80 or above is conventionally held to be a good indicator of consistency. As in the 2013 study, previous court involvement was omitted from the reliability analysis because this indicator's attributes were different from those of the other 10 indicators.

The conflict indicator values were weighted and summed to produce a composite conflict index ranging from a minimum of zero to a hypothetical maximum value of 82.<sup>9</sup> A score of 12 or above on the index indicates a high level of inter-parental conflict.<sup>10</sup> In the case-level data set, 13.5% of the cases were identified as high-conflict based on their conflict index scores.

All conflict indicators were coded solely on the basis of the information contained in the case file for the custody case; law enforcement, juvenile court, and criminal court records were not searched for related cases. In addition, attorneys reported that some litigants strategically avoid alerting the court to indicators of conflict, especially domestic abuse, in divorce, custody, and parenting time cases.<sup>11</sup> For these reasons, parental conflict is likely to be under-identified in the case-level data set.

## **B. Dispute Resolution Center Data**

The regional dispute resolution centers provided monthly data on Parenting Act mediation and Specialized Alternative Dispute Resolution cases handled between July 2012 and March 2014. Data included aggregate statistics on case type, results of mediation, and parent satisfaction survey results.

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<sup>9</sup> For details on how the index was calculated, see Nebraska's JUSTICE Custody Study, 2013, 27-31.

<sup>10</sup> The conflict index score of 12 was selected as the threshold for high-conflict cases based on a review of the distribution of custody-related re-openings by conflict score.

<sup>11</sup> Many of the attorneys interviewed mentioned a prevailing assumption that some judges view reports of domestic abuse as a manipulative strategy used by mothers to gain sole custody, leading some women to avoid alleging domestic abuse during divorce and custody proceedings for fear of backlash.

### C. Parent and Child Surveys

The NCSC Evaluation Team conducted a series of on-line surveys to gather the perspectives of parents and youth on the Parenting Act.<sup>12</sup> The NCSC developed separate surveys for parents and youth, which were implemented during a three-week data collection period between December 2014 and January 2015.

A sample of parents was pulled from Nebraska's JUSTICE court case management system, based on inclusion criteria. Additionally, any children aged 13 and above of selected parents were pulled from JUSTICE for inclusion in the youth survey. Invitation letters were sent through the U.S. Postal Service to each parent. The letter included a description of the study, consent information, and a unique link for the on-line survey. If the parent had a child in the survey sample, the letter also included a description of the youth survey, consent for the youth to participate, and the unique link(s) for the child(ren).

Passive consent information (assent) was included in the invitation letter as well as on the first page of the on-line surveys themselves. For the youth survey, the invitation letter explained that by giving their child the link to the survey, the parent was consenting to their child's participation. Additionally, the first page of the youth on-line survey included an assent form and information on the voluntary nature and confidentiality of the survey. Finally, while the NCSC believed the questions in the survey posed very minimal risk to participants, the survey provided instructions to contact a trusted adult if youth were having problems that they want to talk about.

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<sup>12</sup> The NCSC's Institutional Review Board approved the proposed methodology and survey instrument.

Additionally, a telephone number and email address for the Boys Town National Hotline was provided.<sup>13</sup>

The survey was implemented using the Confrmity web survey program. The links included in the invitation letters to parents were typed into an internet browser and led to the on-line survey, which respondents could start and stop as many times as needed. The security and confidentiality of respondents and the data collected via the survey is protected through a range of mechanisms within Confrmity software. The NCSC provided \$5.00 electronic gift cards to participants who completed the on-line survey.

### ***1) Parent Survey***

The first section of the parent survey was dedicated to questions about the divorce, custody, and parenting time court process. The questions were designed to address the procedural aspects of the legal process only; they did not ask the respondent personal details about their divorce, custody, or parenting time experience. The second section addressed the well-being of the children involved in the parenting plan, in the areas of education, health, social behavior, and parental relationship. The child well-being questions were based on extant literature on the effects of divorce and parenting on children and on consultation with experts in the field. The survey questions were compiled from existing instruments and research studies. Items that were included have been tested and validated with different populations and comparison data exist for most:

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<sup>13</sup> This resource is free and available for children who need someone to talk to. The Boys Town National Hotline is open 24 hours a day, 365 days a year, and is staffed by specially trained Boys Town counselors. It is accredited by the American Association of Suicidology (AAS). <http://www.boystown.org/hotline#sthash.Fu8TR4cG.dpuf>

- National Study of Children's Health (NSCH).<sup>14</sup>
- Behavior Problems Index.<sup>15</sup>
- National Study of Child Abuse and Welfare (NSCAW).<sup>16</sup>
- National Longitudinal Survey of Youth (NLSY).<sup>17</sup>

The parent surveys were intended to gather the experiences of participants who were at different stages in the parenting plan and court process. To accomplish this, the parent surveys were divided into five waves of respondents, with no overlap between groups. Each survey wave included questions that were appropriate for that particular stage in the divorce, custody, or parenting time process. Inclusion criteria for each wave:

Wave	Inclusion Criteria
1	Parents who filed their dissolution, separation, or child support case 90 days before the sampling date. <sup>18</sup>
2	Parents whose parenting plans were finalized four weeks before the sampling date.
3	Parents whose parenting plans were finalized six months before the sampling date.
4	Parents whose parenting plans were finalized one year before the sampling date.
5	Parents whose parenting plans were finalized two years before the sampling date.

The survey instruments for Waves 3, 4, and 5 were identical. While the inclusion criteria yielded 5,497 parents total, invitation/consent letters were sent to 500 randomly selected parents in each wave (2,500 total) in order to provide a statistically significant sample size within the scope and budgetary constraints of the project. However, responses to the surveys were very low, despite

<sup>14</sup> <http://www.cdc.gov/nchs/slaits/nsch.htm>

<sup>15</sup> <http://www.childtrends.org/?publications=behavior-problems-index>.

<sup>16</sup> <http://www.acf.hhs.gov/programs/opre/research/project/national-survey-of-child-and-adolescent-well-being-nscaw>.

<sup>17</sup> <https://www.nlsinfo.org/content/cohorts/nlsy97/other-documentation/questionnaires>.

<sup>18</sup> Sampling date was December 1, 2014.

encouragements. For this reason, an additional round of letters was sent to another 527 parents in the sample with valid addresses obtained from court files. Unfortunately, responses remained low and a number of surveys were returned undeliverable. For the full parent survey protocols, see Appendices C, D, and E.

## **2) *Child Survey***

Research has found that children of divorce or parents in high conflict often experience negative outcomes in areas such as education, health, social behavior, and parental relationships (Amato and Keith 1991; APA 2004). The Nebraska youth survey was designed to assess the well-being of youth whose parents have gone through the Parenting Act provisions in the past two years. Based on the experiences of other researchers and the comprehension level and maturity level necessary to answer an on-line survey, the survey was only offered to youth aged 13 and above.

The survey content was designed to be brief and nonintrusive, yet collect key elements of well-being. It was estimated that the survey would take 15 to 20 minutes for a youth to complete. Questions were based on consultation with experts in the field, as well as existing instruments and research studies. Items that were included have been tested and validated with different populations and comparison data exist for most. Questions were compiled with a balanced approach in mind; that is, not solely focusing on negative outcomes or behaviors.

Following are the sources and instruments included in the child survey:

- Research Assessment Package for Schools (RAPS)--school engagement subdomain.<sup>19</sup>
- National Longitudinal Survey of Youth (NLSY).<sup>20</sup>
- Strengths and Difficulties Questionnaire (SDQ).<sup>21</sup>

The sample of youth was drawn based on the parent survey sample. Any children who were at least 13 years old were sampled if their parent was sampled (children were only assigned to one parent to avoid duplicate sampling). The pull yielded 2,199 children in total. However, due to the random selection of 500 parents per wave, only the children of those parents were included in the first round of recruitment letters (953). An additional 774 children were associated with the parents in the second mailing. The full child survey protocol is available in Appendix F: Youth Survey.

### **3) Results**

There were 123 respondents in total to all waves of the parent survey, resulting in an overall response rate of 4%. Letters were sent via U.S. Postal Service and the accuracy of addresses was unknown. Since the survey was anonymous, and no other contact information (i.e., email address) was available, there was no way to follow up with participants who did not initially respond.

The low response rate raises concerns of nonresponse bias: if only parents with strong positive and/or negative feelings were sufficiently motivated to respond to the survey, the results may not

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<sup>19</sup> [http://www.irre.org/sites/default/files/publication\\_pdfs/RAPS\\_manual\\_entire\\_1998.pdf](http://www.irre.org/sites/default/files/publication_pdfs/RAPS_manual_entire_1998.pdf).

<sup>20</sup> <https://www.nlsinfo.org/content/cohorts/nlsy97/other-documentation/questionnaires>.

<sup>21</sup> <http://www.sdqinfo.com/>.

be representative of the general population of parents involved in litigation under the Parenting Act. The results of the parent survey must therefore be interpreted with caution.

Of the 123 parent survey respondents, eight were screened out because their court cases did not address a parenting or custody issue, resulting in a final sample size of 115. Slightly over half of respondents were female (53%). Nearly all of the respondents identified as being white (89%), while 5% and 3% identified as African-American and Hispanic, respectively. The largest proportion of respondents were aged between 35 and 44 (44%).

There were zero responses to the child survey.

#### [D. Judge and Attorney Cost Surveys](#)

Data to determine marginal cost and benefits came from a variety of sources. Debora Denny, Director, ODR, was instrumental in obtaining data on costs and numbers of the Parenting Act Information Brochure and facilitated information requests to mediation centers and private providers. In addition, web-based surveys of district court judges and private attorneys (posted on the Nebraska Bar Association's Family Law listserv) were conducted (see Appendices L and M for copies of the surveys).

Of 23 judges, 13 (57%) responded to the survey. Of 327 attorneys, 34 (10%) responded to the survey.



## E. Site Visits

Members of the NCSC Evaluation Team conducted three site visits to Nebraska during the summer and fall of 2014, each three days in length. Research staff visited District Courts in Sarpy, Lancaster, Douglas, Buffalo, Adams, Hall, Scotts Bluff and Cheyenne Counties, as well as the Douglas County District Court Conciliation and Mediation Office, the Central Mediation Center, Mediation West, the Concord Mediation Center, and the University of Nebraska—Lincoln Extension office.

The NCSC Evaluation Team conducted individual and group interviews with district court judges and clerks of the court, private attorneys, Legal Aid attorneys, mediation center staff, private and center-affiliated mediators, parenting education providers, and staff at domestic violence service agencies. During the site visits and two additional visits to Nebraska, the NCSC Evaluation Team also interviewed legislators and other stakeholders involved in drafting Nebraska's original Parenting Act as well as the 2007 revisions (including the subsequent amendments in 2008). A total of more than 60 judges, clerks of the court, mediators, legislators, and other Parenting Act stakeholders participated in interviews. In addition, the NCSC Evaluation Team observed an in-person parenting education course in Douglas County and viewed portions of an on-line course provided by the University of Nebraska—Lincoln Extension office.

The site visit interviews were recorded, transcribed, and coded using the constant comparative method, a component of the grounded theory method of qualitative analysis.<sup>22</sup> A researcher

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<sup>22</sup> See Kathy Charmaz, *Constructing Grounded Theory* (2006).

employing the constant comparative method does not approach the data with a predetermined hypothesis or categories for analysis. Rather, the researcher identifies categories in the data during the coding process, constantly comparing categories, drawing connections between them, and refining their properties in the process of building a hypothesis. This process of inductive hypothesis-building is a useful counterpoint to the deductive hypothesis-testing practiced in quantitative research. Whereas the constant comparative method begins with individual data elements (e.g., statements made by an interview participant) and builds a hypothesis from these elements (e.g., the allocation of custody in a temporary order serves as an anchor during subsequent negotiations between the parties), statistical research begins with a general hypothesis (e.g., the Parenting Act decreases the rate of relitigation of custody issues) and then uses the data to test that hypothesis. Using these two contrasting methods in concert is intended to provide a more complete and nuanced picture of the implementation and impacts of the 2007 Parenting Act revisions.

#### **F. Parent Focus Groups**

The purpose of the parent focus groups was to hear directly from parents affected by the Parenting Act about their experiences with the legal process and the individual components of the Parenting Act, including the Parenting Act Information Brochure, parenting education classes, parenting plans, and mediation. The NCSC Evaluation Team conducted one parent focus group during each of the site visits conducted in June 2014, August 2014, and September 2014.

A project consultant for the ODR, Kathy Bigsby Moore, assisted the NCSC Evaluation Team in developing the methodology for recruiting parents for the focus groups, developing the focus

group protocols, and facilitating the focus group discussions. The mediation center in each of the sites assisted in identifying and recruiting parents and in staffing the focus groups (Central Mediation Center in Kearney, Concord Mediation Center in Omaha, and Mediation West in Scottsbluff), and the ODR and University of Nebraska—Lincoln law student externs assisted in recruiting parents, tracking responses, and making logistical arrangements. The focus groups were held in local churches (First United Methodist Church in Kearney and Scottsbluff and Unity Church in Omaha). The focus groups were scheduled from 6:00 p.m. to 7:30 p.m., with pizza, salad, and soft drinks offered beginning at 5:30 p.m. Child care services were provided at each focus group, and participants were given a \$10.00 gift card.

### ***1) Parent Recruitment***

To ensure some familiarity with mediation among the parents in the focus groups, the pool of parents was limited to those who had been clients of the mediation center. To increase the likelihood that the parties' addresses had not changed and that their memories of the legal process would be sufficiently fresh, the mediation centers identified parents who had been clients within the past 12 months. To ensure that two parents from the same case were not invited to the focus group, the mediation centers sent a letter of invitation to only one party to each case. The letter included a description of the study, the time and location of the focus group, the availability of food, childcare, and a \$10.00 gift card for participation. After the deadline for responding had passed with no response from the invited parent, a letter of invitation was sent to the other party. Within a week of mailing the letters, an University of Nebraska—Lincoln law student extern with the ODR attempted to call each parent to provide further information, answer any questions, and collect information for following up. The extern tracked all attempts to reach

the parents (10 calls per parent), agreements to participate, follow-up calls to confirm participation, and reminder calls two days before and on the day of each scheduled focus group. Despite all these efforts, the total number of parents participating in the focus groups was 13 (Kearney-4; Omaha-4, Scottsbluff-5).

## **2) Focus Group Protocol**

The NCSC Evaluation Team and ODR project consultant created the protocol for the focus groups with input from the ODR Director. The protocol introduced the facilitators, explained the purpose of the focus groups, explained that the discussion would be about the legal process and particular components of the Parenting Act, spelled out the rules for the discussion, and listed 11 questions the facilitators used to guide the conversation. See Appendix G: Parent Focus Group Protocol.

## **G. Document Review**

Finally, the NCSC Evaluation Team reviewed a variety of documents related to Nebraska's revised Parenting Act and services provided under the Parenting Act. These included statutes and court rules; the Parenting Act Information Brochure; information packets, brochures, and forms from courts and mediation centers; and ODR forms, publications, and web pages. The NCSC Evaluation Team also conducted a qualitative review of a random sample of 50 parenting plans from cases in the case-level data set.

Part 3: Process Evaluation examines whether the Parenting Act was implemented in accordance with its design. Part 4: Impact Evaluation explores the Parenting Act's impact on case outcomes,

trial rates, time to disposition, relitigation, and child well-being. Part 5: Cost and Benefit

Considerations investigates the cost and benefit to the State of Nebraska and the parties involved in a custody and parenting time case.

## Part 3: Process Evaluation

Nebraska's Parenting Act (Parenting Act) is complex, consisting of numerous requirements for cases involving the custody of minor children. The Parenting Act's general intent is to create a legal environment that places the child's best interests at the center of parental and judicial decision-making; the Parenting Act's specific requirements further this general goal. The primary components of the Parenting Act to be examined during the course of the evaluation include the Parenting Act Information Brochure; parenting education; the Temporary Child Information Affidavit; mediation, including screening for conflict and Specialized Alternative Dispute Resolution; and the requirement of a parenting plan.

This section investigates how Nebraska has implemented these components of the 2007 Parenting Act revisions, as amended in 2008, and whether they have been implemented in accordance with the Parenting Act's design. It describes the processes through which the Parenting Act's requirements are carried out and the services provided to parents under the Parenting Act. It also examines the outputs of these processes and services, such as compliance with Parenting Act requirements, the results of mediation, and the content of parenting plans.

The Parenting Act applies to all cases in which parenting functions for a child are at issue, such as dissolution of marriage, legal separation, and paternity actions. Both original proceedings and petitions for modification are included.<sup>23</sup> Although Nebraska's annual caseload reports do not distinguish cases in which parenting functions are at issue from other domestic relations cases, data from the 2002-2012 custody case file study can be used to estimate annual custody and

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<sup>23</sup> Neb. Rev. Stat. § 43-2924.

parenting time caseloads. As part of this study, a total of 69,575 cases disposed of between January 1, 2002, and December 31, 2012, were identified as potentially involving custody issues. In a random sample of 600 of these cases, 392 (65.3%) were found to have an issue of custody or parenting time in the initial case sequence. Applying this proportion to the population of eligible cases yields an average of 4,132 custody and parenting time cases disposed each year in Nebraska's district courts.<sup>24</sup> These cases were studied during the course of the evaluation with respect to the Parenting Act Information Brochure, parenting education, the Temporary Child Information Affidavit, mediation, Specialized Alternative Dispute Resolution, and the requirement of a parenting plan.

#### **A. The Parenting Act Information Brochure**

The Parenting Act requires the Administrative Office of the Courts (AOC) to develop an “information sheet” that provides “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.”<sup>25</sup> The information sheet is also to include information on available resources for parents, such as legal self-help services, domestic violence services, and sources for assistance in developing a parenting plan. The AOC is directed to “take reasonable steps to ensure that it is distributed statewide and made available to parties in parenting function matters.”<sup>26</sup> In fulfillment of this mandate, the Office of Dispute Resolution (ODR) developed the 16-page Parenting Act Information Brochure, included in Appendix J.

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<sup>24</sup> Non-parenting and non-custody cases were excluded from the study as the primary focus is on custody and parenting time. Cases that only addressed issues of paternity or child support in the first sequence (from initial filing of complaint/petition to the closing of the first sequence by court order or decree) were not included in the study. Nebraska's 2002-2012 JUSTICE Court File Custody Research Study, 2013 (Nebraska's JUSTICE Custody Study, 2013), 17.

<sup>25</sup> Neb. Rev. Stat. § 43-2926.

<sup>26</sup> *Id.*

### ***1) Content and Readability***

The Parenting Act Information Brochure (Brochure) satisfies the statutory requirements as to content. The Brochure notifies parties in divorce, custody, and parenting time cases that they must file a parenting plan with the court and attend parenting education, and may be required to participate in mediation. It describes the legal process and the role of the lawyer, the function and required elements of the parenting plan, and the process and benefits of mediation. The Brochure also discusses the effects of divorce and parental conflict on children, along with strategies for minimizing the impact of conflict. Suggested reading lists for adults and children, contact information for domestic violence resource centers and dispute resolution centers, and a list of additional resources are presented. The Brochure is available in English and Spanish.

The Brochure's readability was evaluated using the Flesch-Kincaid Grade Level formula. This formula uses the average number of words per sentence and the average number of syllables per word to calculate the grade level at which the average student should be able to comprehend a text.<sup>27</sup> After eliminating resource lists and URLs, the Brochure's Flesch-Kincaid Grade Level was calculated at 8.9, meaning that most parents who have at least some high school education should be able to comprehend the brochure. The readability of the Brochure appears to be appropriate.

Should attorneys, mediators, or judges voice concerns about parents not understanding the language of the Brochure, it may be advisable to revisit the issue of readability. However, re-evaluating readability should not now be considered a priority.

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<sup>27</sup> J. Peter Kincaid, Robert P. Fishburne, Jr., Richard L. Rogers & Brad S. Chissom, Derivation of New Readability Formulas (Automated Readability Index, Fog Count and Flesch Reading Ease Formula) for Navy Enlisted Personnel, Naval Technical Training Command Research Branch Report 8-75 (February 1975).



## **2) *Distribution***

Every Nebraska parent involved in a parenting time case should receive a copy of the Brochure. Since 1994, the clerk of the court has been required to distribute parenting information to parents.<sup>28</sup> The 2007 Parenting Act revisions required a change to the content of the Brochure as well as documentation of Brochure distribution by the clerk of the court and counsel for represented parties.

In 189 (72%) of the 261 post-revision cases, court records confirmed that the Brochure had been distributed to both parties and notice was recorded in JUSTICE. In the remaining cases, other documents in the court file indicated that attorneys for the plaintiff and defendant had provided the Brochure to their clients. In more than 25% of the cases, however, court records do not confirm that both parties received the Brochure, indicating that there are ongoing issues with Brochure distribution and/or recordkeeping. Based on reports from attorneys in various jurisdictions, it appears that some courts distribute the Brochure to parents more quickly than others. Among the 13 parents participating in the focus groups, five remembered receiving the Brochure (four from their attorney), one said he asked for one, and three stated that they did not remember receiving the Brochure.

## **3) *Utility***

Parents and attorneys offered little feedback as to the Brochure's usefulness. Of the 45 respondents to Waves 1 and 2 of the parent survey, which inquired about the usefulness of the Brochure, eight parents (18%) indicated that they had referred back to the Brochure during the

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<sup>28</sup> Neb. Rev. Stat. § 43-2904 (Laws 1993, LB 629, §4; repealed Laws 2007, LB 554, §49).

litigation process.<sup>29</sup> Some attorneys remarked that they review the Brochure with each client because clients are not likely to read the Brochure on their own. Most of the parents in the focus groups who received the Brochure remembered it primarily as being a source of information on where to find a parenting education class. One parent commented that she did not like what she read in the Brochure, indicating that she thought it stated that Nebraska is a “50-50 state,” although the Brochure does not in fact make such a statement. Several parents did their own research on the divorce process, and several found the Nebraska Supreme Court website to be useful.

The Brochure provides a general overview of the child custody litigation process, and is not intended as an exhaustive resource on the divorce process. The Brochure also provides a list of additional resources, such as sources of legal assistance, parenting education providers, mediation center locations, and suggested reading for parents and children, and appears to be sufficient to fulfill the legislative intent.

In summary, the content and readability of the Brochure appears to be appropriate. Only a small amount of feedback was received on its usefulness. There are ongoing issues with Brochure distribution and recordkeeping. Developing a uniform statewide practice for the clerks of the court in how they document distribution of the Brochure would help in confirming compliance and serve as a reminder to the clerks of this statutory duty.

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<sup>29</sup> Waves 1 and 2 were sent to parties who had most recently been involved in a parenting function proceeding. The Wave 1 survey asked more detailed questions about parents' reaction to the Brochure, but too few parents responded to these questions (n = 7 for most questions) to produce meaningful results.

## B. Parenting Education

As set forth in Part 1: Background and Objectives, findings from multiple studies on parenting education indicate that parenting education can help participants to deal better with their own feelings and reactions to divorce and meet their children's needs more effectively.

The Parenting Act requires the court to order all parties to cases in which parenting functions for a child are at issue to participate in a basic parenting education course. The court may waive or delay attendance for good cause shown. The Parenting Act also provides for second-level parenting education in cases where there is evidence of domestic intimate partner abuse, child abuse, or "unresolved parental conflict."<sup>30</sup>

This section considers to what degree parenting education providers are subject to a uniform approval process, whether the curriculum for each level of parenting education is appropriate to serve its purpose, and what can be done procedurally to improve parenting education's effectiveness in reducing conflict and helping parents navigate the issues that will arise from shared parenting time.

### ***1) Approval of Parenting Education Providers***

Parenting education providers must be approved by the AOC.<sup>31</sup> Facilitators must have at least a bachelor's degree in children and family, psychology, sociology, social work, or a related or equivalent field, and must have knowledge of the topics covered in parenting education. To receive approval, parenting education providers must submit to the AOC a checklist indicating

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<sup>30</sup> Neb. Rev. Stat. § 43-2928.

<sup>31</sup> *Id.*

the topics covered in the parenting education course, along with three written references for each instructor. Approval is valid for one year.<sup>32</sup>

As of April 2015, a total of 41 in-state organizations were approved to provide basic-level parenting education; 16 of these providers offer on-line courses in addition to in-person sessions, and 19 are approved to provide second-level parenting education. Approved providers include dispute resolution centers, University of Nebraska—Lincoln Extension education offices, family services agencies, counseling practices, and private groups. Seven out-of-state providers were approved to offer on-line basic parenting education to Nebraska litigants, based upon their compliance with Nebraska standards requiring Nebraska-specific information about the Parenting Act and Nebraska resources.

## ***2) Basic Parenting Education Course***

Basic parenting education courses must last between two and six hours; in practice, most in-person courses are two hours long. Courses are typically held during evening or weekend hours. The cost of the course varies by provider, but is typically between \$25.00 and \$50.00. Many providers offer fee waivers or sliding fee scales for low-income parents. Some offer the course in Spanish or work with interpreters for non-English-speaking parents.

All basic parenting education courses address nine educational objectives; additional elements may also be covered. The core learning objectives and additional elements include:

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<sup>32</sup> Neb. Sup. Ct., Parenting Education Approval Under the Nebraska Parenting Act (2007), <https://supremecourt.nebraska.gov/4781/parenting-education-approval-under-nebraska-parenting-act-2007>.

1. Learning about the potential impact of the court action (separation/divorce) upon a child.

Additional elements under this objective may include:

- To what extent children should be involved in the court action.
  - Empowering parents.
  - Using a child-centered approach.
  - Safety.
2. Identifying ways to appropriately address parenting functions. Additional elements under this objective may include:
    - Basic parenting education.
    - Parenting functions as outlined in the statute.
  3. Identifying the developmental stages of children. Additional elements under this objective may include:
    - What is “normal” behavior.
    - Ages and stages and the ranges of these stages.
    - Impact of crisis such as divorce upon the stages of the child’s development.
    - Consideration of the child(ren)’s stage(s) of development when designing the parenting plan.
  4. Learning about ways to support the child’s adjustment to parental separation.
  5. Identifying the elements of a parenting plan and how to develop the parenting plan.

Additional elements under this objective may include:

    - Elements of a parenting plan.
    - Guidelines for parenting time/visitation/or other access.

- How to create a parenting plan (parental negotiation, attorney negotiation, mediation, Specialized Alternative Dispute Resolution, litigation).
6. Learning about alternative dispute resolution, conflict management, stress reduction, appropriate language usage, and positive communication. Additional elements under this objective may include:
- Use of “I” messages.
  - How to help children when alienation is present.
  - Interest-based negotiation techniques.
7. Identifying provisions for safety and transition plans under the Parenting Act.
8. Identifying attributes of child abuse, neglect, domestic intimate partner abuse, and unresolved parental conflict and how they impact members of the family. Additional elements under this objective may include:
- Mandatory reporting requirements.
  - Effects of domestic intimate partner abuse and child abuse/neglect at different stages of development.
  - Ongoing persistent parental conflict and its impact on children.
  - Definitions of terms: domestic intimate partner abuse versus high conflict.
9. Identifying “parenting through separation” resources and references for those who want more information from websites and books.<sup>33</sup>

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<sup>33</sup> Neb. Admin. Office of the Cts., Application for Parent Education Providers – 2015, *available at* <https://supremecourt.nebraska.gov/sites/supremecourt.ne.gov/files/forms/2015-parent-education-providers-application.pdf>.

*See also* Parenting Education Approval Under the Nebraska Parenting Act (2007) *available at* <https://supremecourt.nebraska.gov/4781/parenting-education-approval-under-nebraska-parenting-act-2007>.

The format for in-person parenting education varies somewhat by provider. Some parenting educators write on flip charts; others rely more heavily on PowerPoint slides. Videos that include judges, parents, children, and mental health professionals discussing the impact of divorce and parental conflict on children, along with staged scenes of interactions between parents and children, are commonly used. Some courses have one instructor, while some instructors work in opposite-gender pairs. Some instructors and judges and focus group participants expressed the opinion that in-person parenting education provides parents with a beneficial opportunity to share experiences with other parents experiencing divorce and separation. Several focus group participants expressed a preference for in-person classes for this reason, but most of these parents ultimately took on-line classes either because of the lower cost or to satisfy the requirement in a timely manner.

To ensure participants' safety, the AOC directs providers to screen parents for domestic intimate partner abuse, offer separate classes to the parties in a case involving domestic intimate partner abuse, and implement safety measures during the class. The class observed by the National Center for State Courts (NCSC) Evaluation Team, for example, was held in a courthouse with a uniformed officer present.

On-line parenting education is an increasingly popular option for parents. On the parent survey, 23 of the 36 parents who provided information about the format of their parenting education course attended on-line parenting education (64%). Most of the parents in the focus group participated in an on-line course, some after having difficulty finding an in-person class that was convenient. On-line parenting education offers a convenient solution for parents with scheduling

difficulties, transportation challenges, child care issues, or safety concerns, particularly parents in rural areas where parenting education classes may be held infrequently or at a considerable distance from the parent's home. All approved on-line courses must incorporate the opportunity for participants to ask questions of an instructor via e-mail and telephone. The relative anonymity of on-line interaction may help some participants feel more comfortable sharing their experiences and asking questions.

### ***3) Attendance and Waiver***

Local rules in many districts require the parties to attend basic parenting education within 60 days of service of process, and a final hearing will not typically be scheduled unless both parties have filed certificates of completion. Some judges incorporate attendance at parenting education into a standard order entered in all parenting time cases. In the Fourth Judicial District (Douglas County), parents must register with the Douglas County District Court Conciliation and Mediation Office and schedule parenting education within 10 days of filing (plaintiff) or receipt of service (defendant).<sup>34</sup> In Scotts Bluff County, parents must register for parenting education during a required orientation session held at the courthouse during business hours. Attorneys noted that the court's practice of requiring both parents to attend the same orientation session can cause discomfort to the parties and may create safety issues. Because the orientation session is held during business hours, it can require some parents to miss as much as an entire day of work. Scotts Bluff County also requires parents to attend an in-person class, which can present logistical difficulties as the course is only offered once per month. Two participants in the Scotts Bluff parent focus group reported that their former spouse did not take a course and one of these participants also did not take the class.

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<sup>34</sup> Rules of Dist. Ct. of Fourth Jud. Dist. 4-3.D.1.



The Parenting Act provides that a parent's failure or refusal to attend parenting education shall not delay the case disposition by more than six months, and that a parent cannot be incarcerated for failing to attend parenting education. In practice, most courts do not appear to monitor the 60-day deadline closely, and judges verify attendance at parenting education when scheduling the final hearing. Some judges may occasionally issue an order to show cause when a parent has failed to attend parenting education.

Although parenting education was not mandated on a statewide basis until the Parenting Act revisions took effect in 2008, parenting education has been defined in statute since 1998. Judges could order parenting education in individual cases and it was required by local rule in some districts prior to the 2007 Parenting Act revisions. In the case-level data set, parenting education was ordered in 15% of pre-revision cases.

Table 4 displays the rate of documented attendance at parenting education for all post-revision cases. Both parents were documented to have attended parenting education in fewer than half of cases; in 31% of cases, neither parent's attendance was documented in the court case file.

**Table 4. Documented Attendance at Parenting Education,  
Cases Filed After 2007 Parenting Act Revisions**

	%
Both parents	42
Plaintiff only	23
Defendant only	4
Neither parent	31

n = 261

Table 5 shows the timing of attendance for plaintiffs and defendants in post-revision cases whose attendance at parenting education was documented. The average (mean) number of days from

case filing to completion of the parenting education requirement was 79 for plaintiffs and 86 for defendants. Median time to completion was 55 days for plaintiffs and 58 days for defendants, which implies that slightly more than half of parents satisfied the requirement by the 60-day deadline established by local rule. Of the parents who completed parenting education, most did so within six months after filing.

**Table 5. Days from Filing to Parenting Education, Cases Filed After 2007 Parenting Act Revisions**

	<b>Plaintiff</b>	<b>Defendant</b>
Mean	79	86
Percentile		
10	14	20
20	25	28
30	33	40
40	45	47
50	55	58
60	64	69
70	81	90
80	94	133
90	160	192
<i>N</i>	158	116

Judges may waive the parenting education requirement for cause. Practices vary from judge to judge. Many judges reported that they typically waive parenting education only when a parent has recently completed the course in connection with another court case, or the youngest child is nearing age 19. Some judges, however, will waive the parenting education requirement for parents who agree on a parenting plan, on the theory that these parents are already communicating effectively. Waivers of parenting education classes are not always clearly documented in JUSTICE, and may appear in the text of a court order. Waivers are not recorded in the case-level data set.

#### **4) Effectiveness of Basic Parenting Education**

The quality of parenting education courses offered in Nebraska appears to be highly variable. In the in-person course observed by members of the NCSC Evaluation Team, there were no interactive or role-play exercises, and the instructor relied largely upon prepared flip charts that listed principles from various classic texts on conflict resolution, with little discussion of how these principles might apply to the participants' lives. Parents appeared bored and disengaged. On the other hand, the University of Nebraska—Lincoln Extension on-line course is specifically designed to serve a range of different learning styles (e.g., visual, auditory), is customized to the age of the child, and incorporates instructor feedback on written assignments.

The first two waves (Waves 1 and 2) of the on-line parent survey included questions about parenting education; parents' responses leaned in a positive direction. On the Wave 2 parent survey, 54% of respondents (14 of 26) indicated that they had learned something in parenting education that they had been able to use. Specific examples of useful information learned in parenting education included "how to keep kids out of the middle of the divorce," "how to handle transitions between houses," "keeping a positive environment," "how to limit conflict and create more of a businesslike aspect of the situation," and "keeping children out of the conflict with the other party."

On the other hand, only a few of the parent focus group participants thought that parenting education class had been helpful. Content the parents found useful included "don't make the kids the go-between," "do not do the '20 questions' with your children," "don't talk about your ex while [the children] are around." Some parents noted that, although these lessons were common

sense, it was good to hear them reinforced. One parent pointed out that it was very helpful to learn about how to respond positively when a child mentions a former spouse's new partner. Another parent who had participated in an interactive class said it was valuable to hear what other parents in the same situation were doing. Focus group parents' comments tended to be more negative. Several said it was too basic, a waste of time and not useful; one compared it to driver's education. Some described the class as boring and repetitive with too much time spent watching videos and listening to the teacher lecture. Some noted that the content did not take into account the varying ages of participants' children.

Attorneys were somewhat skeptical about the usefulness of parenting education, but most conceded that it has potential value for parents. Many attorneys reported that clients could usually identify something helpful they learned during parenting education, even clients who had initially been reluctant to attend. Attorneys tended to support the course's focus on minimizing children's exposure to conflict and dealing productively with the other parent. Some attorneys noted that parenting education seemed to have the greatest impact on parents who were already interested in minimizing conflict and moving forward cooperatively, whereas parents enmeshed in conflict tended to use the lessons learned in parenting education primarily to identify examples of improper behavior on the part of the other parent. Because they do not deal as closely with parents as attorneys do, judges were largely unaware of parenting education's impact on the parties.

### **5) *Second-Level Parenting Education***

In cases where there are signs of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict, the court may order the parties to second-level parenting education.<sup>35</sup> Second-level parenting education is a three- to six-hour in-person course, held in separate sessions for couples in order to ensure safety. Required educational objectives and optional additional elements include:

1. Identify the “why” and “how” to develop provisions for safety and transition plans.

Additional elements under this objective may include:

- Examples of safe transitions.
  - Parallel parenting.
  - Options if plan is violated.
2. Identify the potential harmful impact of domestic intimate partner abuse and unresolved parental conflict on the child. Additional elements under this objective may include:
    - Definition of terms.
    - Developmental stage specific effects.
    - Resiliency factors.
    - Joint and sole custody behaviors.
    - Purpose of child support and ways to defuse unnecessary conflict.
  3. Learn effective communication techniques and protocols. Additional elements under this objective may include:
    - Plan for communicating about the needs of children.

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<sup>35</sup> Neb. Rev. Stat. § 43-2928.

- Examples of safe communication for all parties.
4. Become aware of resource and referral information for victim, perpetrator, and batterer services. Additional elements under this objective may include:
- Victim services.
  - Perpetrator services.
  - Batterer intervention programs.
  - Referrals for mental health services, substance abuse services, and other community resources.<sup>36</sup>

No information about second-level parenting education was recorded in the case-level data set, and interview respondents had few comments regarding second-level parenting education. Two parents in the focus groups knew about a class called “Beyond the Conflict,” and one said he had participated in it. He found it to be more useful than the basic class because it was very interactive.

In summary, it appears that there is an opportunity for Nebraska to make procedural improvements to its parenting education program in order to realize parenting education’s full potential benefits for parents and children. Although parenting education providers are generally subject to a uniform approval process and the required learning objectives appear generally appropriate, greater oversight of parenting education providers could lead to greater interactivity and higher levels of participant satisfaction. A more rigorous review and approval process for

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<sup>36</sup> Neb. Admin. Office of the Cts., Application for Parent Education Providers – 2015, *available at* <https://supremecourt.nebraska.gov/sites/supremecourt.ne.gov/files/forms/2015-parent-education-providers-application.pdf>.

*See also* Parenting Education Approval Under the Nebraska Parenting Act (2007) *available at* <https://supremecourt.nebraska.gov/4781/parenting-education-approval-under-nebraska-parenting-act-2007>.

parenting education providers, which might include a more detailed curriculum review and/or classroom observation, could help to ensure more uniform quality. A statewide policy requiring courts to accept approved on-line parenting education courses would also make it less burdensome for parents in rural areas to fulfill the requirement.

### C. Temporary Child Information Affidavit

When a motion for a temporary order on custody or parenting time has been filed, the Parenting Act requires each party to file the Temporary Child Information Affidavit. The Temporary Child Information Affidavit must include information about where the child has lived for the preceding 12 months (unless safety concerns exist), how the parents have divided responsibility for the parenting functions relating to the daily needs of the child in the past 12 months, the parents' work and child care schedules, and the child's school and extracurricular schedule and transportation. The Temporary 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."<sup>37</sup>

#### ***1) Usage of the Temporary Child Information Affidavit***

The purpose of the Temporary Child Information Affidavit is to provide the judge facts regarding the pre-separation allocation of parenting functions, in order to make a best interests decision for the child during the transition period. In practice, nearly all temporary orders on custody and parenting time are decided on affidavits presented to the court without a courtroom hearing with in-person testimony. The parents are permitted to submit additional affidavits,

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<sup>37</sup> Neb. Rev. Stat. § 43-2930 (Cum. Supp. 2014).

including affidavits from outside parties. Local court rules may limit the total number and/or pages of affidavits permitted.

A motion for temporary custody was filed in 165 of 261 (63%) of the post-revision cases in the case-level data set. In only 39 (24%) of these cases did one or more Temporary Child Information Affidavits appear in the case file. For a variety of reasons, the NCSC could not measure compliance with the statutory requirement. Attorneys in some districts explained that the information required in the Temporary Child Information Affidavit is usually included in other affidavits, and judges will not typically require the filing of a separate document titled “Temporary Child Information Affidavit” if this information is already available. Additionally, in some jurisdictions, the Temporary Child Information Affidavit is reportedly not maintained in the court file and thus not scanned into JUSTICE. In some districts, the Temporary Child Information Affidavit is returned to the attorneys; in other districts, the judge keeps it. It is unclear what level of consideration is given to the Temporary Child Information Affidavit without the opportunity for an in-person hearing. This is an area that warrants further examination.

## ***2) Effects of the Temporary Child Information Affidavit on Parental Conflict***

Attorneys reported that the process for obtaining a temporary order on custody or parenting time, including the submission of the Temporary Child Information Affidavit and other affidavits, tends to increase conflict between the parties. According to attorneys, the lack of an in-person hearing with an opportunity for cross-examination creates an incentive for each party to allege in the affidavits as much negative information as possible about the other. Anecdotally, attorneys



indicated that some parents will also obtain affidavits from friends, co-workers, and their own parents describing their own desirable qualities as parents and denigrating the other party. One parent in the focus group admitted that she and her family members had engaged in hyperbole in affidavits. She considered it to be a necessary evil of the process. Some attorneys described the process as a competition in which the winner is the party submitting the last affidavit, which the other party has no opportunity to refute. Specific allegations in the affidavits, along with the confrontational nature of the entire process, can intensify resentment and conflict between the parties and sometimes within the extended family. Such conflict can persist long after the temporary order is entered, negatively impacting negotiation and/or mediation regarding the final parenting plan.

Given the generally uniform concern among stakeholders about the use of the Temporary Child Information Affidavit and other affidavits in determining temporary custody allocations, Nebraska policymakers should carefully consider how the affidavits are used, and whether to continue requiring them. One possibility is to obtain the relevant information through a triage or differentiated case management process, as described in Part 6: Conclusions and Recommendations.

#### **D. Mediation**

As discussed in Part 1: Background and Objectives, research indicates that mediation can support self-determination of parties as well as administrative efficiency. The Parenting Act encourages self-determination by directing parents to develop a parenting plan either on their own or through mediation. As the central tenet of the Parenting Act is to establish a plan that

focuses on a child's welfare and diminishes conflict, mediation is key to fulfilling the Parenting Act's mission. Hence, the procedural implementation of mediation is considered at length here, including mediator training and qualifications, the dispute resolution centers, and mediation processes including screening and Specialized Alternative Dispute Resolution.

The Parenting Act requires the court to set a deadline for the parents to agree upon a parenting plan and submit it to the court. If the parents do not submit a parenting plan, the court must order the parties to participate in mediation or Specialized Alternative Dispute Resolution.<sup>38</sup>

If the parents agree that mediation should be waived for a reason other than avoiding the purposes of the Parenting Act, or "when mediation or specialized alternative dispute resolution is not possible without undue delay or hardship to either parent," the court may waive the requirement of mediation or Specialized Alternative Dispute Resolution after holding an evidentiary hearing and making evidentiary findings.<sup>39</sup>

In many districts, local rules require the parties to attend mediation before a trial date will be scheduled. The court may order the parties to participate in mediation or Specialized Alternative Dispute Resolution at any point in the litigation process, regardless of whether the parents have failed to submit a parenting plan by the deadline.<sup>40</sup> Parents may also participate in mediation or Specialized Alternative Dispute Resolution on a voluntary basis. This section considers the qualifications of mediators.

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<sup>38</sup> Neb. Rev. Stat. § 43-2937(3).

<sup>39</sup> Neb. Rev. Stat. § 43-2937(4).

<sup>40</sup> Neb. Rev. Stat. § 43-2937(1).

### ***1) Training and Qualifications for Mediators***

The ODR is responsible for the approval of Parenting Act mediators.<sup>41</sup> A Parenting Act mediator must complete 30 hours of approved basic mediation training, plus 30 additional hours of approved family mediation training. The basic mediation course must cover the following topics:

- Overview of alternative dispute resolution (ADR) processes.
- Principles of mediation.
- Mediation styles.
- Stages and goals of the mediation process.
- The role of the mediator.
- Nature of conflict/behaviors in conflict.
- Mediation skills, including negotiation skills, interactive listening, question-asking, use of neutral language, reframing, issue and interest identification, option generation, addressing barriers to agreement, reality testing, and agreement writing.
- Caucus.
- Values, self-awareness, and bias awareness.
- Cultural diversity including race and gender.
- Power imbalances.
- Working with attorneys and representatives of parties.
- Confidentiality and privilege.

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<sup>41</sup> Neb. Rev. Stat. § 43-2937(1), § 43-2940(1).

- Ethical issues, including impartiality, party self-determination, informed consent, conflicts of interest, responsibilities to third parties, dealing with legal issues, withdrawal by mediator, and termination of the mediation.
- Relevant Nebraska mediation and ADR law.<sup>42</sup>

Topics addressed in the family mediation course include:

1. Topics listed in the Parenting Act:

- Knowledge of the court system and procedures used in contested family matters.
- General knowledge of family law, especially regarding custody, parenting time, visitation, and other access, and support, including calculation of child support using the current Nebraska child support guidelines.
- Knowledge of other resources in the state to which parties and children can be referred for assistance.
- General knowledge of child development, the potential effects of dissolution or parental separation upon children, parents, and extended families, and the psychology of families.
- 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.

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<sup>42</sup> Neb. Admin. Office of the Cts., [Policy for Approval of Parenting Act Mediators](#), § II.I.C.1 (2009).

- Knowledge in regard to the potential effects of domestic intimate partner abuse 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.
2. Mediation process and skills as set forth under Nebraska's Basic Mediation Training, or comparable elements.
  3. Family mediation-related issues, including:
    - Family systems theory and its application to parenting mediation.
    - The mediator's approach and skills in working with the emotions of the separation and dissolution process and post-separation dynamics.
    - Overview of working with parties engaged in high-conflict dynamics.
    - Process to assist parties in child-centered decision-making.
    - Process to address children's best interests, including whether and how to involve children in the process.
    - The Parenting Act and its amendments.
    - Specific knowledge of the parenting plan contents and formats.
  4. Nebraska standards of practice and ethics for family mediators.<sup>43</sup>

Both basic and family mediation training must include a minimum of six hours of role-playing under the supervision of experienced mediators.<sup>44</sup> Approved

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<sup>43</sup> Neb. Admin. Office of the Cts., Policy for Approval of Parenting Act Mediators, § II.I.C.2 (2009).

mediation training is provided by the Nebraska Mediation Association. Each course is typically held over a four-day period. The cost of approximately \$900.00 is borne by the mediator-in-training, with limited scholarships available for mediators who affiliate as volunteers with one of the regional mediation centers.<sup>45</sup> After completing basic and family mediation training, a mediator must complete an apprenticeship.<sup>46</sup> During the apprenticeship, the mediator co-mediates a minimum of three parenting plan cases under the supervision of an experienced family mediator, serves as lead mediator in at least one case, conducts at least one initial private screening for ability to negotiate and identify issues of domestic intimate partner abuse, and drafts at least one parenting plan.<sup>47</sup> The apprenticeship requirement may be waived for mediators with significant experience in mediating parenting plan cases.<sup>48</sup>

After fulfilling the training and apprenticeship requirements, the mediator applies to the ODR for approval. The approval process includes a criminal background check. An applicant is required to disclose a conviction of child abuse or a violent crime. An applicant is also required to disclose suspension or revocation of a professional license.<sup>49</sup> On a biennial basis, each approved mediator must conduct at least two parenting plan mediations, attend eight hours of approved continuing

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<sup>44</sup> Neb. Admin. Office of the Cts., Policy for Approval of Parenting Act Mediators, § II.I.D.1.c (2009).

<sup>45</sup> Neb. Mediation Ass'n, Training & Education, <http://www.nemediation.org/joomla/index.php/training-education> (last visited April 6, 2015).

<sup>46</sup> Neb. Rev. Stat. § 43-2938(2).

<sup>47</sup> Neb. Admin. Office of the Cts., Policy for Approval of Parenting Act Mediators, § II.II.A.2 (2009).

<sup>48</sup> Neb. Admin. Office of the Cts., Policy for Approval of Parenting Act Mediators, § II.II.E.2 (2009).

<sup>49</sup> Neb. Admin. Office of the Cts., Policy for Approval of Parenting Act Mediators, § I.C.2 (2009).

mediation education, and submit a report to the ODR.<sup>50</sup> Mediators must also adhere to the Nebraska Standards of Practice and Ethics for Family Mediators. Mediators are not required to be licensed attorneys. In practice, approved mediators come from a wide variety of professional backgrounds, including attorneys, teachers, retired law enforcement officers, and homemakers. Despite the provision for waiving the apprenticeship requirement, a number of attorneys remarked that the training and apprenticeship requirements serve as a disincentive for experienced attorney mediators to become approved Parenting Act mediators. Several attorneys explained that the direct expenses and opportunity costs associated with attending the required training outweigh any potential gains from being approved as a Parenting Act mediator, and suggested that the training requirement should be waived for experienced attorney mediators. To that point, the Legislature enacted the statutory parenting mediation training as an integral component to ensure mediators have a foundation of education in content and skills (distinct from legal advocacy) in order to build competencies to safely and constructively facilitate sensitive and often volatile family dynamics, as well as address the variable child development issues.

Only court-ordered mediation requires an approved mediator. If the parties choose to mediate their case outside of the court-mandated process, they may select an approved mediator or a non-approved mediator. No quantitative data exist regarding the frequency of voluntary mediation conducted by non-approved

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<sup>50</sup> Neb. Admin. Office of the Cts., Policy for Approval of Parenting Act Mediators, §§ II.III.A.1, III.I.A.2, III.I.B.1 (2009).

mediators, but the attorney interviews suggest that non-approved attorney mediators do not frequently mediate parenting time issues and are typically used for financial issues, which are outside the scope of the Parenting Act. According to a recent ethics opinion by the Nebraska Commission on Unauthorized Practice of Law, non-lawyer mediators may negotiate and draft a parenting plan without being considered to have engaged in the unauthorized practice of law. However, unless exceptions apply, they may not negotiate and draft property settlement and financial support settlement agreements.<sup>51</sup>

## **2) *Regional Dispute Resolution Centers***

In 1991, the Nebraska Dispute Resolution Act established the ODR and gave it the power to approve and make grants to dispute resolution centers.<sup>52</sup> Six regional nonprofit dispute resolution centers currently serve all 93 of Nebraska's counties.<sup>53</sup> The dispute resolution centers provide mediation and facilitation services in a variety of cases, host mediator training, and provide parenting education courses. Many approved Parenting Act mediators choose to become affiliated with their local dispute resolution centers. The dispute resolution center typically handles intake, scheduling, billing, and other administrative matters. The dispute resolution center also provides space for the mediation and liability insurance. Approved Parenting Act mediators are not required to affiliate with a dispute resolution center; unaffiliated mediators maintain their own private mediation practices. As of April 2015, there are 134 approved

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<sup>51</sup> "Mediator Role in Developing a Parenting Plan," Nebraska Commission on the Unauthorized Practice of Law Advisory Opinion 01-2015 (June 2015).

<sup>52</sup> Neb. Rev. Stat. §§ 25-2901 et seq.

<sup>53</sup> The six ODR-approved regional dispute resolution centers and their primary business offices are: Concord Mediation Center, Omaha; Nebraska Mediation Center, Fremont; The Resolution Center, Beatrice; The Mediation Center, Lincoln; Central Mediation Center, Kearney; and Mediation West, Scottsbluff.



Parenting Act mediators in the state of Nebraska; 117 are affiliated with dispute resolution centers or the Douglas County District Court Conciliation and Mediation Office, and 17 are exclusively in private practice.

In Douglas County, Parenting Act requirements are administered by the Douglas County District Court Conciliation and Mediation Office. The office was established as the Douglas County Conciliation Court in the 1970s. In 1995, the Fourth Judicial District in Douglas County promulgated a local rule mandating that parties in contested divorce, custody, and parenting time cases with no issues of domestic violence participate in mediation before a trial would be granted. The Douglas County District Court Conciliation and Mediation Office subsequently developed procedures to enhance safety and equalize bargaining power in high-conflict and domestic violence cases. The practices of the Douglas County District Court Conciliation and Mediation Office served as a model for portions of the 2007 Parenting Act revisions, and by local rule the Douglas County District Court Conciliation and Mediation Office retained authority over Parenting Act cases in Douglas County after the revisions took effect. The Douglas County District Court Conciliation and Mediation Office currently offers basic and second-level parenting education courses, provides mediation and Specialized Alternative Dispute Resolution in Parenting Act cases, and reviews all parenting plans submitted to the Fourth Judicial District for compliance with Parenting Act requirements. Parents in the Fourth Judicial District may also use mediators affiliated with the Concord Mediation Center or private mediators, but all parenting plans are subject to review by the Douglas County District Court Conciliation and Mediation Office.

The six regional dispute resolution centers maintain case records using mediate.com's cloud-based Caseload Manager system. Each center reports the following information to the ODR on a quarterly basis:

- Referral sources.
- Case outcomes.
- Types of cases mediated.
- Results of participant evaluations.
- Costs of mediation.
- Outreach efforts.<sup>54</sup>

During the site visits, management practices at the regional dispute resolution centers appeared to vary. At some centers, veteran staff described well-established policies and procedures. In at least one center, however, there were reports of recent turnover and turmoil in the center's administration.

### ***3) Costs of Mediation***

The ODR-approved regional dispute resolution centers are funded in part by a \$0.75 dispute resolution fee charged for every case filed in the Nebraska courts,<sup>55</sup> as well as a \$50.00 portion of the filing fee in dissolution of marriage and domestic relations modification cases that is designated for Nebraska's Parenting Act Fund.<sup>56</sup> The dispute resolution centers may also apply

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<sup>54</sup> Neb. Office of Dispute Resolution, Policy Manual § 5.b (2009).

<sup>55</sup> Neb. Rev. Stat. § 33-155.

<sup>56</sup> Neb. Rev. Stat. §§ 33-106.03, 33-107.02(1).

for other public and private funding, such as federal Access and Visitation grants to fund services that help children obtain access to their noncustodial parents.

Some regional dispute resolution centers charge a flat fee of \$300.00 per party to mediate a parenting plan. The fee may be split between the initial private screening and the mediation itself (e.g., \$75.00 for the screening and \$225.00 for the mediation). Some centers charge on an hourly basis of \$90.00 per hour per party; however, it is a minority of the clients who pay a full fee. A sliding fee scale is available for parents who qualify on the basis of income and family size. The centers require most parents to pay at least a small fee (e.g., \$20.00 per hour), on the theory that paying for mediation services increases parents' commitment to the process. A significant percentage of parties also have mediation fees waived. Sliding fee cases are subsidized by Nebraska's Parenting Act Fund and other funding sources. Private mediators set their own fees and are not obligated to offer a sliding fee scale.

Some attorneys frequently cited the cost of mediation as a substantial burden to the parties. In some cases, it was reported that mediation may be delayed while the parties save enough money to pay for mediation. Legal Aid attorneys pointed out that their clients who are filing *in forma pauperis* cannot afford to pay even the minimum rate for mediation. A number of attorneys reported that funding for sliding fee scale mediation runs out so that clients who would otherwise qualify for sliding fee scale services would either have to pay the full rate or wait until the next fiscal year. All mediation centers, however, asserted that no one is denied services based upon an inability to pay, and while there may be a lapse of time between requesting mediation and assigning a mediator to the case, there are not waiting lists based upon financial resources.

Regardless of whether any limitations on the availability of the sliding fee scale actually exist, it is clear that in practice the cost of mediation is a concern to many parents.

#### **4) Initial Private Screening**

Under the Parenting Act, the mediation process begins with an initial private screening (IPS) of each party. The IPS is designed to identify issues of domestic intimate partner violence, as well as conflict and power and control dynamics that might interfere with the parties' ability to negotiate on an equal footing.<sup>57</sup> In addition to evaluating the parties' ability to negotiate safely and equitably, mediators use the IPS as an opportunity to orient participants to the mediation process. The IPS may be conducted by telephone or in-person. From July 2012 through March 2014, the average IPS conducted through a dispute resolution center lasted approximately one hour.

The ODR provides a standard screening questionnaire adapted from the Duluth Power and Control Wheel<sup>58</sup> that asks about power and control dynamics, including signs of physical, emotional, and economic abuse.

At the dispute resolution centers, the IPS is often conducted by a different mediator than the one who is ultimately assigned to mediate the case. This can be frustrating to both participants and mediators, as the assigned mediator frequently needs to ask many of the same questions that were already asked during the IPS. Private mediators conduct their own IPS interviews.

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<sup>57</sup> Neb. Rev. Stat. § 43-2939(1).

<sup>58</sup> <http://www.theduluthmodel.org/training/wheels.html>.

### **5) *The Mediation Process***

If the IPS indicates that the parties can negotiate safely and equitably, the case proceeds to standard mediation. Mediators and attorneys frequently discussed two distinct styles of mediation: interest-based (facilitative) mediation, and evaluative (directive) mediation.

In interest-based (facilitative) mediation, the mediator structures a process to assist the parties in reaching a mutually agreeable resolution. The mediator asks questions, searches for interests underneath the positions taken by parties, and assists the parties in finding and considering solutions to resolve the underlying conflict. The facilitative mediator does not make recommendations to the parties, give his or her own advice or opinion as to the outcome of the case, or predict what a court would do in the case, preferring to create an environment where the parties are empowered to determine their own outcome. Facilitative mediation consists predominantly of joint sessions where each party can hear the other's views, although facilitative mediators also hold separate caucuses with the parties as needed.

Evaluative, or directive, mediation is a process that in many ways resembles a judicial settlement conference. Evaluative mediators help the parties to evaluate their legal positions and the costs and benefits of settlement or proceeding to trial. Unlike a facilitative mediator, the evaluative mediator both structures the process and directly influences the outcome of mediation. An evaluative mediator may have substantive expertise or legal expertise in the substantive area of the dispute, enabling the mediator to evaluate the strengths and weaknesses of each party's legal position and make predictions about how a court might rule in the case. Traditionally, evaluative mediators meet separately with the parties and their attorneys.

In Nebraska, standard mediation of parenting time issues typically takes place in joint sessions with periodic caucuses. From July 2012 through March 2014, cases mediated through the regional dispute resolution centers required an average of 2.4 mediation sessions and 4.9 hours of total session time until an agreement was reached or mediation was terminated. Some mediation centers employ a co-facilitation model, in which two mediators work together at no additional cost to the parties. This approach helps to ensure that all issues are addressed, and allows mediators to learn from each other and continually improve their skills.

Most Nebraska mediators assert that they practice interest-based mediation, although some incorporate aspects of other styles of mediation. Attorneys and parents, however, frequently commented that mediators in their cases offered opinions about how the judge would rule or pressured the parties to make concessions. According to attorneys, such practices are counterproductive because some mediators do not have substantive or practical experience in the practice of family law and their predictions can be inaccurate, and agreements reached through coercion typically fall apart and require renegotiation. Attorneys also noted that their clients often felt that the mediator was siding with the other party, a sentiment echoed in the comments to the parent survey. However, data reported in Table 8 (page 92) from the regional dispute resolution centers show that 99% of parties were satisfied or very satisfied with the neutrality of the mediator.

Attorneys commented that many mediators seem to lack a full understanding of the difficulties of shared parenting time, leading them to suggest arrangements that are unworkable in real life. In general, attorneys rated private mediators as more qualified and more effective than center-

affiliated mediators. Many attorneys also felt that negotiated agreements are easier for the parties to accept than mediated agreements because attorney involvement gives parents confidence that their interests are being protected. The perspectives of parents in the focus groups indicate, however, that attorneys are not always helpful in moving parents toward a mutually agreeable parenting plan. While a few parents thought their attorneys had been effective advocates for their positions, most parents believed that their attorneys had made the process more complicated and had interfered in their attempts to negotiate with the other parent. For example, one participant commented that both attorneys “shoot for the moon” and that they both were “so extreme one way that you know it’s not going to work either way.” Several parents commented that the process flowed more smoothly after the “attorneys got out of the way.”

These views of parents suggest that some attorneys are not practicing in ways that promote parental cooperation or facilitate the mediation process. In other commentary, parents noted that their attorneys had advised them that mediation was required in every case but had not given them much guidance about the process or expectation of its value. These comments suggest that attorneys and their clients would benefit from continuing legal education on the purposes of mediation and its role in furthering the goals of the Parenting Act.

Not all attorney comments regarding mediation were negative, however; several attorneys noted that in some cases mediation can de-escalate conflict and provide a cost-effective way for the parties to work out a parenting plan. For their part, mediators asserted that attorneys tend to characterize mediation as a requirement that must be checked off, leading their clients to enter mediation with low expectations for the process. Although attorneys are virtually never present

at Parenting Act mediations, both attorneys and mediators agreed that mediation can be more productive when attorneys have effectively prepared their clients by describing the mediation process and encouraging clients to consider their goals and preferences in advance of mediation.

Attorneys and parents cited the mediation process as a frequent source of delay. Some parents may fail to schedule or appear for an IPS or mediation as a deliberate stalling tactic. Attorneys reported that some judges are reluctant to waive the mediation requirement even when one party refuses to participate, repeatedly sending the case back to mediation instead of proceeding to trial.

Mediation may result in full or partial agreement on a parenting plan. Parents, attorneys, and mediators all commented that a mediated agreement on some issues, such as the division of holidays, can pave the way for future settlement of the remaining issues. Mediation may also lead to improved communication and cooperation between the parties, even if no parenting time issues are resolved during mediation. Following mediation, the parties and their attorneys review the mediated plan. The parties may choose to reject the mediated plan, renegotiate aspects of the plan through their attorneys or between themselves, or file the mediated plan with the court. Mediators are not typically informed of what happens to the parenting plan following mediation. Feedback could help mediators evaluate their performance and consider ways to improve outcomes in future cases, both of which would be helpful.

Continuing education for mediators, attorneys, and judges may be an effective solution to improving understanding of the mediation process and its role in the Parenting Act. In particular,



cross-training would be effective. As indicated in the focus groups, some parties appreciated an attorney's perspective during the mediation process, and domestic relations attorneys could be recruited to serve as mediators. Mediators may also benefit from reviewing feedback received by attorneys either from this evaluation or from ongoing satisfaction surveys to reflect in their practice. Improving the quality of mediation through additional mediator training and attorney feedback can also serve to increase attorneys' confidence in and support of the mediation process.

#### **6) *Mediation Caseloads and Results***

In the case-level data set, it is not possible to identify all cases in which a mediator was involved. Outside of Douglas County, the parties are not required to report to the court whether they attended mediation or whether the parenting plan was developed through mediation, and parenting plans do not always list the name of the mediator or mediation center involved. If the ODR wishes to analyze the impact of mediation on future case activity, it may wish to require Parenting Act mediators to file a form with the court in each case, to include data such as whether mediation was court-ordered or voluntary, which parties participated, the amount of time spent in mediation, which issues were mediated (e.g., parenting time, financial plan), and whether a full or partial agreement was reached on each issue. These data would become part of the case record.

Because the case-level data set does not contain complete information on mediation, this evaluation uses aggregate data from the regional dispute resolution centers to describe the mediation process.

Table 6 shows the total number of parenting plan cases initiated in Nebraska's regional dispute resolution centers in fiscal year 2012. Of the 1,855 cases initiated, 787 (42%) were divorce, custody, and parenting time cases, 554 (30%) were new cases between never-married parents, and 514 (28%) involved modifications of existing parenting plans. There were 105 cases (5.7%) referred to Specialized Alternative Dispute Resolution, and 19 cases (1%) were deemed inappropriate for mediation. Of the remaining cases, slightly fewer than half (46%), 849 cases, underwent mediation and slightly more than half (54%) did not, either because the case settled prior to mediation or because one or both parties withdrew, refused to participate, or was unresponsive.

**Table 6. Parenting Plan Caseloads in Regional Dispute Resolution Centers, FY 2012**

	Mediated	Specialized Alternative Dispute Resolution	Not appropriate for mediation	Not mediated	Total
Dissolution	374	53	4	356	787
Never married	228	28	7	291	554
Modification	247	24	8	235	514
Total	849	105	19	882	1,855

Between July 2012 and March 2014, 51% of parenting plan cases opened in the regional dispute resolution centers were referred by the court. Court records indicate that 8.0% of all custody and parenting time cases filed on or after January 1, 2008 were ordered to mediation, as compared with 1.4% of cases filed before the 2007 Parenting Act revisions took effect. This difference is statistically significant at the .01 level.<sup>59</sup>

<sup>59</sup>  $\chi^2 = 15.876$ ,  $df = 1$ ,  $n = 608$ .

Table 7 shows the results of mediation for Parenting Act cases mediated through Nebraska's regional dispute resolution centers between July 2012 and March 2014. Full agreement was reached in 41% of cases, with an additional 29% of cases achieving partial agreement.<sup>60</sup>

**Table 7. Parenting Act Mediation Results for Regional Dispute Resolution Centers, July 2012 through March 2014**

	<b>n</b>	<b>%</b>
Full agreement	520	41
Partial agreement	371	29
No agreement*	384	30
Total	1,275	100

\*Includes one case described as "facilitated only."

### 7) *Participant Satisfaction*

Each regional dispute resolution center asks parents to complete a satisfaction survey following mediation. The results for Parenting Act mediation participants surveyed between July 2012 and March 2014 appear in Table 8. Responses were predominantly positive regarding the fairness of the mediation process, the neutrality of the mediator, and overall satisfaction with the mediation process.

**Table 8. Parent Satisfaction with Mediation July 2012 through March 2014**

	<b>n</b>	<b>%</b>
<i>How fair was the mediation process?</i>		
Very fair	834	62
Fair	412	30
Average	95	7
Unfair	6	0
Very unfair	5	0

<sup>60</sup> "Full agreement" and "partial agreement" refer to all issues being mediated, which in some cases include financial issues in addition to the parenting plan. "Agreement" is recorded as of the close of mediation, and the parties may subsequently modify or reject the mediated parenting agreement.

	n	%
<b><i>How satisfied are you with the neutrality of the mediator?</i></b>		
Completely satisfied	945	71
Very satisfied	275	21
Satisfied	91	7
Slightly dissatisfied	16	1
Very dissatisfied	3	0
<b><i>How would you rate your overall level of satisfaction with the mediation process?</i></b>		
Very high	581	43
High	420	31
Average	266	20
Low	52	4
Very low	36	3

The comments on the parent survey conducted as part of the current evaluation, however, were more mixed. Although several parents found mediation “helpful” and “worthwhile,” others reported less positive experiences. One parent asserted that although the parties came to mediation with a nearly complete parenting plan, the mediator refused to look at the parents’ plan and repeatedly asked questions that were irrelevant to the parents’ situation. Another parent found the mediator “unprofessional” because she discussed her own divorce with the parties. Others found mediation frustrating and “pointless,” and one parent felt traumatized by questions from the mediator that brought up painful issues from the parent’s marriage. As a result of the parent survey’s low response rate, the survey comments may not be representative of the opinions of the general population of parents.

#### E. Specialized Alternative Dispute Resolution

If the IPS reveals signs of domestic intimate partner abuse or “unresolved parental conflict” (interpreted in practice as a power imbalance that interferes with the parties’ ability to negotiate freely), the mediator must refer the case to Specialized Alternative Dispute Resolution

(SADR).<sup>61</sup> SADR is based upon procedures for mediating cases involving domestic intimate partner abuse developed by the Douglas County District Court Conciliation and Mediation Office beginning in 2004. It is designed to allow high-conflict couples to realize the benefits of mediation while ensuring the parties' safety and mitigating power imbalances.

### ***1) Training and Qualifications for Specialized Alternative Dispute Resolution Facilitators***

A SADR facilitator must satisfy all requirements for approval as a Parenting Act mediator. An additional 24 hours of SADR training are required, covering the following topics:

1. Topics listed in the Parenting Act:

- Advanced education in regard to the potential effects of domestic intimate partner abuse 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.
- Appropriate and safe mediation strategies to assist parties in developing a parenting plan, provisions for safety, and a transition plan.

2. Distinguishing the SADR intervention process from the customary family mediation process.

3. Techniques for assisting parties engaged in high-conflict dynamics.

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<sup>61</sup> Neb. Rev. Stat. § 43-2937(2).

4. Ability to identify and skills for working with persons with mental illness or substance abuse issues.
5. Information and tools that can be used to increase the likelihood of providing a safe environment for the child and victim parent.
6. Information and skills to ensure that [the] SADR process takes into account the safety needs of the children, the parties, and the SADR facilitator.
7. Advanced process skills for SADR facilitators using primarily a caucused-based approach to negotiation.
8. Information as to the availability of community and legal domestic violence resources.
9. Standards and ethics as applicable to SADR facilitators.<sup>62</sup>

A SADR facilitator must be affiliated with an approved dispute resolution center or conciliation court program.<sup>63</sup> As of April 2015, 75 of Nebraska's 134 approved Parenting Act mediators were qualified as SADR facilitators.

During the interviews, mediation center staff, mediators, and attorneys reported that not all qualified SADR facilitators are willing to accept SADR cases. Some interviewees suspected that this is a result of the demanding nature of the cases. Interviewees also mentioned that SADR training is offered approximately every two years and is geographically inconvenient for many mediators, reducing the likelihood that mediators will become qualified SADR facilitators. The ODR and most of the core professional trainers provide the training at no cost to SADR

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<sup>62</sup> Neb. Admin. Office of the Cts., Policy for Approval of Parenting Act Mediators, § II.I.C.3 (2009).

<sup>63</sup> Neb. Rev. Stat. § 43-2938(3).

facilitators and the ODR provides travel and lodging financial support in order to address the geographical challenges.

## ***2) The Specialized Alternative Dispute Resolution Process***

After the parties provide informed consent, SADR proceeds in separate sessions, as opposed to the joint sessions typically used in standard mediation. To further reduce the safety risks, the facilitator usually meets with the parties on separate days. Because the individual sessions are confidential, the facilitator must come to an agreement with each party regarding what information is to be shared with the other party. Although attorneys and domestic violence resource agencies agree that it is helpful for domestic violence advocates to accompany victims to SADR, domestic violence agencies report that victims rarely request this support, perhaps because a victim's involvement with the agency typically ends before a divorce, custody, or parenting time case has proceeded to SADR.

In practice, much of the focus of SADR is on crafting safety provisions for the parenting plan, such as procedures and locations for child drop-offs. While SADR case data from the Douglas County District Court Conciliation and Mediation Office are not included in this report, some interviewees felt that the Douglas County office has a higher rate of success with SADR cases than the regional dispute resolution centers. They hypothesized that this is due to the office's ability to work with high-conflict parents over a long period of time—in some cases, years—along with its close connection to the court, which gives the office leverage to encourage parents to participate.

### 3) *Specialized Alternative Dispute Resolution Caseloads and Results*

Of the 1,855 parenting plan cases initiated in Nebraska's regional dispute resolution centers during fiscal year 2012, 105 (5.7%) were referred to SADR (see Table 6, *supra*). Because every SADR facilitator must be affiliated with an authorized dispute resolution center or conciliation court program, this represents the total number of SADR referrals in fiscal year 2012.<sup>64</sup>

Of the 424 total cases referred to SADR between July 2012 and March 2014, 288 (68%) underwent SADR facilitation.<sup>65</sup> In the remainder of cases, facilitation did not occur, usually because one or more parents withdrew, refused to participate, or was unresponsive. Table 9 shows the results for cases where SADR facilitation did occur. The overall rate of agreement was lower for SADR (55%) than for standard mediation (60%; see Table 7), and the rate of full agreement was substantially lower (17%) for SADR versus 41% for standard mediation.

**Table 9. Specialized Alternative Dispute Resolution Results  
July 2012 through March 2014**

	<b>n</b>	<b>%</b>
Full agreement	49	17
Partial agreement	108	38
No agreement	131	45
Total	288	100

It is important to note that database limitations in 2012 and 2013 reflect an incomplete picture of 6% of cases being referred for SADR. The ODR instituted an upgrade for tracking SADR cases in fiscal year 2013-14 in order to more accurately record this data. During that year, 642 out of 2,480 (26%) of the total parenting plan cases were SADR cases.

<sup>64</sup> If a mediator in private practice identifies a case as appropriate for SADR, the mediator must refer the case to a qualified facilitator affiliated with a dispute resolution center or conciliation court program. The case is then re-screened by the center and included in the center's statistical reports.

<sup>65</sup> On July 1, 2013, the approved mediation centers modified their reporting systems to more accurately track SADR cases, resulting in an increase in the number of SADR cases recorded.



Like a parenting plan developed through standard mediation, a facilitated agreement is subject to review, renegotiation, and rejection by the parties. No data are available regarding the ultimate outcome of agreements facilitated through SADR.

#### 4) Participant Satisfaction

Table 10 displays the results of the participant satisfaction survey administered by the regional dispute resolution centers for cases undergoing SADR between July 2012 and March 2014. Responses were mostly positive, although somewhat less positive than responses for standard mediation participants (see Table 8).

**Table 10. Parent Satisfaction with Specialized Alternative Dispute Resolution  
July 2012 through March 2014**

	N	%
<i><b>How fair was the mediation process?</b></i>		
Very fair	118	53
Fair	71	32
Average	30	14
Unfair	2	1
Very unfair	1	0
<i><b>How satisfied are you with the neutrality of the mediator?</b></i>		
Completely satisfied	131	61
Very satisfied	43	20
Satisfied	35	16
Slightly dissatisfied	6	3
Very dissatisfied	1	0
<i><b>How would you rate your overall level of satisfaction with the mediation process?</b></i>		
Very high	81	36
High	59	27
Average	59	27
Low	12	5
Very low	11	5

## F. Parenting Plans

In every case subject to the Parenting Act, a parenting plan must be developed and approved by the court. The parenting plan must serve the best interests of the child. The plan must also include the following elements:

- Legal custody and physical custody of each child.
- 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.
- Location of the child during the week, weekend, and given days during the year.
- 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.
- 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.
- Provisions for a remediation process regarding future modifications to such plan.
- Arrangements to maximize the safety of all parties and the child.
- Provisions to ensure regular and continuous school attendance and progress for school-age children of the parties.

- Provisions for safety when a preponderance of the evidence establishes child abuse or neglect, domestic intimate partner abuse, unresolved parental conflict, or criminal activity that is directly harmful to a child.<sup>66</sup>
- Requirement that the parties notify each other of a change in 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.<sup>67</sup>

In the absence of safety concerns, “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.”<sup>68</sup> The parenting plan should take into account “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.”<sup>69</sup>

The parties may develop the parenting plan through negotiation or mediation. The Nebraska Supreme Court provides forms to guide self-represented parents in developing parenting plans; the forms are also used by some attorneys.<sup>70</sup> If the parties cannot agree upon a parenting plan or certain elements of the plan, the parties’ plan fails to address all of the required issues, or the court does not approve of the parties’ plan, the court may impose a plan. In a dissolution case, the parenting plan becomes part of the final decree.

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<sup>66</sup> Neb. Rev. Stat. § 43-2929(1).

<sup>67</sup> Neb. Rev. Stat. § 43-2929(2).

<sup>68</sup> Neb. Rev. Stat. § 43-2929(3).

<sup>69</sup> Neb. Rev. Stat. § 43-2929(5).

<sup>70</sup> Neb. Sup. Ct., Filing for Divorce in Nebraska, <https://supremecourt.nebraska.gov/self-help/7235/filing-divorce-nebraska-children-no-custody-disputes-visitation-disputes-or-property>.

### ***1) Parenting Plans Filed Pre- and Post- Revisions***

Prior to the 2007 revisions, the Parenting Act encouraged but did not require the parties to file a parenting plan. In the case-level data set, a parenting plan was filed in 53% of pre-revision cases and 82% of post-revision cases, either as a separate document or as part of the final decree. This difference is statistically significant at the .01 level.<sup>71</sup> If a parenting plan, final decree, or property settlement agreement did not include a specific apportionment of parenting time, it was not considered to be a parenting plan and therefore, not coded as a parenting plan. The increase of 29% in the proportion of cases with a parenting plan that includes a specific apportionment of parenting time reflects substantial progress in achieving the goals of the 2007 Parenting Act revisions, although there remains room for further improvement.

### ***2) Source of Parenting Plan***

The case-level data reflects that, of the 209 parenting plans filed in post-revision cases, 78% were generated by attorneys and 7% showed direct evidence of being generated by mediation centers.<sup>72</sup> The remainder were generated by the parties or the court. Of parenting plans submitted, 13% were on court forms; of these, one-third were submitted by attorneys.

Table 11 shows the sources of 97 parenting plans as reported on the parent survey. Slightly more than half of parents developed their parenting plans primarily through negotiation with attorneys. The trial rate reported by survey respondents (11%) is substantially higher than the rate of contested custody trials for post-revision cases in the case-level data set (2.7%). This may result from nonresponse bias on the parent survey, where parents with stronger feelings about the litigation process may have been more likely to respond. It could also vary because of JUSTICE

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<sup>71</sup>  $\chi^2 = 55.102$ ,  $df = 1$ ,  $n = 600$ . Three cases without a final order or decree were excluded.

<sup>72</sup> Attorney-generated plans may include provisions agreed upon during mediation.

limitations or because parties considered “going to court” or a “court appearance” to be the same as a trial. There is no data field in JUSTICE to indicate whether a case went to a full trial, requiring the NCSC Evaluation Team to rely on language in the court order to confirm a trial occurred. On the parent survey, at least half of the 10 parenting plans developed through “other” means were described as being imposed by the judge.

**Table 11. Primary Method Used to Develop Parenting Plan, Parent Survey**

	<b>n</b>	<b>%</b>
Negotiated without attorneys	14	14
Negotiated with attorneys	50	52
Mediated	12	12
Trial	11	11
Other	10	10
Total	97	100

Note: Percentages do not sum to 100 due to rounding.

The Parenting Act requires judicial approval of all parenting plans. In practice, judges reported that although they may occasionally ask parties to clarify their plans or add missing elements, they rarely if ever reject a plan on substantive grounds. Most judges explained that because the parents have the best knowledge of their own family situation and their children's needs, a plan developed by the parents is usually best for the children.

### **3) Elements of Parenting Plan**

Table 12 shows the percentage of parenting plans for post-revision cases in the case-level data set that contain elements required under the Parenting Act. Not all of the required elements are consistently addressed. Every parenting plan addresses legal and physical custody of the child(ren). Most, but not all, specifically address the apportionment of parenting time and the location of the child(ren) during the week. Slightly fewer than 75% of parenting plans include a

transition or transportation plan and procedures for making decisions regarding day-to-day care and control of the child(ren). A requirement that the parties notify each other of a change in address is included in 60% of plans while fewer than half of plans include a provision for regular and continuous school attendance and progress. Safety provisions were evident in slightly more than 20% of plans; such provisions are not required in every case. Just over half of plans showed evidence that the child's age and developmental needs had been taken into consideration.

**Table 12. Parenting Plan Elements for Parenting Plans in Cases Filed After 2007 Parenting Act Revisions**

<b>Element</b>	<b>% of plans where addressed</b>
Legal and physical custody of child(ren)	100
Apportionment of parenting time	89
Location of child(ren) during week	87
Transition or transportation plan	74
Procedures for making decisions regarding day-to-day care and control of child(ren)	74
Requirements that parties notify each other of a change in address	60
Consideration of the child's age, developmental needs, etc.	52
Provisions of regular and continuous school attendance and progress	46
Safety provisions	22

Note: Percentages exclude cases where item coded as "not applicable."  
n = 209

The NCSC Evaluation Team reviewed an additional 50 randomly selected parenting plans. Most of the plans contained the elements noted in the case file research. In addition to these elements, several plans spelled out communication methods to be followed, for example, specifying that email is preferred but allowing voice messages if a more immediate response is required, requiring cell phones, and requiring responses to emails within 48 hours. Examples of safety measures included supervised visitation, permission to provide only the county and state of residence for safety reasons if a parent changes residence, prohibitions on communications with any future spouses of the parents, and allowance for discussion of major decisions only if safe

and appropriate for the children's best interests. Additionally, 11 plans specified a 10-day rule, under which the parties have 10 days from signing the agreement to negate the plan. Three plans cited to *Wilson v. Wilson*<sup>73</sup> for determining visitation for the noncustodial parent.

In many courts, it is standard practice for all parenting plans to include language requiring the parents to cooperate, treat each other in a civil manner, and avoid using the children as intermediaries. This language is often taken from the Nebraska Supreme Court parenting plan forms:

The child(ren)'s best interests require the utmost cooperation between Mother and Father. To this end, neither parent will talk badly about or in any way be negative about the other parent in front of the child(ren) or in any activity or communication involving the child(ren). Neither parent will ask about the other's personal affairs through the child(ren). Mother and Father will cooperate with the other, to the fullest extent necessary, in order to encourage a safe, secure, and loving environment for the child(ren).

A number of attorneys remarked that although this "boilerplate" provision may help to remind some parents of constructive behavior, it is unenforceable in practice.

Table 13 shows parent opinions regarding the parenting plans as reported from the parent survey.

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<sup>73</sup> *Wilson v. Wilson*, 224 Neb. 589, 399 N.W.2d 802 (1987).

**Table 13. Parent Opinions Regarding Parenting Plan**

	<b>Strongly agree</b>	<b>Agree</b>	<b>Disagree</b>	<b>Strongly disagree</b>	<b>N</b>
I always follow my parenting plan closely	49%	32%	12%	7%	68
The parenting plan is most useful when my co-parent and I are not able to work out solutions on our own	33%	35%	22%	10%	63
I can realistically adhere to all of the requirements of my plan regarding parenting time	55%	36%	5%	5%	66
The parenting plan has improved communication between my co-parent and me	12%	21%	34%	33%	67
The parenting plan has improved coordination between my co-parent and me	19%	33%	25%	22%	67
Having a parenting plan has decreased my stress concerning parenting time issues	24%	24%	27%	27%	68
Overall, the parenting plan has been useful to me in understanding and managing parenting time	22%	43%	22%	12%	67

Attorneys and mediators frequently commented that it is virtually impossible for parents to develop a plan that fully anticipates a child's changing needs and circumstances over time.

Section 43-2929(1)(vi) of the Parenting Act does require that a parenting plan include provisions for a remediation process regarding future modifications to the plan. Some parents incorporate into their parenting plans a provision for review and remediation of the plan at regular intervals—for example, every three years. Several attorneys and mediators suggested that such a provision should be a standard element of all parenting plans under the Parenting Act.

Some parents in the focus groups valued the clarity of the parenting plan, preferring sufficient specificity to leave no room for interpretation. In general, judges, attorneys, and mediators agreed that the best-case scenario is for parents to “put the parenting plan in a drawer” and work together to handle day-to-day parenting issues in a flexible and equitable manner—for example, renegotiating parenting time to accommodate special events and extracurricular activities.



For the substantial proportion of families in which there is a high level of parental conflict, however, this ideal may be unattainable. In discussing parenting plans, judges and attorneys noted that high-conflict parents will always find ways to use the parenting plan as a weapon, whether it is extremely detailed or lacks specificity. For example, high-conflict parents whose plan specifies an exact drop-off time may enter into a dispute over drop-offs that are just a few minutes late, whereas high-conflict parents whose parenting plans are less detailed may try to extend their parenting time beyond reasonable bounds. In general, relatively specific parenting plans with provisions for regular review and modification may best serve the changing needs of the widest variety of families.

In conclusion, Nebraska has generally implemented the components of the 2007 Parenting Act revisions—a Brochure, parenting education, a Temporary Child Information Affidavit, mediation, SADR, and parenting plans—according to design. There exist some opportunities to improve service to parents and families through improved communication, education, and record-keeping. These potential improvements include:

- Developing a uniform statewide procedure for the clerks of the court to distribute and document distribution of the Brochure would result in wider and more uniform dissemination of this information.
- Increased oversight of parenting education providers, including observation of parenting education classes and closer examination of individual providers' curricula, would result in more uniformity in the quality and content of parenting education.

- Given the widespread concern that the Temporary Child Information Affidavit and the affidavit-driven process for establishing temporary custody and parenting time orders encourages parental conflict, policymakers should carefully consider establishing alternative processes for gathering information relevant to temporary custody decisions. Such processes might include triage or differentiated case management approaches that are discussed in more detail in conclusions in Part 6: Conclusions and Recommendations.
- Additional training and support for mediators, attorneys, and other family law professionals can help to increase the quality of mediation services and maximize attorney support for the mediation process, particularly in non-urban areas. Because cost is a significant concern to many parents and attorneys, the cost of mediation and the availability of the sliding fee scale should also be addressed through further study, education, and outreach.

## Part 4: Impact Evaluation

The National Center for State Courts conducted an impact evaluation to examine the effects of the 2007 revisions to Nebraska's Parenting Act (Parenting Act) on short-term and long-term outcomes for parents and children. These outcomes include time to disposition in the original custody case and the rate of relitigation of custody and parenting time issues.

To analyze the impact of a public policy intervention such as the 2007 Parenting Act revisions, it is necessary to compare outcomes for cases or individuals subject to the intervention—sometimes called the treatment group—with the outcomes those cases or individuals would have experienced in the absence of the intervention. The latter condition can be represented by a group of similar cases that did not receive the intervention, known as the comparison group. The comparison group for the following analysis is divorce, custody, and parenting time cases filed in Nebraska before the 2007 Parenting Act revisions took effect on January 1, 2008 (pre-revision cases). The treatment group consists of cases filed on or after this date, which were subject to the revised 2007 Parenting Act requirements (post-revision cases).<sup>74</sup>

The original research design called for an analysis of the impact of the 2007 Parenting Act revisions on the rate of contested custody trials. Such contested custody trials are few and JUSTICE limitations make contested trials difficult to identify. Contested custody trials were documented in just 15 of the 608 cases in the case-level data set, or about 2.5% of cases. Eight trials were documented among the 347 pre-revision cases and seven trials were documented in

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<sup>74</sup> Although the requirement of mediation or Specialized Alternative Dispute Resolution did not take full effect until July 1, 2010, all cases that were filed after the majority of the 2007 Parenting Act revisions took effect on January 1, 2008, are considered together as a single treatment group because the 2007 Parenting Act revisions strongly encouraged mediation.

post-revision cases. These documented trial rates are too low to allow for statistical comparison between pre-revision and post-revision cases.<sup>75</sup>

The Program Evaluation Protocol also called for the evaluation to analyze the 2007 Parenting Act revisions' impact on child well-being. This task, however, encountered several obstacles. The first obstacle was the identification of a suitable comparison group. To isolate the impact of the 2007 Parenting Act revisions on the well-being of children, it would be necessary to compare Nebraska children whose divorce, custody, and parenting time cases were litigated under the requirements of the revised Parenting Act with Nebraska children whose cases were litigated under the requirements that existed prior to the 2007 Parenting Act revisions, at the same point in time (that is, cases from the same year). Because the revisions were implemented simultaneously throughout the State of Nebraska, it was impossible to construct such a sample. One alternative would have been to ask parents whose cases were litigated prior to the revisions to report on their children's well-being at previous points in time, but this would have required parents whose cases were filed in 2007 or earlier to recall emotional and behavioral characteristics of their children as they existed several years in the past. That exercise was not likely to produce accurate results.

A second alternative would have been to compare children whose cases were litigated under the revised Parenting Act with demographically similar children whose cases were litigated in other

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<sup>75</sup> As a result of limitations in the JUSTICE database, coders relied on language in court orders and other documents to determine whether a trial occurred on the issue of custody or parenting time. The JUSTICE database does not include a trial indicator, and some cases in which the docket noted a trial were in fact settled. Because of inconsistencies in the coding of the trial variable in the original case-level data set, the trial rate of 9.7% reported in Nebraska's 2002-2012 JUSTICE Court File Custody Research Study, 2013, over-represents the frequency of contested custody trials. During the coding of the second group of 216 cases in 2014, coders also reviewed and recoded the trial variable for the original 392 cases in the data set for increased accuracy.

states; however, project resources were insufficient to support this approach. In addition, the cooperation of other state governments would have been required in order to draw the comparison sample, and the willingness of out-of-state parents and children to participate was uncertain.

Given the available project resources and other practical considerations, it was ultimately decided that the well-being of Nebraska children involved in custody and parenting time litigation under the revised Parenting Act would be measured using a variety of nationally normed parent and child survey questions, as described in Part 2: Evaluation Data and Methods. It was hoped that this approach would provide a general comparison between the well-being of children with parenting plans developed under the revised Parenting Act and the well-being of the average child in the United States. Even this limited measurement of child well-being, however, proved to be unworkable in practice. As a result of the extremely low response rate to the parent survey (4%), sample sizes were too small to provide adequate statistical power for comparisons of most of the child well-being measures, and non-response bias was an overwhelming concern. Furthermore, no children responded to the child survey. As a result, analysis of child well-being was eliminated from the final impact analysis.

#### [A. Description of Case-Level Data](#)

Part 2: Evaluation Data and Methods describes the case-level data in detail. Table 14 below presents summary statistics for variables relevant to the impact evaluation. The percentage of dissolution cases, the average score on the conflict index, and the percentage of high-conflict

cases are somewhat lower in the post-revision group (cases filed on or after January 1, 2008) than in the pre-revision group (cases filed prior to January 1, 2008).<sup>76</sup>

The level of parental conflict is included in the analysis as an explanatory variable rather than an outcome variable. As described in Part 2, the conflict index and high-conflict indicator are based on a composite of 11 separate indicators of conflict appearing in case files. Because many of the components of the conflict index identify signs of conflict that occurred *prior* to the filing of the divorce, custody, and parenting time case and *before* the parents received the services prescribed under the Parenting Act, changes in the average score on the conflict index and the percentage of cases ranked as high-conflict cases cannot be used to analyze the impact of the 2007 Parenting Act revisions on the level of parental conflict at the conclusion of litigation. Any difference in the average score (also known as the mean score) on the conflict index or the proportion of high-conflict cases in the pre-revision and post-revision groups cannot therefore be considered an outcome of the Parenting Act. However, the level of parental conflict may have an independent impact on case outcomes such as time to disposition and the relitigation rate. For this reason, parental conflict is included in the outcome analysis as an explanatory variable.

It is noteworthy that the percentage of cases in which both parties were unrepresented quadrupled between the pre-revision and post-revision periods. As with the conflict index and high-conflict indicator, the parties' representation status is of interest as an explanatory variable that may influence case outcomes, not as an outcome of the 2007 Parenting Act revisions.

Anecdotal reports from courts across the nation indicate that the rate of self-representation has

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<sup>76</sup> See pages 38-39 for the description of how the conflict index was created and the definition of a "high-conflict" case.

risen substantially across all case types since the onset of the Great Recession in December 2007. In 2008, the Self-Represented Litigants Committee promulgated detailed forms and instructions to implement the Parenting Act which were posted on the Nebraska Supreme Court website. The Nebraska Bar Association and Legal Aid of Nebraska also created a number of self-help centers for pro se litigants between 2008 and 2012. As a final note, JUSTICE is limited in its ability to track pro se parties' legal representation status at various stages of the case. Taken together, these factors mean that no conclusions should be drawn implying that the 2007 Parenting Act revisions had a causal effect on the observed increase in self-representation.

**Table 14. Summary Statistics for Parenting Act Cases**

<b>Variable</b>	<b>All cases</b>	<b>Pre-revision</b>	<b>Post-revision</b>
Number of cases	608	347	261
Dissolution cases (%) <sup>77</sup>	92%	93%	90%
Conflict index (mean) <sup>78</sup>	4.3	4.6	3.9
High-conflict cases (%) <sup>79</sup>	14%	15%	12%
Pro se (%) <sup>80</sup>	7%	3%	12%
Observation period (mean days) <sup>81</sup>	1,057	1,060	1,055
Custody-related reopenings (% of cases) <sup>82</sup>	25%	27%	23%
Average time to disposition (days)	263	280	239

<sup>77</sup> Dissolution cases (%) is defined as the number of dissolutions expressed as a percentage of all case types included in the study. Other case types include legal separation, annulment, and never-married support/custody/visitation cases.

<sup>78</sup> Conflict index (mean) is defined as the average score on the index built from a number of indicators of parental conflict. See Chapter 2 for a full description of these indicators and the index.

<sup>79</sup> High-conflict cases (%) is defined as the number of high-conflict cases expressed as a percentage of all cases in the study. See Chapter 2 for a full description of how the high-conflict variable is constructed.

<sup>80</sup> Pro se (%) is defined as the number of cases in which both parties were unrepresented at filing and decree, expressed as a percentage of all cases included in the study.

<sup>81</sup> Observation period (mean days) is defined as the simulated average number of days that the cases in the study were observed. For the post-revision group, the observation period is the actual length of time the cases were observed. For the pre-revision group, the observation interval is simulated to mirror the intervals for the post-revision data. See footnote 87 on page 112 for the complete explanation.

<sup>82</sup> Custody-related reopenings (% of cases) is defined as the number of cases in which the issue of custody was reopened, expressed as a percentage of all cases included in the study.

## B. Time to Disposition

Time to disposition is defined as the total number of days from filing to the entry of the final order or decree. To investigate the impact of the 2007 Parenting Act revisions on time to disposition, a statistical method known as linear regression analysis was used. This method is commonly used to examine changes in the average value of a continuous outcome (such as the number of days until the completion of a case) at different values of several variables that are thought to influence the outcome being studied. The outcome (dependent variable) here is time to disposition, defined as the number of days between filing and the entry of the final order or decree. Explanatory variables included the 2007 Parenting Act revisions, case type, high-conflict, and pro se status.<sup>83</sup>

Table 15 shows the estimated impact of the explanatory variables on time to disposition, based on the 587 cases that had reached a disposition by the end of the observation period. Each number in the coefficient column is interpreted as the change in the number of days to disposition associated with a change in the value of the explanatory variable from 0 to 1 (e.g., -40.1 means 40 fewer days). Thus, holding all else equal, the 2007 Parenting Act revisions are associated with a 40-day decrease in time to disposition. This result is not statistically significant at the .05 level ( $p = .07$ ).<sup>84</sup>

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<sup>83</sup> Technical note: standard errors were clustered by judicial district to account for correlation within judicial districts.

<sup>84</sup> In normal usage, “significant” denotes something important. In statistics, the term means that a result is probably genuine and not merely the result of chance. A finding can be statistically significant and substantively meaningless or of no value for decision-making. Saying a result is statistically significant at  $p < .05$  means that it is 95% probable (1-p) that the result is not due to random chance, or in the inverse, there is a 5% chance that the result is simply due to chance. The lower the value of p, the more probable it is that the result is not due to chance. At the same time, the larger the sample size, the easier it is to reach higher levels of statistical significance, because larger sample sizes increase confidence that the sample is representative of the population. In the social sciences, a confidence level of .05 is conventionally employed for tests of statistical significance. In policy analysis, small sample sizes and other practical considerations sometimes lead to the selection of a .10 confidence level, which makes it easier to detect



Unsurprisingly, a high-conflict case lasts approximately two and a half months (108.6 days) longer than a case not identified as high-conflict ( $p < .01$ ). High conflict between parties in a dispute has the consistent effect of making litigation more burdensome for both the parties and the courts. Finally, the impacts of representation status, indicated in the table by the *pro se* variable, and of non-dissolution case type on time to disposition, are not statistically significant.

**Table 15. Estimated Impact on Time to Disposition (Days)**

	Coefficient	p-value
2007 Parenting Act revisions	-40.1	.07
Non-dissolution case type <sup>85</sup>	27.8	.60
High conflict	108.6	<.01
Pro se	30.0	.74
Constant	20.7	

n = 587

### C. Relitigation

The frequency of relitigation is an important measure for evaluating the impact of the 2007 Parenting Act revisions. Such post-decree activity, which may occur multiple times within a single case and be vigorously contested, can tax judicial resources considerably. In addition, it creates significant disruptions to families. The relitigation analysis indicates that relitigation is significantly *more* likely in high-conflict cases and in non-dissolution cases (see footnote 83), and significantly *less* likely in cases where neither party is represented by an attorney. The analysis suggests that the 2007 Parenting Act revisions may be associated with a somewhat *lower* probability of relitigation for most cases, but may be associated with a *higher* probability

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statistically significant effects while at the same time doubling the risk of a “false positive” from 5% to 10%. The estimated p-value of .07 for the effect of the 2007 Parenting Act revisions means that at a confidence level of .10, the 2007 Parenting Act revisions would be considered to have a statistically significant impact on time to disposition.

<sup>85</sup> Non-dissolution cases are defined as all case types other than dissolution that are included in the study, i.e., annulment, legal separation, and never-married support/custody/visitation cases.

of relitigation in high-conflict cases. While these results suggest effects that make sense, these observations regarding the impact of the 2007 Parenting Act revisions are not statistically significant at the .05 level and must be interpreted with extreme caution. The results of the relitigation analysis are presented more fully below.

### ***1) Calculating the Frequency of Relitigation***

The outcome or dependent variable in the relitigation analysis is the number of custody-related reopenings occurring in each case within the observation period.<sup>86</sup> Each case in the data set was observed from the date of filing through the date of data collection.<sup>87</sup> For each case, the period of observation was calculated as the number of days between filing and the end of the applicable follow-up period. On average, the original observation period was longer for pre-revision cases than for post-revision cases, simply because the pre-revision cases were filed earlier and therefore followed longer.<sup>88</sup> As a result, more relitigation events may have been observed in the pre-revision group than in the post-revision group. To avoid biasing comparisons between pre-revision and post-revision cases, the observation periods for pre-revision cases were adjusted to equal the observation periods for post-revision cases.<sup>89</sup>

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<sup>86</sup> In the case-level data set provided by Nebraska, the date of reopening and reason for reopening were recorded for the first three reopenings in each case. For this reason, the maximum number of custody-related reopenings observed per case is three.

<sup>87</sup> The date of data collection was July 17, 2013, for the first 392 cases coded and March 6, 2014, for the 216 cases coded in the second round. See Part 2: A. Case-Level Data Set for details.

<sup>88</sup> The observation periods reported for pre-revision cases in Table 14 are the simulated observation periods described in footnote 87 below, not the original observation periods.

<sup>89</sup> One approach to adjusting the observation time would have been to select a uniform observation period, such as one year or three years after filing, count only relitigation events which occurred within this window, and discard all post-revision cases that were not observed for the full period. Such an approach, however, would result in the loss of some usable data. To maximize the amount of data included in the analysis, all post-revision cases were included and followed for their full observation periods; the observation periods for individual pre-revision cases were then adjusted to match those of the post-revision cases. This was done by calculating the periods of observation for the post-revision group and assigning them randomly to cases in the pre-revision group. The pre-revision group contained 86 more cases than the post-revision group, so 86 observation periods were selected randomly from the post-revision group and each assigned to two pre-revision cases. If the observation period assigned to a control

## **2) Ordered Logit Models of Relitigation**

In the case-level data set, the maximum number of relitigation events for which the date and reason are known is three. In practical terms, the outcome variable can be therefore described as a series of four ordered categories: zero reopenings, one reopening, two reopenings, and three reopenings. The nature of this outcome variable means that a different statistical method was used to evaluate relitigation than the method used to evaluate time to disposition. This appropriate statistical method chosen to evaluate relitigation is known as ordered logit. Using this method, the effects of the 2007 Parenting Act revisions, case type, high conflict, and pro se status on re-litigation were estimated.<sup>90</sup>

Two ordered logit models of relitigation were estimated. The first (“pooled”) model estimates the average impact of the 2007 Parenting Act revisions across all cases. The second (“interactive”) model also includes interaction terms that allow the impact of the 2007 Parenting Act revisions to vary for non-dissolution cases, cases with a high level of conflict, and cases in which neither parent was represented by an attorney.

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group case was longer than the time that case was actually observed, another period was selected. Relitigation events in pre-revision cases that occurred outside of the imposed observation period were excluded. In this way, the average observation periods for pre-revision and post-revision cases were equalized, eliminating any potential bias associated with differences in the length of the observation period while using as much as possible of the available data.

<sup>90</sup> Ordered logit is a probability model used to analyze the outcome as a series of transitions, from zero to one event, one to two events, and so on. This approach permits movement from the zero to one reopening to be more or less “difficult” than movement from the first to the second reopening, or from the second to the third. This might be the case, for instance, if the first relitigation event tends to resolve most issues, making the second less likely, or, alternatively, if the first reopening foretells more difficulties later on, making a second more likely. The ordered logit model therefore imposes fewer assumptions than a model that includes a uniform effect for each transition.

Figure 3: Predicted Probability of Relitigation, Pooled Ordered Logit Model presents predicted probabilities of one or more relitigation events for various hypothetical cases based on the pooled model. The baseline case is a hypothetical case for which the values of all explanatory variables are set to zero—in other words, a pre-implementation dissolution case not identified as high conflict in which one or both parents was represented by an attorney. Predicted probabilities of relitigation are also presented for hypothetical cases with other attributes (post-revision, high-conflict, pro se). For each hypothetical case, the diamond symbol represents the predicted probability of relitigation using the pooled ordered logit model estimated using the sample data in the case-level data set; the vertical band represents the 95% confidence interval for the predicted probability.<sup>91</sup> The confidence intervals represent the level of statistical certainty about the predicted probabilities, and allow statistical inference about differences in the predicted probabilities between hypothetical cases. If the confidence intervals for two of the predicted probabilities do not overlap, the difference between the two predicted probabilities is statistically significant at the .05 level. If the confidence intervals do overlap, there is not a statistically significant difference between the two predicted probabilities. For example, the confidence intervals for the predicted probability of relitigation in a baseline case and an otherwise similar non-dissolution case overlap, indicating that the difference in the predicted probabilities of relitigation for these two hypothetical cases is not statistically significant, and the model does not detect a significant effect of non-dissolution case type on the probability of relitigation.

The model does not provide evidence that the 2007 Parenting Act revisions had a statistically significant impact on the probability of relitigation. The predicted probability of relitigation in a

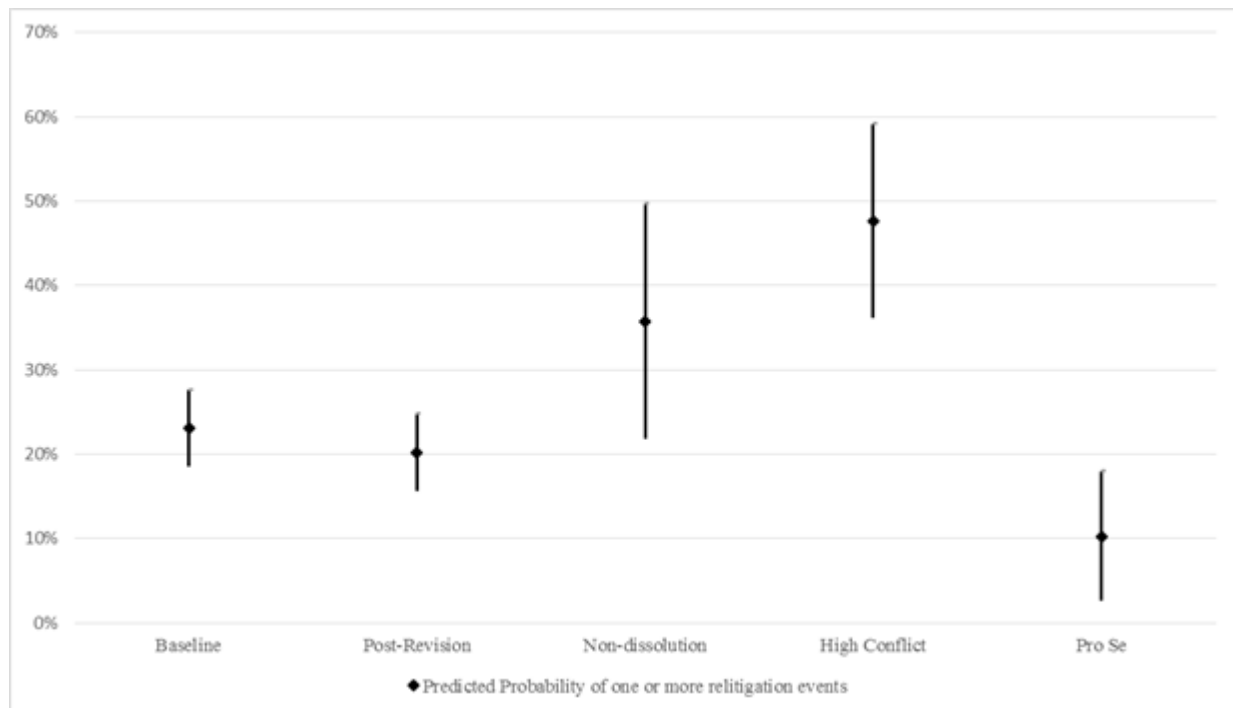
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<sup>91</sup> The 95% confidence interval is constructed in such a way that if repeated samples were taken, the confidence intervals calculated for 95% of these samples would contain the true, unobservable, population value.

baseline case is 23%. The predicted probability of relitigation in an otherwise similar case filed after the implementation of the 2007 Parenting Act revisions is 20%, but since the vertical bands overlap, the difference in the predicted probabilities is not statistically significant.

On the other hand, the model does provide evidence that a high level of conflict is associated with a higher probability of relitigation, while a lack of legal representation is associated with a lower probability of relitigation. For a high-conflict pre-revision case, the predicted probability of relitigation is 48%, more than twice as large as the predicted probability of relitigation for a comparison case (23%). On the other hand, the predicted probability of relitigation for a pre-revision pro se case is 11%, less than half the predicted probability of relitigation in a baseline case (23%). Both of these differences are statistically significant at the .05 level.

**Figure 3: Predicted Probability of Relitigation, Pooled Ordered Logit Model**



n = 608

Figure 4: Predicted Probability of Relitigation, Interactive Ordered Logit Model presents predicted probabilities of relitigation based on the *interactive* model. The interactive model includes additional explanatory variables known as “interaction terms” that separately estimate the effect of the 2007 Parenting Act revisions on relitigation in non-dissolution cases, high-conflict cases, and cases in which neither party was represented by an attorney. By comparing the predicted probabilities of relitigation for each case with each attribute (non-dissolution, high-conflict, pro se) before and after the implementation of the 2007 Parenting Act revisions, one can get a sense of how the 2007 Parenting Act revisions affected cases with each attribute. After implementation of the 2007 Parenting Act revisions, the predicted probability of relitigation for non-dissolution cases decreases from 42% to 26%; the predicted probability of relitigation in pro se cases decreases from 16% to 6%. For high-conflict cases, on the other hand, the predicted probability of relitigation increases from 41% to 54% after implementation of the 2007 Parenting Act revisions.

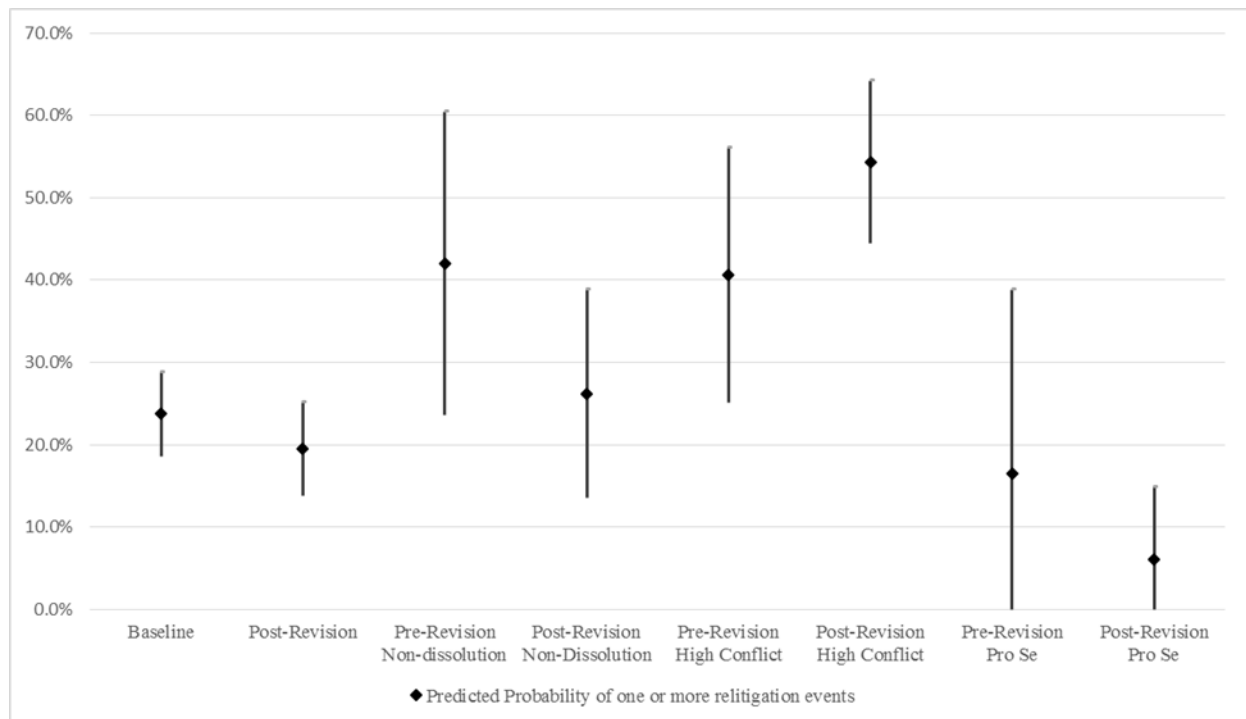
These results suggest that the 2007 Parenting Act revisions may help to reduce relitigation in non-dissolution cases and pro se cases (cases in which both parties are self-represented), while possibly increasing the probability of relitigation in high-conflict cases. These differences are not statistically significant, meaning that based upon the available data one cannot reliably conclude that they are not caused merely by chance. However, these differences might achieve statistical significance with a larger sample size.<sup>92</sup> Furthermore, the magnitude of these differences may warrant further investigation by policymakers even in the absence of sufficient data to produce a

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<sup>92</sup> Larger samples result in smaller confidence intervals, and therefore a greater likelihood that a difference will be judged to be statistically significant.

statistically significant finding, especially given the revised Parenting Act's goal of reducing the impact of conflict on children and families.

**Figure 4: Predicted Probability of Relitigation, Interactive Ordered Logit Model**



n = 608

In conclusion, at the .05 confidence level, the available data do not provide statistically significant evidence that the 2007 Parenting Act revisions had an impact on time to disposition or the rate of custody-related relitigation. When the impact of the 2007 Parenting Act revisions is analyzed separately for non-dissolution, high-conflict, and pro se cases, the data suggest that the 2007 Parenting Act revisions may be associated with a decrease in the probability of relitigation in non-dissolution and pro se cases that is offset by an increase in the probability of relitigation in high-conflict cases. Although these observed effects are not statistically significant in the current sample, their magnitude suggests that further investigation into the 2007 Parenting Act revisions' impact on high-conflict cases, including the collection of additional data, may be useful.

## Part 5: Cost and Benefit Considerations

The overarching legislative intent of Nebraska's Parenting Act (Parenting Act) revisions in 2007 was not to save the state money; rather, the purpose was to promote a legal environment that fosters a child-centered decision-making process in custody and parenting time matters. The Program Evaluation Protocol called for a cost efficiency analysis to weigh program costs against possible benefits, in other words, compare the costs and benefits of the 2007 Parenting Act revisions and draw conclusions about their cost efficiency. If monetized benefits exceed monetized costs, the intervention (revisions) is considered to be cost efficient. If costs exceed benefits, the intervention is not cost efficient and requires changes if cost efficiency is required or desired.

However, the complexity of measuring costs and benefits involved with family conflict and judicial proceedings makes this analysis difficult at best and impossible in some situations. One cannot quantify the cost and interpersonal devastation of emotional conflict, nor the value of improved interpersonal relationships. It is impossible to quantify the benefits of an improved living environment for a child whose exposure to parental conflict has been minimized due to the parents' participation in parenting education or mediation as part of their separation process. Even where benefits and costs are more readily monetized, there are no mechanisms currently in place to reliably measure many of these costs. For example, while the cost of mediation may be quantified, no data exist to quantify any changes in the number of successful mediations associated with the 2007 Parenting Act revisions, nor any associated savings in attorney fees. JUSTICE (the statewide case management system used by Nebraska's trial courts) does not capture certain data required for a comprehensive cost effectiveness analysis, such as the



frequency of mediation; surveys of lawyers, judges, and parents were limited; and other relevant data were unavailable or difficult to obtain.

As a result of these and other limitations, it was determined that a full-scale, reliable cost efficiency analysis was beyond the scope of this study. However, some consideration of available marginal costs and benefits provides a framework for use in developing changes to data collection and mechanisms to help quantify some of these costs and benefits for future studies.

#### **A. Methodology**

Data to evaluate some of the marginal costs and benefits came from the case-level data set and a variety of other sources. The Office of Dispute Resolution and the Administrative Office of the Courts provided data (e.g., costs of printing the Parenting Act Information Brochure) and facilitated information requests to mediation centers and private mediation providers. In addition, the National Center for State Courts (NCSC) Evaluation Team conducted interviews of judges, attorneys, and mediators during the site visits and administered web-based surveys to Nebraska district court judges and private attorneys (via the Nebraska Bar Association's Family Law listserv) (see Appendices L and M for copies of the surveys).

## B. Marginal Costs

A marginal cost is defined as the change in cost caused by the change in policy.<sup>93</sup> The NCSC Evaluation Team identified certain aspects of the 2007 Parenting Act revisions to consider costs associated with those changes.

The *Parenting Act Information Brochure* provided to parents is one cost of the 2007 Parenting Act revisions. In 2014, copies of the Parenting Act Information Brochure were ordered twice, once in March and again in October. Each time, the cost was about \$825 for 5,000 copies. This cost was borne by the state. Assuming each case involves two parents, the cost is \$0.34 per case.

*Parenting education courses* represent a cost that is borne primarily by parents, who pay fees to parenting education providers. Attendance documented in the case-level data indicates that the percentage of cases in which parenting education was ordered prior to the 2007 Parenting Act revisions was 15%. The 2007 Parenting Act revisions are associated with more frequent attendance at parenting education: both parents' attendance was documented in 42% of post-revision cases, and in an additional 27% of cases one parent's attendance was recorded (see Table 4, page 63). Publicly available information from mediation centers and contacts with private mediation providers reveal the typical cost of parenting education to be \$50.00. Some parents pay less as a result of sliding fee scales or fee waivers, which were not documented in the

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<sup>93</sup> In the context of the criminal justice system, the marginal cost is the amount of change in an agency's total operating costs when output (such as arrests, court filings, or jail days) changes because of changes to policies or programs. Cost-benefit analysis in general requires expert opinion based on informed assumptions of costs and what can or cannot be monetized. A common approach is to monetize all possible costs and specify costs that cannot be monetized. See also Henrichson, C. and Galgano, S. (2013) *A Guide to Calculating Justice-System Marginal Costs*, New York: Vera Institute of Justice.

available data. Other costs to parents related to parenting education, such as lost income and out-of-pocket costs for transportation and child care, could not be quantified.

*Mediation*<sup>94</sup> costs are borne by the parents, totaling \$300.00 per party<sup>95</sup> or \$600.00 per case, assuming two parties in every case. Some parents pay less as a result of sliding fee scales. The case-level data provided limited information on how often mediation services are utilized by parties. Prior to implementation of the 2007 Parenting Act revisions, parties attended mediation in approximately 2.9% of the 347 cases in the database. After implementation, court records indicated that the parties attended mediation in 9.6% of cases. This represents a 230% increase in parental participation in mediation. It should be noted that because participation in mediation is not consistently documented when it takes place, this increase in usage might be understated.

*Legal representation* costs are also borne by the parents. One aspect of the 2007 Parenting Act revisions that could impact the cost of that representation is the required filing of the Temporary Child Information Affidavit for temporary custody hearings. However, the data indicates a variety of practices employed across the state in how attorneys and judges handle such matters, including the filing of other affidavits. The NCSC Evaluation Team could not correlate the impact of requiring the Temporary Child Information Affidavit to specific legal representation costs. As noted above, another aspect of the 2007 Parenting Act revisions that could favorably impact legal representation costs is the increased use of mediation; however, the lack of relevant data made it impossible to measure any such changes in costs. And while there was a post-

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<sup>94</sup> Training mediators in the provision of services related with parenting cases costs about \$1,800.00 per mediator, which includes \$900.00 for basic preparation and an additional \$900.00 for training associated with family issues. However, these costs accrue to the mediators themselves and, thus, are not included in the cost-benefit analysis.

<sup>95</sup> This is a flat fee charged by some mediation centers for parenting plan mediation, subject to a sliding fee scale or a fee waiver based on financial ability. The fee is generally representative of the fees charged in other jurisdictions.

revision decrease in the number of parties hiring attorneys, other factors identified in Part 4:

Section A. Description of Case-Level Data prevent a conclusion determining that this decrease resulted from passage of the revisions. While the 2007 Parenting Act revisions may have impacted legal representation costs, mechanisms for measuring such changes are not currently in place to allow for any meaningful data collection and analysis.

### C. Marginal Benefits

Quantification of costs for factors such as the production of the Parenting Act Information Brochure and the provision of parenting education and parenting plan mediation does not mean that benefits can be quantified. It was not possible to measure or monetize the benefits of parents' learning something new about the requirements of the Parenting Act or the legal process from the Parenting Act Information Brochure. Likewise, the monetary value of parenting education courses and parenting plan mediation are not readily quantified or monetized.

*Time in court* is a major cost factor for parents in several ways. Costs are reduced (and savings produced) by any reduction in the amount of time parties spend in court proceedings on Parenting Act matters. According to the judge survey, the average decrease in the amount of courtroom time is estimated at 1.7 hours per Parenting Act case. The decrease in the amount of time spent on court proceedings results in *avoided costs* (or, put another way, *savings*) realized by both the parties to the case and the state as a result of less time spent in court proceedings on Parenting Act cases.

These avoided costs can be characterized as benefits. For example, the decrease in time spent in court proceedings results in real savings to the parties to the case. Savings to the parties include a reduction in the amount of time parents must take off from work to participate in court proceedings,<sup>96</sup> and possibly reduced attorney fees due to less time spent in court. The lack of measurable and quantifiable data prevented a clear picture of total attorney cost savings for parties, but informal information from attorneys, judges, and parties developed at site visits and other methods suggest there were savings and that the number of trials were reduced. In the case of the state, the savings are realized in the form of reduced *opportunity costs*; in other words, the judge and court reporter can reallocate the time saved to other types of cases or other matters of importance to the court.

A decrease in the rate of contested custody trials or the rate of relitigation in Parenting Act cases would also reduce costs for parents and the court system. However, analysis of case-level data did not demonstrate that the 2007 Parenting Act revisions had a statistically significant impact on the rate of relitigation of parenting cases. Because trials are not consistently recorded in JUSTICE, it was not possible to analyze the impact of the 2007 Parenting Act revisions on the trial rate.

In conclusion, examining the costs and benefits of statutory mandates to reassure the public that private and public financial investments associated with those requirements are accomplishing the legislative purpose in passing such laws is a worthy goal. However, the availability of data to conduct a credible cost efficiency analysis is limited at this time. Even with increased resources,

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<sup>96</sup> Other avoided costs such as the cost of securing childcare and paying for transportation are real for many parents, but these costs could not be reliably estimated based on the available data.

some key data may remain cost-prohibitive or impossible to collect. For example, reduced legal fees as a result of less time in court seems like a benefit that might reasonably be expected, but data do not exist to document whether this is the case and if it is, the extent to which it is true. As a result, costs can sometimes be obtained while benefits are difficult to quantify or monetize.

Some costs can be determined, and these are reported here. There are clearly some new costs to parents as a result of the 2007 Parenting Act revisions; parenting education classes and mediation (when required) are added costs for parents. Producing the Parenting Act Information Brochure is an additional cost for the state. Requiring the Temporary Child Information Affidavit and detailed parenting plans may increase costs to parents. The resulting benefits of many of these added costs are less easily estimated—most importantly, the reduction in parental conflict and improvement in the well-being of the children.

Notwithstanding the limitations noted, the cost and benefit examination of the primary components of the 2007 Parenting Act revisions has demonstrated, where quantifiable, fairly minimal costs to parents and the state to achieve the goal of keeping children the focus of custody and parenting time matters.

## Part 6: Conclusions and Recommendations

The objective and driving force behind Nebraska's Parenting Act (Parenting Act) is to have the best interests of children as the standard by which child custody and parenting conflicts are resolved, placing the children at the center of parental decision-making rather than leaving them caught in the middle of parental disputes. It was premised upon a belief that fostering a child-centered decision-making process in custody and parenting time matters would improve outcomes for both parents and children. In the enactment of the 2007 Parenting Act revisions, the Legislature's findings in Neb. Rev. Stat. § 43-2921 focused upon the best interests of the child as having a "safe, stable, nurturing environment." It further found that "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." The findings further included "a heightened standard of the safety and well-being of the child in situations of high conflict, domestic intimate partner abuse." Finally, the Legislature found that 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."

As set forth in the legislative intent, the Parenting Act strives to meet the best interests of the child and to assist parents by promoting the provision of quality parenting resources, requiring parenting plans, requiring parenting education courses for parents in custody or parenting time cases, and requiring mediation in cases in which the parents have been unable to agree on a parenting plan. Like any legal framework that touches upon the sacrosanct realm of the family

relationship, the Parenting Act has been the font of active debate, as well as active study. The Office of Dispute Resolution in the Administrative Office of the Courts has sought this evaluation of the Parenting Act, in particular, the 2007 revisions, following requests from members of Nebraska's Unicameral Legislature and with guidance from a diverse coalition consisting of attorneys, judges, researchers, former divorce clients, social workers, mediators, advocates for survivors of domestic violence, and non-profit organizations dedicated to children's issues.

By decreasing parental conflict and children's exposure to such conflict, increasing safety for parents and children, and increasing compliance with parenting plans, the Parenting Act ultimately aims to improve long-term well-being for parents and children. Other intended benefits of the 2007 Parenting Act revisions include a reduction in the amount of court resources devoted to resolving contested custody issues, along with an improvement in the well-being and an increase in satisfaction for all participants in the child custody and parenting time dispute resolution process, including parents, judges, attorneys, mediators, educators, and court staff.

## **A. Conclusions**

### **1) Literature Review**

A literature review sought to explore effects of divorce and parental conflict on children and the effect of interventions established in the 2007 Parenting Act revisions, including mandatory parent education and mediation required prior to proceeding with a contested custody trial. Findings from that review support the direction Nebraska has taken in the development and ongoing revisions to the Parenting Act.



*a. Child Well-Being*

- “Children in high-conflict marriages are more likely to experience behavioral and academic problems including, but not limited to, disobedience, aggression, delinquency, poor self-esteem, anti-social behaviors, and depression.” (APA 2004).
- “Recent literature suggests that the differences in outcomes and adjustment in children of divorced parents compared to those of intact families is less pronounced than previously believed and that the level of conflict in marriage or divorce is a more important predictor of negative child outcomes than whether the parents remain married.” (APA 2004; Amato 1993; Ayoub, Deutsch, and Maraganore 1999).
- The American Psychological Association (APA) summarizes recent literature to suggest that parents who provide emotional support, monitor their children’s activities and discipline authoritatively can contribute to healthier adjustment for their children after divorce. Custody arrangements, low parental conflict, and access to the non-residential parent are other factors that can have a positive influence on children (APA 2004).

*b. Parenting Education*

- “In other studies of parenting education classes researchers conducted follow-ups with participants to measure how they were using or planned to use the information provided in the parenting education class. Findings from these studies include self-reports that participants were dealing better with their own feelings and reactions as well as dealing more effectively with their children’s needs and reactions to divorce.” (Bacon 2004).

*c. Mediation*

- “There is a significant amount of literature that examines the tension and balance between preserving self-determination in mediation and administrative efficiency. There is concern that some court mediation programs are so focused on short-term outcomes such as freeing up court dockets and conserving resources that the goals of mediation are sacrificed, and more dangerously, that a coercive, non-neutral, non-voluntary environment is created. Recommendations for avoiding this include clearly stating court mediation programs’ goals and practices not only for how mediation is conducted, but also mediation’s part in the larger court process.” (Boyarin 2012).
- “It does appear that the attorneys’ attitudes toward mediation and case specifics affect whether an involved attorney is an asset or barrier to mediation.” (Ballard 2011).

**2) *Process Evaluation***

The application of each of the Parenting Act processes has been studied across the state to evaluate whether those processes are being implemented consistently and have helped achieve the Parenting Act’s goals. Data sources include court records for custody and parenting time cases filed before and after the implementation of the 2007 Parenting Act revisions, dispute resolution center records, web-based surveys of parents, web-based surveys of judges and attorneys regarding the cost of custody and parenting time litigation, site visits that included interviews with Parenting Act stakeholders, observation of Parenting Act activities, parent focus groups, and review of a wide variety of documents.

In consideration of all of the information gathered and analyzed, it is clear that the Parenting Act as amended has resulted in processes which aspire to improve the legal environment so that children can be at the center of the decision-making instead of putting them in the middle of parental conflict. These processes seek to mitigate the impact of conflict on children and may save parties and the courts valuable time and financial resources. But have these processes supported the Parenting Act's goals related to improved parental behavior and less conflict, less contested trials, faster disposition, less post-disposition relitigation, increased safety from domestic violence, reduction in court resources, and improved long-term well-being for both parents and children? As summarized next, while some benefits have been realized, there are some potential benefits that could not be measured due to a lack of uniform documentation, or in some cases, lack of access to, or participation by, enough stakeholders to collect sufficient information to render supportable positions. That said, opportunity lies in considering the various components of the Parenting Act as implemented to determine which components are rendering benefit and which need to be changed or applied more uniformly statewide in order to better enhance and measure the impact intended.

As discussed in Part 1: Background and Objectives, the 2007 Parenting Act revisions included a number of changes to the original 1994 version. This report has evaluated six of the key components modified in the 2007 Parenting Act revisions, specifically, the Parenting Act Information Brochure, parenting education, the Temporary Child Information Affidavit, mediation, Specialized Alternative Dispute Resolution, and parenting plans. The National Center for State Courts (NCSC) has reviewed whether each of those components has been implemented according to its design and is being operated and administered in a satisfactory manner from the

perspective of families involved in custody litigation and justice system stakeholders. From a program implementation standpoint, the NCSC sees that some components have been more faithfully implemented than others across jurisdictions.

The **Parenting Act Information Brochure** (Brochure) was developed by the Office of Dispute Resolution (ODR) in response to the statutory mandate that the Administrative Office of the Courts take reasonable steps to ensure that an information sheet be distributed statewide for all parties involved in parenting function matters. The 16-page Brochure sets out the mandated information regarding parenting plans, child custody, parenting time, visitation, and other access matters, along with information about attending basic parenting education. The Brochure also includes information about available resources for parents, such as self-help services, domestic violence services, and sources available for assistance in developing a parenting plan. The Brochure presents all information required by statute in a highly readable format. While parties express that it could be more informative, it must also be acknowledged that no brochure could possibly address all complexities of these processes. Other sources of information such as the Nebraska Supreme Court website should also be acknowledged as an available resource.

With regard to the mandate that this information be made available to all parties involved in parenting function matters, the Brochure appears to be broadly disseminated statewide, typically when the parties initially file with the courts. Distribution is made by the clerks of the court and attorneys. However, documentation confirming distribution was not always available. In some counties, confirmation of distribution to the parties was noted in the JUSTICE system, while in other cases, confirmation of distribution was discovered through attorney filings with the court.

Evidence of distribution could only be confirmed in 72% of the post-revision cases studied based upon documentation contained in the JUSTICE system. Documentation of distribution maintained outside the JUSTICE system was not solicited in this study; a recommendation for a uniform system of documentation will be discussed later. In terms of content and readability, distribution and utility of the information provided, the Brochure appears to provide helpful, readable content in accordance with its purpose. Processes could be improved to ensure that court representatives know of the statutory reason and obligation to provide the Brochure, that they do so, and that they track this within the court file.

**Parenting education** is required by statute, unless waived by the court. Parenting education has been found to allow parties to deal better with their own feelings and reactions, as well as dealing more effectively with their children's needs and reactions to divorce.

Many local court rules require that the parties attend basic parenting education within 60 days of service of process, and a final hearing will not typically be scheduled unless both parties have filed certificates showing they have completed their parenting education requirement. Court records document that both parents attended a parenting education class in only 42% of post-revision cases. Again, because of lack of uniformity statewide in maintaining documentation to confirm compliance, this percentage may not accurately reflect all participation. While the availability of classes is more limited in rural areas, on-line options are available. Stakeholders' beliefs about the value of the classes and the best venue for classes varied, and more rigorous oversight and evaluation of individual parenting education providers appears to be warranted. Nebraska is to be credited for having a second level of parenting education classes for higher

conflict cases, but the available data provided no information regarding the quality or usage of these classes.

In summary, while parenting education providers are generally subject to a uniform approval process, and each level's curriculum as set forth may be generally appropriate to serve parenting education purposes, the lack of interactivity of some of the courses, low satisfaction rates among some parents, and quality discrepancies between courses offered indicate that parenting education may not be meeting its full potential in reducing conflict and improving parent response. As recommended above, every effort should be made to maximize parenting education given its unique potential. If Nebraska were to consider a specific parenting education curriculum that stressed adult learning techniques and interactivity for participants, and was based on the components of the Parenting Act, a second-level class would go into greater detail on the dynamics of intimate partner abuse and would stress effective communication techniques and protocols. Much of the Literature Review presented in Part 1: Background and Objectives should be taken into account in considering establishment of such a curriculum.

The **Temporary Child Information Affidavit** presented some source of contention. While intended to give the court an immediate sense of where the child resides and should reside in time-sensitive matters, some parties alleged that the Temporary Child Information Affidavit was subject to abuse or may increase conflict between the parties.

A motion for temporary custody was filed in 165 of 261 (63%) post-revision cases in the case-level data set.<sup>97</sup> In only 39 (24%) of these cases did one or both parties file the Temporary Child Information Affidavit as determined by appearance in the case file. Anecdotally, in some jurisdictions, the Temporary Child Information Affidavit is not filed in the court file and thus not scanned into JUSTICE. Some are apparently given back to the attorneys, while in some districts, the judge keeps them. It is unclear what level of consideration is given to the affidavits without the opportunity for an in-person hearing. This is an area warranting further examination and consideration of other processes to allow parties prompt access to the courts for the determination of time-sensitive issues. An approach may be differentiated case management or triage, described in greater depth in the NCSC's recommendations.

**Mediation** is overseen by the ODR, which has been effective in establishing minimum standards and qualifications for its approved mediators, and establishing 30 hours of approved basic mediation training curriculum along with 30 additional hours of approved family mediation training. An apprenticeship is required after completion of basic and family mediation training. State-approved mediators are only required in court-ordered mediation. No quantitative data exist regarding the frequency of voluntary mediation conducted by non-approved mediators but the attorney interviews suggest that non-approved attorney mediators do not frequently mediate parenting time issues and are typically used for financial issues.

In many districts, local rules require the parties to attend mediation before a trial date will be scheduled. The court may waive the requirement of mediation after holding an evidentiary

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<sup>97</sup> Data evaluated does not include pre-revision motions because a change in the number of motions for temporary custody filed is not an intended or anticipated impact of the 2007 Parenting Act revisions and not within the scope of this analysis.

hearing and making evidentiary findings. The court may order the parties to participate in mediation or Specialized Alternative Dispute Resolution at any point in the litigation process. How consistently mediation is ordered varied greatly among courts. There was variance in attitudes regarding the utility of mediation, and the quality of mediation procedures and practices appears to vary across the mediation centers and individual mediators. In general, attorneys rated private mediators as more qualified and more effective than center-affiliated mediators.

Some mediators received rave reviews in their ability to ameliorate conflict and find constructive solutions. Parents that responded to satisfaction surveys gave positive feedback. Nevertheless, feedback regarding the mediation centers statewide was uneven. While the ODR is effective at establishing a network of communication, as well as standards, in an area that requires both legal and social science expertise, additional training may need to be provided to mediators statewide. The ODR may also need to implement an improved evaluation system for mediators, perhaps having evaluation results submitted through the ODR. Statewide oversight of dispute resolution centers may need to be strengthened to improve consistencies in procedures and practices. It would be beneficial to create opportunities for discussion among mediation centers, judges, and attorneys to identify and address issues of concern.

The ODR and regional dispute resolution centers are funded by a \$0.75 dispute resolution fee charged for every case filed in the Nebraska courts as well as a \$50.00 portion of the filing fee in dissolution of marriage and domestic relations modification cases. Some regional dispute resolution centers charge a flat fee of \$300.00 per party to mediate a parenting plan, while some charge on an hourly basis of \$90.00 per hour per party. A sliding fee scale is available for parents



who qualify on the basis of income and family size. A number of attorneys reported that funding for sliding fee scale mediation runs out so that clients who would otherwise qualify for sliding fee scale services would either have to pay the full rate or wait until the next fiscal year. All mediation centers, however, asserted that no one is denied services based upon an inability to pay, and while there may be a lapse of time between requesting mediation and assigning a mediator to the case, there are not waiting lists based upon financial resources. Regardless of the actual availability of the sliding fee scale, any perception of limitations on subsidies may affect the choices that parties and their attorneys make regarding mediation. What appear to be in fact misperceptions about availability of services based on cost should be addressed by the ODR through communication to parties, perhaps via the initial contact that the centers make with each party.

Under the Parenting Act, the mediation process begins with an initial private screening (IPS) of each party. The IPS is designed to provide a private, individual consultation with each parent to describe the mediation process and learn about the family and legal issues, as well as to identify issues of domestic intimate partner or substance abuse, conflict, or power and control dynamics that might interfere with the parties' ability to negotiate on an equal footing. From July 2012 through March 2014, the average IPS conducted through a dispute resolution center lasted approximately one hour. At the dispute resolution centers, the IPS is often conducted by a different mediator than the one who is ultimately assigned to mediate the case. This can be frustrating to both participants and mediators, as the assigned mediator frequently needs to ask many of the same questions that were already asked during the IPS. Private mediators conduct their own IPS interviews. Participant satisfaction measured by the mediation centers was very

positive but the comments on the parent survey and in focus groups were more mixed. Feedback received through the survey and focus groups indicates that this is an area that warrants further exploration. One suggestion was that the IPS and mediation always be conducted by the same individual.

**Specialized Alternative Dispute Resolution (SADR)** is a referral requirement if the initial private screening reveals signs of domestic intimate partner abuse, unresolved parental conflict, or inability to negotiate face-to-face. SADR has been successfully implemented in Nebraska, which is one of the first jurisdictions in the nation to accomplish this. The ODR instituted an upgrade of tracking SADR cases in FY2013-2014 in order to more accurately record this data. During that year, 642 out of 2,480 (26%) of the total parenting plan cases were SADR cases. Database limitations in 2012-13 reflected an incomplete picture of 6% of cases as referred for SADR. The process provides great benefits for families experiencing issues of power and control by assisting in the crafting of safety provisions for parenting plans, such as procedures and locations for child drop-offs. Some interviewees felt the Douglas County District Court Conciliation and Mediation Office has a higher rate of success with SADR than the regional dispute resolution centers. If accurate, this may be due to the Douglas County District Court Conciliation and Mediation Office's ability to work with high-conflict parents over a long period of time—in some cases, years—along with its close connection to the court, which gives the office leverage to encourage parents to participate.

A **parenting plan** was filed in 53% of pre-revision cases and 82% of post-revision cases according to the case-level data set. The difference is statistically significant at the .01 level.<sup>98</sup> The establishment of a parenting plan for children whose parents are undergoing separation is truly central to the Parenting Act. Thus, it is unquestionably positive that parenting plans were found in 209 of the 261 post-revision cases reviewed. The existence of parenting plans for children speaks highly of the impact of the 2007 Parenting Act revisions, and of the awareness of the need to establish a plan for each child. Further, system stakeholders expressed that parenting plans were being included with increasing consistency across the state. However, it must be noted that the 60% of the plans reviewed only demonstrated four of the nine statutorily required elements that were measured for this evaluation. Interviewees and focus group participants also noted that some plans lacked detail and seemed generic or pro forma. It is clear that additional educational efforts are needed for mediators, attorneys, and judges so that all professionals involved can support the establishment of parenting plans that truly meet the needs of each individual child.

### **3) *Impact Evaluation***

An **impact evaluation** examined the outcomes of Parenting Act activities. These impacts include time to disposition and the rate of relitigation in Parenting Act cases. Despite the fact that the Parenting Act requires parties to participate in a number of extra-judicial activities, such as parenting education and mediation, no negative impact on time to disposition was observed. The 2007 Parenting Act revisions were not found to have a statistically significant impact on time to disposition or on the rate of relitigation.<sup>99</sup> The relitigation analysis did suggest that the Parenting

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<sup>98</sup> Ibid.

<sup>99</sup> Ibid.

Act may be associated with a decrease in time to disposition, an overall decrease in the rate of relitigation, and an increase in the rate of relitigation for high-conflict cases, although these observations are not statistically significant and cannot be interpreted as definitive evidence of this impact of the Parenting Act.

The impact analysis provided significant evidence that high-conflict cases take longer to reach disposition and are more likely to be relitigated than cases not identified as high-conflict. These findings suggest the need for a triage program to identify high-conflict families and connect them with appropriate services.

#### ***4) Cost and Benefit Considerations***

An analysis of the **costs** and **benefits** of the Parenting Act demonstrates that, where quantifiable, fairly minimal costs are required of parents and the state to achieve the goal of keeping children the focus of custody and parenting time matters. Reduction in the numbers of cases going to trial and fewer modification filings may be indicative of reduced conflict between parents. And as the literature has shown, children in low-conflict divorced families have fewer emotional and behavioral problems than those in families with a high level of conflict (APA 2004).

#### **B. Recommendations**

Parenting provisions as comprehensive as Nebraska's are not widely found nationally. The findings demonstrate that individual provisions of the Parenting Act are being implemented faithfully, that the Parenting Act revisions demonstrate positive impacts as well as cost savings. The following recommendations are presented in the spirit of strengthening the Parenting Act as

currently written and implemented, as well as suggesting other themes worthy of discussion for the benefit of Nebraska's children.

### ***1) Parenting Act Components***

#### ***a. The Parenting Act Information Brochure***

- Education should be provided to each clerk of the court to distribute the Brochure at filing to each party in every divorce, custody, and parenting time-related case with instruction for uniform documentation in JUSTICE. A more uniform statewide practice in how distribution should be documented in JUSTICE would be helpful to confirm 100% distribution.
- While the Brochure could be supplemented by additional information otherwise available on websites, and the reading level could continue to be analyzed, this would not constitute a priority action item. Establishing a schedule of periodic review of the Brochure content is recommended.

#### ***b. Parenting Education***

- Parenting education classes should be periodically reviewed in order to provide greater oversight of the quality of the curriculum and format for both in-person and on-line courses. Quality control across curriculum and standards appears to be in order. Efforts should be made to maximize parenting education by considering a Nebraska-specific parenting education curriculum delivery that leverages effective adult learning techniques and provides interactivity for participants.

- During a curriculum revision process, it may also be appropriate to consider public policy, and standard curriculum that would address the provisions of the Parenting Act, how to help parties deal with co-parenting under changed or special circumstances including issues of distance, different size communities, or incarceration, to name a few. Much of the literature review presented in Part 1: Background and Objectives should be taken into account in considering establishment of such a curriculum.
- It would be beneficial to determine the feasibility of tailoring content of the classes according to the age of the children, to require providers to describe the content and process (e.g., proportion of lecture and interactivity among participants), and to address varying needs of parents.
- Some jurisdictions regularly audit classes to ensure consistency and quality. It would be beneficial to recommend this to all jurisdictions. A strong evaluation component could assist with ongoing improvements as well, possibly with evaluations being sent to the ODR, including an on-line survey option.
- The JUSTICE database needs to be reviewed and revised to ensure uniform data entry and documentation confirming compliance with mandatory parenting education. This should include a provision for also documenting waivers of parenting education by court order.

*c. Temporary Child Information Affidavit*

Submission of the Temporary Child Information Affidavit is required for all custody and parenting time cases in which a temporary order on parenting functions or custody, parenting time, visitation or other access is requested. There were numerous challenges in documenting

submission of the Temporary Child Information Affidavit because it can be submitted in a variety of ways. Significant discussion occurred surrounding the Temporary Child Information Affidavit. Given the generally uniform concern among stakeholders about the use of the Temporary Child Information Affidavit and other such affidavits for temporary custody motions, Nebraska policy makers should consider whether and how to continue requiring their submission for temporary orders. At the very least, a study committee should be formed to explore the findings presented in this report and consider other potential judicial processes when dealing with temporary custody matters. This study committee could explore such things as:

- Consideration of the Temporary Child Information Affidavit and other affidavits used in temporary custody matters including the potential for the handling of cases with different levels of conflict.
- Increased conflict discussed in Part 3: Process Evaluation when parties submit affidavits in support of temporary custody.
- Whether it is appropriate to require mediation before motions for temporary custody can be filed, absent exigent circumstances.
- Establishing uniform practices on the handling of the Temporary Child Information Affidavit and supporting documents, and whether they should be stored in the court file.
- Use of in-person hearings.
- Other ways the court might readily receive recommendations as to placement such as the utilization of a differentiated case management or triage process, explained more fully below.

*d. Mediation*

As the central tenet of the Parenting Act is to establish a plan that focuses on the children's welfare and diminishes conflict, mediation is central to fulfilling the Parenting Act.

- Provide additional mediator training and support statewide, but particularly in non-urban areas.
- Highlight and share effective practices statewide. Some mediation centers reported very effective practices in place. Areas to study and support effective practices may be most evident in the initial screening process. For example, some dispute resolution centers assign the same mediator for the initial screening and mediation to avoid participant frustration at having to repeat information already shared during the initial screening. That is only one idea, as other centers had screening processes that appeared very functional outside of this recommended model.
- Give attorneys and other stakeholders an opportunity through legal education to learn more about mediation generally as well as SADR, and how mediation processes accomplish the spirit of the Parenting Act. Not only would this provide education and a venue for dialogue, it may also be an opportunity to recruit attorneys, mediators, and other family law professionals to perform mediation and SADR.
- Provide additional training to mediators in order to increase statewide consistency in conducting IPS, knowledge of family law, understanding of individual circumstances of parents, and understanding of the unique issues that unmarried parents face.
- Develop strategies to better identify the involvement of mediation in the development of a parenting plan. These strategies could include:



- More uniform documentation to show when a parenting plan has been facilitated by a mediator. It may be advisable for the ODR to develop and require mediators to file with the court a “Mediator Participation Form.” Such a form could indicate such things as:
  - Whether mediation was court-ordered or voluntary.
  - Who participated.
  - Number of hours.
  - Parenting plan status: completed, partial, no.
  - Financial plan.
- Create a separate field in the JUSTICE database for documentation of mediation.
- Create and share clear guidelines for clerks of the court to utilize a mediation field in JUSTICE.
- Implement an improved evaluation system for mediators, perhaps having evaluations submitted through the ODR.
- Strengthen statewide oversight of dispute resolution centers to improve consistency in procedures and practices.
- Encourage greater judicial supervision of the mediation process to the extent that it is ethically permissible to reduce delays and the ability of one parent to manipulate the legal process to their advantage. Some courts have tickler processes for identifying when mediation should have occurred, and if it has not, parties are required to show cause.
- Establish a judicial review committee to consider more uniform procedures for judges to rely upon and enforce when parties refuse to participate in mediation in order to avoid delaying finality.

- Where possible, ensure that the mediator handling the initial screening is also the ongoing mediator, unless there are caseload deterrents or when screening identifies a need for SADR with a different mediator. This will smooth transitions and shorten the mediation process.
- Develop a mechanism for the mediator to receive a copy of the final decree and parenting plan. It may help to improve their understanding of the results of their work.
- Offer continuing legal education to family law attorneys on the Parenting Act and the role of mediation. This may reap the most benefit in the short term, and would further extend understanding of the purpose of the Parenting Act and improve the relationship between mediators and attorneys.

*e. Specialized Alternative Dispute Resolution*

Implementation of SADR has been exemplary in Nebraska.

- It will be important to learn lessons from what is being done well in areas such as Douglas County and to continue recruitment and training for SADR mediators.
- It may be beneficial to explore the possibility of having court-based SADR mediators statewide who are affiliated with the mediation centers, but available on-site, as Douglas County has implemented. This might be an element of the triage, or differentiated case management model as described below.
- Ongoing training around initial screening for the presence of domestic intimate partner abuse and issues of power and control will be critical to the success of SADR.

*f. Parenting Plan*

Regular review and training of attorneys, mediators, and judges on the required elements of a parenting plan should increase compliance with these provisions of the Parenting Act. There should be uniformity in policies and procedures for filing parenting plan documents, coding them in JUSTICE, and ultimately being able to track the presence of a parenting plan in each case.

**2) *Recommendations for Family Law Practitioners***

- Regular education is in order for family law practitioners to recognize and understand the impact of child abuse or neglect, domestic intimate partner abuse, and unresolved parental conflict to guide their work with families on parenting plans and allocation of custody and parenting time.
- Provide a research-based screening tool for attorneys representing a party or child to screen-for domestic intimate partner abuse.
- Family law practitioners would benefit from more uniform statewide policies and application of the use of the Temporary Child Information Affidavit, mediation, and SADR.

**3) *Court Operations and Data Management***

While the findings of this evaluation were challenged in several areas due to data limitations or lack of uniformity of data collection, a baseline has now been drawn and important lessons learned can be utilized in making future improvements. The following recommendations will ensure that the Parenting Act continues to evolve to better meet the needs of the children it was designed to serve:

- Regular collection of process and impact evaluation data would enable the Office of Dispute Resolution to measure and adjust procedural changes more regularly.
- Adding several fields to the JUSTICE database and improving consistent use of other fields will be important for ongoing analysis. These fields should enable easier documentation of:
  - Parenting plan.
  - Mediation.
  - Brochure notification.
  - Parenting education completion or waiver.
  - Temporary custody orders.
  - Contested custody or parenting time trials.
  - Appointment of a guardian ad litem.
  - Child support calculations.
- Take steps to collect data that would enable more precise cost and benefit estimates to be established for future consideration.
- Ongoing education is recommended for district court judges to help them recognize child abuse or neglect, domestic intimate partner abuse, and unresolved parental conflict and understand its potential impact upon children and families, parenting plans, and allocation of custody and parenting time.
- Equally helpful would be more uniform statewide policies and application of the use of the Temporary Child Information Affidavit, mediation, and SADR as well as training for district court judges to help them consider which parties would most benefit from tools such as the Temporary Child Information Affidavit, mediation, and SADR.

- Consider the development of a differentiated case management or triage approach in custody, parenting, and family cases. These approaches are being used effectively in domestic relations dockets in a number of jurisdictions. Differentiated case management and triage are more fully explained below.

#### **4) *Cost and Benefit Considerations***

- Nebraska is encouraged to modify current data systems and consider new mechanisms to measure the benefits of the 2007 Parenting Act revisions. If the data can reliably demonstrate reduced parental conflict, such a finding may in turn support the legislation's goal of staying focused on the best interests of children in custody and parenting time cases.
- New fields added to JUSTICE would provide more uniform and consistent data recording which could enable future researchers to better quantify changes in the number of custody and parenting time trials and modification actions.

#### **5) *Differentiated Case Management or Triage Approach***

A recommendation is made for Nebraska courts to examine the use of a differentiated case management or triage approach<sup>100</sup> for custody, parenting time and family cases. In domestic relations dockets, this approach is presenting itself as a developing area in order to give courts a means to provide more particularized inquiry according to the needs of each family. A number of courts are finding this differentiated case management or triage approach also helps ensure that

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<sup>100</sup> See Peter Salem, Debra Kulak and Robin M. Deutsch, Triaging Family Court Services: The Connecticut Judicial Branch's Family Civil Intake Screen, *Pace Law Review*, Vol. 27 No. 4 (2007); Thomas Clarke and Victor Flango, Case Triage for the 21st Century, *Future Trends in State Courts* (2011); Nancy Ver Steegh, Look Before You Leap: Court System Triage of Family Law Cases Involving Intimate Partner Violence, 95 *Marquette Law Review* 955 (2012).

limited or emergency judicial hearing time is reserved for the cases most needing ready access to the courts. Some researchers estimate that as much as 50% to 60% of custody and parenting time cases may be resolved in an expedited fashion by application of a differentiated case management or triage approach.

Families experiencing higher levels of conflict and families with a history of domestic intimate partner abuse or child abuse would likely benefit from ready access to a judicial determination as opposed to other processes more appropriate to families not experiencing conflict. By identifying typologies of families eligible for an expedited processing, a court can then allow more time to work with families needing greater attention. Either by a self-assessment or with the help of judicial personnel conducting an early screening, the court determines whether a family may be eligible for expedited case processing. Conducting this screening at case inception would help expedite services for families who may have already established agreement with regard to a parenting plan.

A differentiated case management or triage approach may be particularly relevant given the increase in unrepresented litigants, as well as this evaluation's finding that fewer pro se litigants filed modification actions after the decree was finalized. Families that require more attention, or ready access to the court in order to establish a parenting time order, could be identified and calendared accordingly. To do so would allow the judicial officer to consider the needs of the family before the court in order to establish the most appropriate parenting time plan. For example, as applied to parenting education, a judicial officer could reconsider universal application of parenting education and only order such services when it seemed of value to the

particular individuals. Similarly, a judicial officer could determine whether a more collaborative approach to custody and parenting time negotiations is in order to reduce or eliminate negative effects such as parental acrimony and psychological distress upon parents than the traditional adversarial process.

A guideline for a differentiated case management or triage approach could include, at a minimum, the following criteria:

- Level of conflict.
- Receptivity of parties, ability to participate in an alternative dispute resolution process.
- Intentionality of behaviors.
- Complexity of the case.
- Types of services for conflict.
- What is available in the community.
- Domestic intimate partner, substance, or child abuse.
- Mental health issues placing parties at risk.

The purpose of a screening is to, at case inception, help expedite services for low conflict families and grant a judicial determination at the soonest opportunity. It also helps to identify high-conflict families that may need more immediate attention and temporary orders by the court. This would also direct parties to services such as parenting assessments, mediators, social-legal interventions and court structure as necessary.

Since implementing triage processes, a number of courts report improved family outcomes and more effective case management. It is entirely possible that such a process could identify families in need of an immediate parenting time order in a more precise and rapid manner than the affidavit process.

A great deal more consideration of all of the unique dimensions of a family court or a differentiated case management or triage approach as they would apply to Nebraska, is far beyond what can be presented here. A first step would be for domestic relations stakeholders in Nebraska to review differentiated case management approaches in other jurisdictions and consider what elements could be beneficial in Nebraska.

#### ***6) Final Remarks and Next Steps***

In consideration of all of the information gathered and analyzed, it is clear that the Parenting Act as amended has resulted in processes that aspire to improve the legal environment so children can be placed at the center of the decision-making instead of being put in the middle of parental conflict. These processes seek to mitigate the impact of conflict on children and may save parties and the courts valuable time and financial resources. But have these processes supported the goals of the Parenting Act related to improved parental behavior and less conflict, fewer contested trials, faster disposition, less post-disposition relitigation, increased safety from domestic violence, reduction in court resources, and improved long-term well-being for both parents and children? The research indicates that while some benefits have been realized, there are other potential benefits that could not be measured due to a lack of uniform documentation, or in some cases, lack of access to or participation by enough stakeholders to collect sufficient



information to render supportable positions. Opportunity lies in making changes to data management systems that will allow more detailed consideration of the various components of the Parenting Act. Ongoing analysis will help determine which components are rendering benefit and which need to be changed or applied more uniformly statewide in order to better enhance and measure the impact intended. More evaluation needs to take place in order to more fully document the impact of the provisions.

While the Parenting Act may continue to be an active topic for discussion, it is significant and beneficial that parenting time matters are in the public eye. The Parenting Act, its requirements, and its unequivocal focus on the best interests of the child are known, implemented, and very much the focus of attention by judicial officers, attorneys, and the community at large. From a procedural standpoint, stakeholders expressed hope for the increased use of formal mediation processes; greater consistency between judicial districts and professionals; more education for attorneys and parties regarding the Parenting Act, its benefits, and how the spirit of the Parenting Act can truly be met. Nebraska is encouraged to examine a family court or differentiated case management or triage approach being used effectively in domestic relations processes in a number of jurisdictions. The NCSC expresses its appreciation in being able to participate in among the first studies of a tremendously important area. If the past is any indication, additional improvements are in store in Nebraska that will ensure that children are placed even more at the center of decisions in domestic relations matters.

## Appendices

## Appendix A: Nebraska's 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 decisionmaking 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 an 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 43-1401 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 43-1401 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.

### **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.

**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.

**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.

### **Annotations**

- This section requires that a parenting plan be developed and approved by the court in any dissolution proceeding where the custody of a minor child is at issue. Where a decree fails to do so, the decree is not a final, appealable order. *Bhuller v. Bhuller*, 17 Neb. App. 607, 767 N.W.2d 813 (2009).

**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 a parent who has physical custody of the child 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; Laws 2013, LB561, § 51.

**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 registry of child protection cases pursuant to the Child Protection and Family Safety 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; Laws 2014, LB853, § 26.

**Effective Date: July 18, 2014**

### **Cross References**

- **Child Protection and Family Safety 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.

**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:

(a) In a divorce action, if both parties have waived in writing the requirement for a hearing under section 42-361;

(b) In an action for a legal separation, if both parties have waived in writing the requirement for a hearing under section 42-361.01; or

(c) In any other action creating or modifying a parenting plan including an action to establish paternity, if (i) all parties have waived in writing the requirement of the hearing, (ii) the court has sufficient basis to make a finding that it has subject matter jurisdiction over the action and personal jurisdiction over all parties, (iii) all documents required by the court and by law have

been filed, and (iv) the parties have entered into a written agreement, signed by the parties under oath, resolving all issues presented by the pleadings.

**Source:** Laws 2007, LB554, § 16; Laws 2012, LB899, § 3; Laws 2013, LB107, § 1.

**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.

**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.

**Cross References**

- **Nebraska Capital Expansion Act**, see section 72-1269.
- **Nebraska State Funds Investment Act**, see section 72-1260.

## Appendix B: Nebraska Coding Form

Date: \_\_\_\_\_

Court/Town: \_\_\_\_\_

Reviewer initials: \_\_\_\_\_

**Revised 3/25/14\*** only revisions were to clarify explanations/definitions

**\*Revised for Parenting Act Comprehensive Evaluation, March –September 2014**  
 Parenting Act Evaluation Internal Study June-December 2013  
 Nebraska Court File Analysis

Variable	Attributes	Explanations/Definitions
<b>1. General Case Information:</b>		
a. Disposition Year?	dd-mm-yyyy	01-Jan-2014, always use 01-Jan-YEAR OF DISPOSITION; 01-Jan is a <i>FIXED CONSTANT</i>
b. Case or file number?	Numeric	Should begin with "CI" then have two digits representing year "09" then have case number "XXX", thus "CI 09 XXX"
c. Case subtype?	1= Dissolution of Marriage; 2= Order of Support/Custody/Visitation; 3= Order of Support/Custody/Visitation-Private Attorney; 4= Legal Separation & Separate Maintenance	Subtype of case or subject matter of case
d. District Court district?	District Number from List	The district in which the case is being heard at the time of the Final Order/Decree
e. County in which case was filed?	County Number from List	The county in which the case was filed at the time of the Final Order/Decree
f. Judge?	Categorical	Judge assigned to the case -listed at the beginning of JUSTICE
g. Filing date of initial filing (Complaint)?	dd/mm/yyyy	The complete filing date of the filing that initiated the action. 17-Mar-2014; ACTUAL date
<b>2. General Plaintiff Information:</b>		
a. Plaintiff relationship to child(ren)?	1= mother; 2 = father; 3 = State of Nebraska; 4= Other	Plaintiff/petitioner – person who initiated the action and the relationship to the child(ren): whether it was the mother, the father, or State or other.
i. If other, explain	Categorical	
b. Plaintiff gender?	1 = male; 2 = female; 3= Not applicable	If the State of Nebraska, list as n/a

Variable	Attributes	Explanations/Definitions
<b>2. General Plaintiff Information: (cont'd)</b>		
c. Plaintiff represented by attorney at time of original filing?	1= Yes; 2= No; 3= Not applicable	Self-explanatory. If the plaintiff is the State of Nebraska list as n/a
d. Plaintiff represented by attorney at time of Final Decree/Order?	1= Yes; 2= No; 3= Not applicable	Self-explanatory. If the plaintiff is the State of Nebraska list as n/a
e. Number of Attorneys Plaintiff retained during Dissolution?	Numeric	Count number of attorneys Plaintiff retained as indicated by notations on filings and by motions/orders to withdraw as counsel. If Plaintiff is the State of Nebraska, list as "0"
f. Current custody of Child(ren) reported by Petition/Complaint?	1= Sole Custody with mother 2= Sole custody with father; 3= Joint Custody; 4= Other; 5= No; 6= Not applicable	This can be shown if the complaint specifically states that the child(ren) reside with a particular party or with the parties. This question is purposefully not the same as Temporary and Final Decree choices.  Q1: If Mom and Dad both have the same marital address, and it appears that the children are living at that same address, how to answer? Answer as (3) "joint custody." Q2: Example: If Mom and Dad have different addresses, but the petition (and a possible Affidavit) doesn't say definitively as to where the children are CURRENTLY living at the time of the filing of the petition, how to answer? Answer: (5) No
i. If other, explain	Categorical	
g. Complaint/Petition request for Custody?	1= Sole Custody with mother; 2= Sole custody with father; 3= Joint Custody; 4= Other; 5= No; 6= Not applicable	Request for custody is indicated by the prayer of the party. In other words, who the complaint indicates should have the care, custody and control of the child(ren)  Q1: In the Petition, if it requests Joint [Legal] Custody with Primary Physical with Mom [or Dad], how to code? Answer: (3) Joint Custody
h. Was the Complaint/Petition amended	1= Yes; 2= No	Specify whether the complaint/ petition was amended as indicated by an Amended Complaint/Petition.
i. If yes, why?	Categorical	If amended, give the reason it was amended
i. Was an Order to Proceed In Forma Pauperis (IFP) entered for the Plaintiff?	1= Yes, motion granted; 2= Yes, motion denied; 3= No; 4= Not applicable	Court Order in response to a Motion to Proceed IFP by a party alleging they cannot afford to pay court costs & fees. If it was the State of the Nebraska, list as n/a.
<b>3. General Defendant Information:</b>		
a. Defendant relationship to child(ren)?	1= mother; 2= father; 3= mother and father are codef 4= other	Defendant is the person against whom the action was filed. Is the Defendant the mother, father, other?
i. If other, explain	Categorical	



Variable	Attributes	Explanations/Definitions
<b>3. General Defendant Information: (cont'd)</b>		
b. Defendant gender?	1 = male; 2 = female; 3 = mother and father are co-defendants (1 male and 1 female)	Self-explanatory. If the State of Nebraska, list as n/a.
c. Defendant represented by attorney at time of initial action by defendant?	1 = Yes; 2 = No 3 = Not applicable	Self-explanatory. If the plaintiff is the State of Nebraska list as n/a
d. Defendant represented by attorney at time of Final Decree/Order?	1 = Yes; 2 = No 3 = Not applicable	Self-explanatory. If the plaintiff is the State of Nebraska list as n/a
e. Number of Attorneys Defendant retained during Dissolution?	Numeric	Count number of attorneys defendant retained as indicated by notations on filings and by motions/orders to withdraw as counsel. If it is the State of Nebraska, list as "0".
f. Was an Order to Proceed In Forma Pauperis entered for the Defendant?	1 = Yes, motion granted; 2 = Yes, motion denied; 3 = No; 4 = Not applicable	Court Order in response to a Motion to Proceed IFP by a party alleging they cannot afford to pay court costs & fees. If it was the State of the Nebraska, list as n/a.
g. Voluntary Appearance?	1 = Yes by Defendant; 2 = Yes by Plaintiff; 3 = No	Document that voluntarily submits a party, the defendant, to the court's jurisdiction.
h. Answer to Complaint?	1 = Yes; 2 = No	Whether an answer or responsive complaint was filed by the defendant – this is a good indicator of whether D has counsel
i. Did the Defendant file a Countercomplaint?	1 = Yes; 2 = No	Document that contains a written response to the Plaintiff's complaint or initial court filing. This is almost always found within the Answer and states a prayer for relief independent of the prayers listed in the plaintiff's complaint.
i. Current custody of Child(ren) reported by Countercomplaint or Answer?	1 = Sole Custody with mother 2 = Sole custody with father; 3 = Joint Custody; 4 = Other; 5 = No; 6 = Not applicable	Indicate whether the Answer/ Countercomplaint specifies who has custody of the child(ren) at the time the Answer/ Countercomplaint was filed. This can be shown if the filing specifically states that the child(ren) reside with a particular party or with the parties.
ii. Other custody reported	Categorical	
iii. Countercomplaint or Answer request for Custody?	1 = Sole Custody with mother 2 = Sole custody with father; 3 = Joint Custody; 4 = Other; 5 = No; 6 = Not applicable	Who should have custody of the children? As requested in the Prayer of the Answer/ Countercomplaint?
iv. Other - explain	Categorical	



Variable	Attributes	Explanations/Definitions
<b>3. General Defendant Information: (cont'd)</b>  v. If yes, did the Plaintiff file a Reply?	1= Yes; 2= No; 3= Not applicable	Whether the P filed a reply or responsive pleading to the D's Answer/Countercomplaint.
<b>4. Third party involvement?</b>	Categorical	List third parties that are involved in the initial stage of litigation from the initial filing of the P through the first final order/decre. These parties are active participants in the litigation process and formally move to intervene as third parties or intervene as third parties by the motion of the court. (Includes G@L appointed at some stage of the initial sequence)
<b>5. Interested Party involvement?</b>	Categorical	List interested parties involved in the initial stage of litigation from the initial filing of the P through the first final order/decre. These parties are participants whose voices are valuable to the litigation process but are not formal parties in the action. The court will call these people "interested parties". They are usually primary caretakers of the child(ren), in an official capacity as a guardian or unofficial.
<b>6. Child(ren) Information:</b>		
a. Number of Children?	Numeric	List the number of minor children who are subject to the custody determination. (Do not include children who age out before the decree is finalized)
b. Year of birth? (youngest/only child)	dd/mm/yyyy	As indicated by JUSTICE green screen under "INQDEP" inquiry: their age by the year of birth (entered as 01-01-YYYY) ALWAYS report "01-Jan" and ONLY use the specific EXACT YEAR, so if the child was born March 17, 2014, it would be reported 01-Jan-2014.
i. Youngest / only child gender?	1= male; 2= female	List child's gender
c. Year of birth? (second youngest)	dd/mm/yyyy	As indicated by JUSTICE green screen under "INQDEP" inquiry: their age by the year of birth (entered as 01-01-YYYY) ALWAYS report "01-Jan" and ONLY use the specific EXACT YEAR, so if the child was born March 17, 2014, it would be reported 01-Jan-2014.
i. Second youngest child gender?	1= male; 2= female; 3= Not applicable	If no more children, fill 01-Jan-1901 in the blank where year would go.  Self-explanatory
d. Year of birth? (third youngest)	dd/mm/yyyy	As indicated by JUSTICE green screen under "INQDEP" inquiry: their age by the year of birth (entered as 01-01-YYYY) ALWAYS report "01-Jan" and ONLY use the specific EXACT YEAR, so if the child was born March 17, 2014, it would be reported 01-Jan-2014.
		If no more children, fill 01-Jan-1901 in the blank where year would go.

Variable	Attributes	Explanations/Definitions
<b>6. Child(ren) Information: (cont'd)</b>		
i. Third youngest child gender?	1= male; 2= female; 3= Not applicable	Self-explanatory
e. Year of birth? (fourth youngest)	dd/mm/yyyy	As indicated by JUSTICE green screen under "INQDEP" inquiry: their age by the year of birth (entered as 01-01-YYYY) ALWAYS report "01-Jan" and ONLY use the specific EXACT YEAR; so if the child was born March 17, 2014, it would be reported 01-Jan-2014.  If no more children, fill 01-Jan-1901 in the blank where year would go.
i. Fourth youngest child gender?	1= male; 2= female; 3= Not applicable	Self-explanatory
f. Year of birth? (fifth youngest)	dd/mm/yyyy	As indicated by JUSTICE green screen under "INQDEP" inquiry: their age by the year of birth (entered as 01-01-YYYY) ALWAYS report "01-Jan" and ONLY use the specific EXACT YEAR; so if the child was born March 17, 2014, it would be reported 01-Jan-2014.  If no more children, fill 01-Jan-1901 in the blank where year would go.
i. Fifth youngest child gender?	1= male; 2= female; 3= Not applicable;	Self-explanatory
<b>7. Parenting Act Notice?</b>	1= Yes; 2= No; 3= Not applicable	Notice that brochure describing mediation and parenting education has been provided to all parties. Mailed by the Clerk of the District Court as noted in JUSTICE. (Note: This is a term that JUSTICE gives to the Clerk to toggle when the Parenting Act Information Brochure is delivered to Plaintiff and Defendant)
a. Some cases show this as an Action by JUSTICE: Action in JUSTICE?	1= Yes; 2= No; 3= Not applicable	
b. Parenting Act notice provided by Plaintiff's attorney as indicated by court documents?	1= Yes; 2= No; 3= Not applicable	Notice was provided by the P's attorney indicated by the complaint or a separate filing stating notice was provided. If P never had an attorney, list as n/a
c. Parenting Act notification provided by Defendant's attorney as indicated by court documents?	1= Yes; 2= No; 3= Not applicable	Notice was provided by the D's attorney indicated by the answer or a separate filing stating the notice was provided. If D never had an attorney, list as n/a
<b>8. Pretrial Order (a/k/a Order Scheduling)?</b>	1= Yes; 2= No	Progression Order to keep the case moving by setting a schedule of tasks that the parties need to accomplish before the final hearing date. May also be called a Pretrial Order or Order for Scheduling but answer "No" if it is only a Notice of Hearing that simply gives the date of the trial.
a. If yes, does this include language for mediation prior to contested custody trial?	1= Yes; 2= No; 3= Not applicable	Whether it includes any language relating to mediation – look for "mediation".

Variable	Attributes	Explanations/Definitions
<b>8. Pretrial Order (a/k/a Order Scheduling)?</b> <i>(cont'd)</i>		
b. If yes, other relevant information?	Categorical	Any unusual information relating to the parties – particularly if they trigger a conflict indicator
<b>9. Motions filed by parties:</b>		
a. Motion for an Ex Parte Order? (MEPO)	1= Yes; 2=No	Ex Parte Order Motions are “without the party” Motions filed by one party to get a court order without having the opposing party present; usually for child support (CS) or custody
i. If yes, who filed?	1= Plaintiff; 2= Defendant; 3= Not applicable	
ii. If yes, order granted?	1= Yes; 2= No; 3= Not applicable	
iii. Reason for order?	Categorical	List the purpose of the MEPO – again, usually for CS or custody
b. Motion for Temporary Custody? (MTC)	1= Yes; 2= No; 3= n/a	Motion for Temporary Custody is to get a court order specifying the custody arrangement of the child(ren) in the interim period before the final order/decre. If it is unclear whether a motion is an MEPO or a MTC, track it as a MTC. (Includes motion included in complaint)
i. If yes, is there a filing of a Temporary Child Information Affidavit?	1= Yes; 2= No; 3= Not applicable	Temporary Child Information Affidavits are affidavits that accompany the MTC, and are usually filed the same day. They specify where the child(ren) reside and the reasons why the proposed temp custody should be the way it is.
ii. Temporary Order for Custody or Access to Child?	1= Yes; 2= No; 3= Not applicable	Whether the court issued a temporary order re the MTC
1. If yes, is there a temporary parenting plan?	1= Yes; 2= No; 3= Not applicable	<p>A temporary parenting plan (TPP) specifies at a minimum the legal custody arrangement plus a physical custody schedule arrangement and/or some kind of holiday/special events/breaks schedule. It does not have to be listed in a separate document, but it can be.</p> <ul style="list-style-type: none"> <li>• NO: If the court order/settlement agreement ONLY sets forth custody and RR V, then there is “no parenting plan.”</li> <li>• NO: If the court order/settlement agreement ONLY sets forth custody and the words “Wilson vs Wilson” WITHOUT specifying apportionment of time in the order/settlement, or an attachment, there is “no parenting plan.”</li> <li>• YES: If the court order/settlement agreement, including an attachment, sets forth (a) custody and (b) apportionment (access) specifics such as weekends, days of the week, holidays then “Yes, there is a parenting plan.”</li> </ul>

Variable	Attributes	Explanations/Definitions
<b>9. Motions filed by parties: (cont'd)</b>  2. Temporary Order: custody allocation?	1 = sole legal custody to the mom 2 = sole legal custody to the dad 3 = joint legal custody with mother's primary residence; 4 = joint legal custody with father's primary residence; 5 = joint legal custody with shared residence; 6 = joint legal custody with split residence; 7 = other; 8 = Not applicable Categorical	Custody allocation relates to the legal and physical custody of the child(ren). Sole means full legal and physical. Joint means joint physical. Primary residence means where the child(ren) lives more than 50% of the time. Shared residence means the child(ren) live at the parents' residences in equal amounts (50-50). Split residence means 1 or more of the children live with one parent and 1 more of children live with the other parent (ie. son A lives with mom, son B lives with dad). Other is any other custody arrangement that doesn't fit the other listed types. Not applicable stands when the order doesn't exist.
a. If other, explain   3. Temporary Order: type of visitation or parenting time access for non-custodial parent?	1 = weekly; 2 = every other week; 3 = once a month; 4 = less than once a month; 5 = access not specified; 6 = seasonal break access;; 7 = no access (includes RRV) 8 = other; 9 = Not applicable	Type of access of non-custodial parent is the amount of visitation/parenting time the parent who does not have primary physical custody has with the child. <ul style="list-style-type: none"> <li>1 = Weekly means they visit with the child at least once a week for any period of time.</li> <li>2 = Every other week means they see the child every other week for any period of time.</li> <li>3 = Once a month means they see the child once a month for any period of time.</li> <li>4 = Less than once a month means that they see the child periodically through the year, but less than monthly.</li> <li>5 = Access not specified means the order doesn't indicate a visitation schedule.</li> <li>6 = Seasonal break access means the parent has extended visitation over school break periods like spring break, winter and summer breaks or any combination thereof – this is independent of vacation visitation time.</li> <li>7 = No access means the parent cannot exercise visitation with the child.</li> <li>8 = Other is any other arrangement not specified in the above list.</li> <li>9 = Not applicable occurs when there is no order/parenting plan.</li> </ul>
a. If other, explain 4. If yes, does it include an order to mediation	1 = Yes; 2 = No; 3 = Not applicable	Did the Temporary Order for Custody and Visitation also require an order to mediate prior to the final hearing?
5. T. O. Other considerations	Categorical	Did the Temporary Order for Custody and Visitation also require other conditions?
6. If yes, date of Temporary Order?	dd/mm/yyyy	What is the date stamp on the court's Order for Temporary Custody/Visitation?



Variable	Attributes	Explanations/Definitions
<b>9. Motions filed by parties: (cont'd)</b>		
c. Was a Motion to Dismiss filed?	1= Yes; 2= No	Was a motion to dismiss filed by any of the parties? A court ordered dismissal for "lack of prosecution" does not fit here.
i. If yes, movant?	1= Plaintiff; 2= Defendant; 3= Both parties jointly; 4= Not applicable	Did Plaintiff file? Did Defendant file? Both?
ii. If yes, granted?	1= Yes; 2= No; 3= Not applicable	Did the Court grant the Motion to Dismiss?
d. Other motion filed pertaining specifically to child custody?	1= Yes; 2= No	Any other motions initiated by the parties that you feel are unusual or pertinent to child custody issues (ie. Motion to Transfer venue)
i. If yes, type?	Categorical	
ii. If yes, who filed?	1= Plaintiff; 2= Defendant; 3= Not applicable	Did Plaintiff file? Did Defendant file?
iii. If yes, granted?	1= Yes; 2= No; 3= Not applicable	Did the Court grant the Motion?
<b>10. Protection Order?</b>	1= Yes; 2= No	Is there evidence of an Order of Protection in the file?
a. If yes, who filed?	1= Plaintiff; 2= Defendant; 3= Other; 4= Not applicable	Self-explanatory
i. If other, explain	Categorical	
b. Reason for protection order?	Categorical	Insert the reason as to why the Protection Order was ordered by the court. Look for language in initial filings, affidavits or motions for domestic protection orders. These are somewhat rare.
c. Order granted?	1= Yes; 2= No; 3= Not applicable	
d. Language regarding access to children?	1= Yes; 2= No; 3= Not applicable	Does the final Order of Protection limit or otherwise describe specific access to the children?
e. Evidence of PO allegations incorporated into Parenting Plan?	1= Yes; 2= No; 3= Not applicable	Does the final Parenting Plan adopted in the case include provisions that reference or address Protection Order allegations of safety, risk, etc?
f. Evidence of PO allegations incorporated into Final Decree/Order?	1= Yes; 2= No; 3= Not applicable	Does the final Decree include provisions that reference or address Protection Order allegations of safety, risk, etc?

Variable	Attributes	Explanations/Definitions
<b>11. Were the parties ordered to mediate?</b>	1= Yes by the court's own motion or order; 2= Yes on motion of the Plaintiff 3= Yes on motion by Defendant; 4= Yes on motion by both parties; 5= No	Does the file include an order or referral by the Court to mediate? If so, respond with a "1". Was there a Motion to Mediate filed by Plaintiff? = 2 Was there a Motion to Mediate filed by Defendant? = 3 Was there a joint motion? = 4 No evidence of court order, court referral or motion to mediate = 5
a. Did a party object to mediation?	1= Yes, the Plaintiff; 2= Yes, the Defendant; 3= Yes both parties objected; 4= No; 5= Not applicable	An objection to mediate will be on a separate document. The court usually rules on the motion to object. We don't have a code for the court order.
<b>12. Did the parties attend mediation?</b>	1= Yes; 2= No	You can tell if parties mediated by what is listed in the Judge's Notes in JUSTICE, Conciliation Court documents in Douglas County or occasionally in other court filings such as Parenting Plans that indicate they were mediated.
a. If mediated, were any mediation forms filed with the court?	1= Yes, Parenting Plan (PP) 2= Yes, Property Settlement Agreement; (PSA) 3= Yes, PP and PSA; 4= Yes, other; 5= No; 6= Not applicable	Self-explanatory
b. If other, explain:	Categorical	
c. Was Specialized ADR used in this case?	1= Yes; 2= No	Non-judicial intervention in high-conflict cases where approved Specialize Mediators facilitate voluntary mutual development of a structured parenting plan.
<b>13. Parenting Education:</b>		
a. Parenting Education Ordered by Court?	1= Yes; 2= No	Look for parenting education ordered or referred in a written order by the court (ie) within a particular court order or independently.
b. If yes, date?	dd/mm/yyyy	
c. Plaintiff attend PE?	1= Yes; 2= No; 3= Not applicable	Documented with a certificate of completion or list of class attendees.
d. Date Plaintiff completed PE?	dd/mm/yyyy	
e. Defendant attend PE?	1= Yes; 2= No; 3= Not applicable	Documented with a certificate of completion or list of class attendees.
f. Date Defendant completed PE?	dd/mm/yyyy	

Variable	Attributes	Explanations/Definitions
<b>14. Was a Guardian ad Litem appointed for this case?</b>	1= Yes; 2= No	Court file should reflect whether one or more GALs were appointed.
<b>15. Contested Custody Trial? (CCT)</b>	1= Yes; 2= No	<p>Contested custody trial means the parties could not come to an agreement regarding any child custody issue(s) and needed to go to trial to have the court decide the outcome of said issues. If the trial is about Child Support only, then I do not count it as a CCT. Look for witness/exhibit lists, motions to set for trial, indications in the Order for scheduling, and pretrial conference documents and JUSTICE notations that the matter went to trial (sometimes JUSTICE is not correct). If it is not clear, say "no".</p> <p>In the JUSTICE green screen, there is white text as an explanatory note, which may tell you whether there was a trial. There is often a lot of preparation for a trial, but then there is settlement prior to a courtroom trial, this would be "No."</p> <p>See 9b(ii)(1) for a fuller definition of a PP. It is a very loose interpretation and the PP can be found within the text of a property settlement agreement, stipulation, final order/decre or a separate document called a PP.</p> <p>Not R V? Not Wilson vs Wilson?</p> <ul style="list-style-type: none"> <li>NO: If the court order/settlement agreement ONLY sets forth custody and RRV, then there is "no parenting plan."</li> <li>NO: If the court order/settlement agreement ONLY sets forth custody and the words "Wilson vs Wilson" WITHOUT specifying apportionment of time in the order/settlement, or an attachment, there is "no parenting plan."</li> <li>YES: If the court order/settlement agreement, including an attachment, sets forth (a) custody and (b) apportionment (access) specifics such as weekends, days of the week, holidays then "Yes, there is a parenting plan."</li> </ul> <p>IMPORTANT NOTE: #16 is a threshold question. If it is answered "NO" then all of 16.a through 16.h <b>WITH THE EXCEPTION OF 16. f</b> should be answered "3" for "Not applicable"</p>
<b>16. Is there a Parenting Plan?</b>	1= Yes; 2= No	
a. On a NE court form?:	1= Yes; 2= No; 3= Not applicable	Parenting plan that is created on a pre-formatted Nebraska court form, Forms DC 6:5(13), DC 6:5(14), DC 6:5(6) or DC 6:5(7)
b. If yes, PP modified by the parties?	1= Yes; 2= No; 3= Not applicable	3 = Not applicable should always be used if #16 above is answered "NO"
		Was the Court Form PP modified by the parties prior to the final decree? 3 = Not applicable should always be used if #16 above is answered "NO"

Variable	Attributes	Explanations/Definitions
<b>16. Is there a Parenting Plan? (cont'd)</b>		
c. Attorney generated?	1= Yes; 2=No; 3= Not applicable	If the PP was not signed by a mediator, and if there was at least one attorney on the case, answer "yes" = 1. If there is clear indication that a mediator mediated the PP, then answer "no." = 2. If there were no attorneys on the case, and no evidence of a mediator, then answer "no." = 2. If there was no PP at all in the file, answer 3, n/a.
d. PP mediated?	1= Yes; 2=No; 3= Not applicable	If there is clear evidence in the file that there was a mediator(s) who assisted the parties and/or attorneys to create a PP, answer "yes" = 1. If there is no evidence as to the existence of a mediation, answer "no" = 2. If there was no PP at all in the file, answer 3, n/a.
e. PP signed?	1= Yes, by both parties; 2= Yes by Plaintiff only; 3= Yes by Defendant only; 4= No; 5= Not applicable	Self explanatory. 5 = Not applicable should always be used if #16 above is answered "NO."
f. Contents: custody allocation THIS IS A STATUTORILY REQUIRED ELEMENT OF THE PARENTING PLAN (Neb.Rev.Stat. 43-2929 (1) (b) (i))	1 = sole legal custody to the mom 2 = sole legal custody to the dad 3 = joint legal custody with mother's primary residence; 4 = joint legal custody with father's primary residence; 5 = joint legal custody with shared residence; 6=joint legal custody with split residence; 7= other; 8= Not applicable	What is the custody determination in the Parenting Plan? See definitions above. 8 = Not Applicable should always be used if #16 above is answered "NO"
i. If "other", explain.	Categorical	
g. Contents: type of visitation access for non-custodial parent	1 = weekly; 2 = every other week; 3 = once a month; 4 = less than once a month; 5 = access not specified; 6 = seasonal break access; 7 = no access 8= other; 9= Not applicable	What type of access or visitation does the non-custodial parent have? Use not applicable if joint custody – shared residence. 9 = Not Applicable should always be used if #16 above is answered "NO"
i. If "other", explain.	Categorical	



Variable	Attributes	Explanations/Definitions
<b>16. Is there a Parenting Plan? (cont'd)</b>		
ii. Average monthly visitation time, in <b>days</b> for non-custodial parent (not including holidays, breaks or summers)?	Numerical	Calculate by taking the hours of visitation and dividing by 24. If there are no exact times specified, or there is no PP, list as "missing" 98. [This decision was made during the 2013 initial coding process.] (ex) Father gets visitation from 7pm Monday to 7am Tuesday every week = 12 hours per week. 12 hours per week / 24 hours per day = 0.5 day per week 0.5 day per week x 52 weeks a year = 26 days per year 26 days per year / 12 months = 2.167 days per month Insert 2.167 in the cell
iii. Average monthly visitation time in <b>hours</b> for non-custodial parent (not including holidays, breaks or summers)?	Numerical	Calculate by multiplying number of days by 24 hours/day (ex) Using example above: 2.167 x 24 = 52 hours per month visitation Insert 52 in the cell
iv. Days of visitation in the summer for non-custodial parent	Numerical	Based on number of summer vacation time (in full days-- not a modified summer visitation schedule) non-custodial parent gets
<b>h. Statutorily required elements of PP:</b>		
i. Apportionment of Parenting Time, etc. SRE: 43-2929 (1) (b) (ii)	1 = Yes; 2 = No; 3 = Not applicable	Does the Parenting Plan apportion parenting time? NO: RRV NO: the words "Wilson v. Wilson" only YES: the words "Wilson v. Wilson", include an attachment, with specifics of apportionment included, such as "every other weekend" "Tuesday nights" NOTE: related to 16.g. 3 = Not applicable should always be used if #16 above is answered "NO"
ii. Location of the child/ren during week	1 = Yes; 2 = No; 3 = Not applicable	If you can tell where the child(ren) are each day of the week. The statute is ambiguous on this point so if there's a custody schedule and/or it states who has primary physical custody, this requirement is satisfied Not R R V, Not W v W  YES: if there is a physical custody schedule which includes an apportionment of time YES: if it is clear that mom and dad have joint physical custody and it is specified as to apportionment of time NO: if it is unclear or absent as to where the children are primarily living during the week/month/year 3 = Not applicable should always be used if #16 above is answered "NO"

Variable	Attributes	Explanations/Definitions
<b>16. h. Statutorily required elements of PP (cont'd)</b>		
iii. Transition or Transportation Plan	1 = Yes; 2 = No; 3 = Not applicable	Describes how the child(ren) go to and from each parent's residence for visitation. For all visits vs. just Holidays? YES: any indication of one or more of the following details: time, places, how to communicate, duties during transferring child from parent-to-parent during weekly/regular. NO: just holidays NO: no information at all  3 = Not applicable should always be used if #16 above is answered "NO"
iv. Procedures for making decisions regarding day-to-day care and control of child	1 = Yes; 2 = No; 3 = Not applicable	Look for "day-to-day" language specifically. Provision that relates to how to make daily decisions for child. General language or exclusive words "day-to-day"? YES: language that describes HOW mom and dad make decisions for daily, or regular, care of the child. The words "day-to-day" are not required. NO: absence of any language about HOW mom and dad make decisions for the child  3 = Not applicable should always be used if #16 above is answered "NO"
v. Provision for Regular and continuous school attendance and progress for school-aged children.	1 = Yes; 2 = No; 3 = Not applicable	Provisions that relate to child/ren receiving adequate education essential to best interests and meeting any special needs  3 = Not applicable should always be used if #16 above is answered "NO"
vi. Requirement that parties notify each other of a change of address	1 = Yes; 2 = No; 3 = Not applicable	Explicit paragraph that says each parent is to notify the other of change of address. NO: if the language only pertains to keeping child support enforcement notified of address 3 = Not applicable should always be used if #16 above is answered "NO"
vii. Consideration of 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	1 = Yes; 2 = No; 3 = Not applicable	Look for provision that encourages positive relationships between parents and children, age considerations, developmental needs, etc. 3 = Not applicable should always be used if #16 above is answered "NO"
viii. Safety Provision(s)	1 = Yes; 2 = No; 3 = Not applicable	Plan developed to reduce risks of harm to children & adults who are victims of child abuse or neglect, domestic intimate partner abuse or unresolved parental conflict. These are rare and only triggered in a small amount of cases involving abuse/safety concerns.  3 = Not applicable should always be used if #16 above is answered "NO"

Variable	Attributes	Explanations/Definitions
<b>16. h. Statutorily required elements of PP (cont'd)</b>		
ix. More than one Parenting Plan version in file?	1 = Yes; 2 = No; 3 = Not applicable	I say yes to this if there are more than 1 PP in the file prior to the first final decree/order 3 = Not applicable should always be used if #16 above is answered "NO"
x. Other: Explain:	Categorical	List unusual provisions that are in the PP. I have been tracking emergency medical decision making, child's events, and being on time in particular.
xi. Other: Explain:		cc
xii. Other: Explain:	Categorical	cc
xiii. Is PP in a separate document?	1 = Yes; 2 = No; 3 = Not applicable	Is there a separate document entitled "Parenting Plan?" It can be entirely separate, or be a section of a larger document such as the Property Settlement Agreement or final Decree. Answer "yes" if any of the above apply. If custody, visitation, access, other parenting plan terms are mentioned in a non Parenting Plan document, but not titled "parenting plan" answer "no."  Also "no" if it is Parenting Plan that isn't personalized, e.g., just generic "be a good parent" language. Final order/decre is the document that concludes the litigation through court order. The claim in other words has been fully litigated and cannot be re-filed. Files may be reopened for modification or appeal at a later date. (Includes order dismissing without prejudice)
<b>17. Final Order/Decree:</b>		
a. Date of Final Order/Decree?	dd/mm/yyyy	
b. Restrictions on access to child?	1 = Yes; 2 = No; 3 = Not applicable	
c. If yes: what restrictions?	Categorical	
d. Was alimony awarded?	1 = Yes to the mother; 2 = Yes to the father; 3 = No; 4 = Not applicable	
i. Amount of monthly alimony awarded?	Numerical	Enter the dollar amount of monthly alimony. If the alimony is ordered as an annual amount, divide by 12 months to insert the monthly amount. If there is a graduating rate of alimony over a period of years, enter the first year's monthly amount.
e. Is Custody/Appointment of Time specified in the Final Decree?	1 = Yes; 2 = No; 3 = Not applicable	If the final Decree orders custody in the Decree itself, or as an incorporated attachment, then respond with "yes." If there is no visible order of custody or apportionment of time, respond with no. Not R V Not Wilson vs Wilson

Variable	Attributes	Explanations/Definitions
<b>17. Final Order/Decree: (cont'd)</b>		
i. If yes, what type of custody was ordered?	1 = sole legal custody to the mom 2 = sole legal custody to the dad 3 = joint legal custody with mother's primary residence; 4 = joint legal custody with father's primary residence; 5 = joint legal custody with shared residence; 6 = joint legal custody with split residence; 7 = other; 8 = Not applicable	See definitions above under Temporary Custody Order.
ii. Other explanation	Categorical	
<b>18. Right of first refusal language?</b>	1 = Yes; 2 = No	Right of first refusal language means that if a parent cannot exercise their visitation time for whatever reason, the other parent has first priority to have the children in their care, custody and control. This is usually in the PP or final decree/order.
a. Where?	1 = Parenting plan; 2 = Property Settlement Agreement; 3 = Decree; 4 = Other; 5 = Not applicable	Where is the right of first refusal language ordered?
i. If other, explain	Categorical	
<b>19. Were child support calculations provided?</b>	1 = Yes; 2 = No	See explanation
a. Was Worksheet #1 provided (Basic)?	1 = Yes; 2 = No; 3 = Not applicable	Worksheet #1 is a required worksheet by the Nebraska Supreme Court. However, prior to a recent court decision, these worksheets did not always show up in the court file.
i. Monthly net income of mother?	Numerical	Worksheet #1 will show what is the monthly net income of the mother. Insert that \$\$ amount.
ii. Monthly net income of father?	Numerical	Worksheet #1 will show what is the monthly net income of the father. Insert that \$\$ amount.
iii. Percent contribution of each parent: mother?	Numerical	... will show % contribution by mother. Insert %
iv. Percent contribution of each parent: father?	Numerical	... will show % contribution by father. Insert %



Variable	Attributes	Explanations/Definitions
<b>19. Were child support calculations provided? (cont'd)</b>		
b. Was Worksheet #2 provided (Split custody)?	1= Yes; 2= No; 3= Not applicable	Worksheet #2 is used for Split Custody. This is when dad has sole custody of 1 or more children and mom has sole custody of 1 or more of the rest of the sibling group. (Dad has son, Mom has daughter).
i. Support to be paid for child(ren)?	Numerical	
ii. By whom?	1= mother; 2= father; 3= Not applicable	
c. Was Worksheet #3 provided (Joint physical)?	1= Yes; 2= No; 3= Not applicable	Worksheet #3 is used when the parents have joint physical custody of the children; e.g., the children are with both parents about 50/50, or 40/60. The NSC Rule says: <i>"When a specific provision for joint physical custody is ordered and each party's parenting time exceeds 142 days per year, it is a rebuttable presumption that support shall be calculated using worksheet 3."</i> There is more to the rule.
i. Number of days annually child is in custody of mother?	Numerical	
ii. Number of days annually child is in custody of father?	Numerical	
iii. Obligation for support?	Numerical	
iv. By whom?	1= mother; 2= father; 3= Not applicable	
d. Was Worksheet #5 provided (Deviations to Child Support)?	1= Yes; 2= No; 3= Not applicable	Worksheet #5 is used when the parents want to deviate from the calculations.
v. Reasons for deviation?	Categorical	Rationale for deviations should be found in the Court's final Order or Decree. Q: If there is no Worksheet #5, but it is clear there is deviation from the Decree/Order, yes, complete this categorical question.
vi. Adjusted child support for mother?	Numerical	Q: If there is no Worksheet #5, probably won't be able to complete this with a specific answer, thus would insert "98" missing.
vii. Adjusted child support for father?	Numerical	Q: If there is no Worksheet #5, probably won't be able to complete this with a specific answer, thus would insert "98" missing.
e. Was Worksheet #6 provided?	1= Yes; 2= No; 3= Not applicable	Worksheet #6 is "Imputation of Childcare Tax Credit." This is used when parents pay for childcare expenses and want federal tax credit.
viii. Imputed monthly tax credit?	Numerical	Insert the \$\$ amount allowed.
f. Did the Order/Decree specify a child support amount per month?	1= Yes; 2= No; 3= Not applicable	The final amount of child support should be visible in the final Decree or Order.
ix. If yes, what was the amount ordered to be paid?	Numerical	

Variable	Attributes	Explanations/Definitions
<b>19. Were child support calculations provided? (<i>cont'd</i>)</b>		
x. By whom?	1= mother; 2= father; 3= Not applicable	
<b>20. How many times has the case been reopened?</b>		
a. Date of first reopening?	Numerical  dd/mm/yyyy	Do not count an appeal as a "reopening."
b. Party who initiated reopening?	1= Plaintiff; 2= Defendant; 3= Both parties jointly; 4= Not applicable; 5= State of Nebraska; 6= Court	
c. Reason for first reopening	Narrative 1 = change custody 2 = change apportionment parenting time 3 = modify child support 4 = property settlement, alimony, other non-child support financial issues 5 = other (nunc pro tunc; other procedural motions) 6 = N/A	May include a succinct description of conclusion if easily discernible
e. Date of second reopening?	dd/mm/yyyy	
f. Party who initiated second reopening?	1= Plaintiff; 2= Defendant; 3= Both parties jointly; 4= Not applicable; 5= State of Nebraska; 6= Court	
g. Reason for second reopening	Narrative	May include succinct description of conclusion if easily discernible

Variable	Attributes	Explanations/Definitions
<b>20. How many times has the case been reopened? (<i>cont'd</i>)</b>		
h. Categorical reason for reopening	1 = change custody 2 = change apportionment parenting time 3 = modify child support 4 = property settlement, alimony, other non-child support financial issues 5 = other (nunc pro tunc; other procedural motions) 6 = N/A	
i. Date of third reopening?	dd/mm/yyyy	
j. Party who initiated third reopening?	1 = Plaintiff; 2 = Defendant; 3 = Both parties jointly; 4 = Not applicable; 5 = State of Nebraska; 6 = Court	
k. Reason for third reopening	Narrative reason	May include succinct description of conclusion if easily discernible
l. Categorical reason for reopening	1 = change custody 2 = change apportionment parenting time 3 = modify child support 4 = property settlement, alimony, other non-child support financial issues 5 = other (nunc pro tunc; other procedural motions) 6 = N/A	
<b>21. Conflict Indicators between parents:</b>		Conflict indicators should be included from initial sequence as well as modification sequence. "Verified" means there is some official corroboration that the event occurred such as known witnesses with affidavits, police involvement and/or court involvement. "Substantiated" means witnesses were there and other corroborating circumstances indicated that the allegations are very likely true. "Previous/historical" means it happened in the past. "Ongoing/current" means the issue is occurring during the time the present case is litigated. If these conflict indicators are not demonstrated within the case file you are analyzing, assume they are not triggered. Initial sequence and re-openings.
a. Previous involvement with court?	1 = No; 2 = Yes parent(s) had involvement	Involvement of either parent in any court.

Variable	Attributes	Explanations/Definitions
<b>21. Conflict Indicators between parents: (cont'd)</b>		
b. Compliance with court orders?	1= No concerns; 2= Parent alleges that the other is non-compliant; 3= Verified history of non-compliance; 4= Verified ongoing non-compliance	
c. Child(ren)'s exposure to inter-parent conflict (threats, hitting, pushing, yelling, etc.)?	1= Child not been witness to parental conflict; 2= Parent alleges that child has been witness to parent conflict; 3= Verified child witnessed parental conflict; 4= Verified child continues to witness parental conflict	
d. Child Abuse and/or Neglect?	1= Child has not been abused; 2= Parent alleges child has been maltreated by other parent; 3= Verified previous child abuse by parent; 4= Current/ongoing child abuse by parent	
e. Child abduction concerns?	1= No concerns of child abduct. 2= Parent expresses concern that other parent may abduct; 3= Parent alleges other parent made threats to abduct child; 4= verified threats/attempts to abduct child	
f. Domestic violence (threats, hitting, pushing, yelling, etc.)?	1= No concern regarding DV; 2= Parent alleges domestic violence by the other parent; 3= Verified previous incidence of DV; 4= Verified ongoing DV	



Variable	Attributes	Explanations/Definitions
<b>21. Conflict Indicators between parents: (cont'd)</b>		
g. Stalking/intimidation/Threats?	1= No concern of S/I/T; 2= Parent alleges other parent has S/I/T 3= Verified historical S/I/T; 4= Verified current/ongoing S/I/T	
h. Restraining orders/Protection orders?	1= No previous or current RO/PO; 2= Previous/current RO/PO; 3= Substantiated previous/current RO/PO; 4= Verified previous/current RO/PO	
i. Parenting abilities?	1= No concerns regarding parenting ability; 2= Parent alleges other parent lacks skills and creates risk to child; 3= Verified past/current/ongoing lack of parenting ability that creates risk to child; 4= Substantiated past/current/ongoing lack of parenting ability that creates risk to child.	
j. Parent-child contact interference?	1= No P/C contact interfering behaviors; 2= Parent alleges P/C contact interfering behaviors; 3= Verified past P/C contact interfering behaviors; 4= Verified current/ongoing P/C contact interfering behaviors	
k. Child refusal?	1= Child expresses/displays no concerns about contact with either parent; 2= Child expresses/displays discomfort towards parent; 3= Child has displayed/expressed resistance to contact with parent; 4= Child displays/expresses not wanting to have contact with parent	

Variable	Attributes	Explanations/Definitions
22. Parties engage in discovery?	1= Yes; 2= No	
23. Source of data?	1= JUSTICE; 2= Paper file	

## Appendix C: Parent Survey, Wave 1

### **(90 days after filing)**

The National Center for State Courts (NCSC) is an independent, nonprofit court improvement organization. The NCSC is collaborating with the Office of Dispute Resolution & Special Court Programs of the Nebraska Administrative Office of the Courts to conduct an evaluation of the effectiveness and impact of the Nebraska Parenting Act (Act). As part of this evaluation, we are asking parents who have been involved in divorce, custody or paternity cases subject to the Act to share information about their experiences with the programs and services required or offered under the Act. We would like your participation in this survey of parents involved in divorce and custody cases governed by the Nebraska Parenting Act. Your participation in the survey will assist NCSC researchers in evaluating how well parts of the Act are working (e.g., Parenting Act Information Brochures, parenting education classes, parenting plan completion, and mediation). The evaluation findings should help improve these processes and services.

This survey should take about 20 minutes and includes questions regarding your experiences with Parenting Act services. The survey also includes some questions about how your children are doing in areas such as school and health. This survey is voluntary. You may decide not to begin or to stop this survey at any time without penalty. Researchers will not be able to link your survey responses to you, but they will know that you participated in the survey because you accessed the survey through a unique survey link. The survey software keeps your identifying information separate from the answers you provide to the survey. We plan to publish the results of this survey, but we will not include any information that would identify you.

You will receive a \$5 Visa gift card for completing this survey. At the end of the survey, you will be directed to another survey where you will fill out contact information for delivery of your gift card. This will ensure that your identifying information is not associated with any of your answers to the survey questions.

If you have questions about your rights as a survey participant, or wish to obtain information, ask questions or discuss any concerns about this study with someone, please contact: Alicia Davis, [adavis@ncsc.org](mailto:adavis@ncsc.org).

By clicking on the link below, you are consenting to participate in this research survey. If you do not wish to participate, click the “x” in the top corner of your browser to exit.

What is your gender?

- ☐ Male
- ☐ Female
- ☐ Other \_\_\_\_\_

Please indicate your race/ethnicity:

- ☐ White
- ☐ Black/African-American
- ☐ Hispanic
- ☐ Asian
- ☐ Native American/Alaska Native

☐ Other (please specify): \_\_\_\_\_

Please select your age range:

☐ 18-24

☐ 25-34

☐ 35-44

☐ 45-54

☐ 55+

Please select your county of residence: [List of counties in dropdown] \_\_\_\_\_

How many children do you have?

☐ 1

☐ 2

☐ 3

☐ 4

☐ 5

☐ 6

☐ More than 6

Please enter the ages of your children (if you have more than six, enter the ages of the oldest six).

Child 1 \_\_\_\_\_

Child 4 \_\_\_\_\_

Child 2 \_\_\_\_\_

Child 5 \_\_\_\_\_

Child 3 \_\_\_\_\_

Child 6 \_\_\_\_\_

The first questions ask your input on the mediation and parenting plan components of the Parenting Act. Please focus on parenting time when answering these questions, and not issues of legal custody, child support, property distribution, or other financial topics. This study is focusing on the effects of the Act regarding parenting time only.

Did you receive the Parenting Act brochure?

☐ Yes

☐ No

☐ Can't remember

Where did you get the Parenting Act brochure?

☐ Attorney

☐ Court clerk – in person

☐ Other \_\_\_\_\_

☐ Court clerk – in mail

Please indicate the extent to which you agree or disagree with the following statements regarding the Parenting Act brochure.

	Strongly Agree	Agree	Disagree	Strongly Disagree	N/A (do not remember getting the brochure)
The brochure was clear and easy to read					
I learned things I didn't previously know about the Parenting Act requirements					
I learned things I didn't previously know about the legal process					
I learned things I didn't previously know about mediation					
I found the list of resources helpful					
The brochure contained too much information--it was overwhelming					

Did you refer to the brochure later during the legal process?

☐ Yes

☐ No

Do you have any other comments regarding the Parenting Act brochure?

Did you attend parenting education?

- ☐ Yes
- ☐ No--attendance was waived
- ☐ No--I didn't attend due to another reason

***[if answered no – it was waived above]***

Why was parenting education waived?

- ☐ Child is nearing age 19
- ☐ Previously attended parenting education for earlier court case
- ☐ Was not able to find a class
- ☐ Other (please specify):\_\_\_\_\_

***[if answered no – due to another reason above]***

What was the reason you did not attend Parenting Education?

What type of parenting education did you attend?

- ☐ In-person
- ☐ On-line



Indicate the extent to which you agree or disagree with the following statements:

	Strongly Disagree	Disagree	Agree	Strongly Agree
It was easy to find a parenting education class that fit my schedule				
It was easy for me to register for the parenting education class				

What, if anything, did you learn from your parenting education class?

Given that the child is the ultimate beneficiary of a good parenting plan, we'd like to ask you some questions regarding your child's academic, social, and physical well-being. Please answer the next questions about the selected child who is the subject of your parenting plan.

What kind of school is your child currently enrolled in?

- ☐ Public school
 ☐ Home-school
- ☐ Private school
 ☐ Not enrolled in school

During the past 12 months, how many times has your child's school contacted you or another adult in your household about any problems he or she is having with school? This includes school related problems but not health related problems.

--

The following is a list of statements that sometimes describe children. For each item, indicate how often it was true for your child during the past month.

My child:

	Never true	Rarely	Sometimes	Usually	Always true
...cares about doing well in school					
...does all the required homework					
...finishes the tasks [he/she] starts and follows through with what [he/she] says [he'll/she'll] do					
...stays calm and in control when faced with a challenge					
...shows interest and curiosity in learning new things					

How would you rate your child's performance in academic subjects in school?

- ☐ Above average      ☐ Below average  
☐ Average      ☐ Failing

How many days of school has he/she missed in the past month (for any reason)? \_\_\_\_\_

How many close friends does your child have? \_\_\_\_\_

How many times a week does your child do things with any friends outside of school? \_\_\_\_\_

During the past 12 months...

	Yes	No	Don't Know
Was your child on a sports team or did he or she take sports lessons after school or on weekends? Include any teams run by your child's school or community groups.			
Did your child participate in any clubs or organizations after school or on weekends? Examples of clubs or organizations are scouts, arts, religious groups, and boys/girls clubs.			
Did your child participate in any other organized activities or lessons, such as music, dance, language, or other arts? This question can include organized lessons in music, dance, foreign languages, performing arts, computers, and more.			
Has your child taken any medication because of difficulties with his/her emotions, concentration, or behavior?			

	Yes	No	Don't Know
Has your child received any treatment or counseling from a mental health professional? Mental health professionals include psychiatrists, psychologists, psychiatric nurses, and clinical social workers.			

The following are some statements that describe the behavior of many children. Indicate whether each statement has been Often true, Sometimes true, or Not true of your child for the past 3 months.

	Often true	Sometimes true	Not true
Has sudden changes in mood or feelings			
Feels or complains that no one loves him or her			
Is high strung, tense, or nervous.			
Cheats or tell lies.			
Is too fearful or anxious.			
Argues too much.			
Has difficulty concentrating, cannot pay attention for long.			
Is easily confused, seems to be in a fog.			
Bullies, or is cruel or mean to others.			
Is disobedient at home.			
Is disobedient at school.			
Does not seem to feel sorry after he or she misbehaves.			

	Often true	Sometimes true	Not true
Has trouble getting along with other children.			
Has trouble getting along with teachers.			
Is impulsive, acts without thinking.			
Feels worthless or inferior.			
Is not liked by other children.			
Has a lot of difficulty getting his/her mind off certain thoughts, has obsessions.			
Is restless or overly active, cannot sit still.			
Is stubborn, sullen, or irritable.			
Has a very strong temper and loses it easily.			
Is unhappy, sad, or depressed.			
Is withdrawn, does not get involved with others.			
Feels others are out to get him/her.			
Hangs around with kids who get into trouble.			
Is secretive, keeping things to himself/herself.			
Worries too much?			

During the past 12 months, how many times did your child see a doctor, nurse, or other health care provider for preventive medical care such as a physical exam or well-child checkup? \_\_\_\_\_

How would you rate your child's health?

- ☐ Excellent
- ☐ Good
- ☐ Fair
- ☐ Poor

About how often do you know who your child is with when s/he is not at home? Would you say you know who s/he is with...

- ☐ All of the time
- ☐ Most of the time
- ☐ Some of the time
- ☐ Only rarely

How close does your child feel toward you?

- ☐ Extremely close
- ☐ Quite close
- ☐ Fairly close
- ☐ Not at all close

## Appendix D: Parent Survey, Wave 2

### **(4 weeks after filing of parenting plan)**

The National Center for State Courts (NCSC) is an independent, nonprofit court improvement organization. The NCSC is collaborating with the Office of Dispute Resolution & Special Court Programs of the Nebraska Administrative Office of the Courts to conduct an evaluation of the effectiveness and impact of the Nebraska Parenting Act (Act). As part of this evaluation, we are asking parents who have been involved in divorce, custody or paternity cases subject to the Act to share information about their experiences with the programs and services required or offered under the Act. We would like your participation in this survey of parents involved in divorce and custody cases governed by the Nebraska Parenting Act. Your participation in the survey will assist NCSC researchers in evaluating how well parts of the Act are working (e.g., Parenting Act Information Brochures, parenting education classes, parenting plan completion, and mediation). The evaluation findings should help improve these processes and services.

This survey should take about 20 minutes and includes questions regarding your experiences with Parenting Act services. The survey also includes some questions about how your children are doing in areas such as school and health. This survey is voluntary. You may decide not to begin or to stop this survey at any time without penalty. Researchers will not be able to link your survey responses to you, but they will know that you participated in the research because you accessed the survey through a unique survey link. The survey software keeps your identifying information separate from the answers you provide to the survey. We plan to publish the results of this study, but we will not include any information that would identify you.

You will receive a **\$5 Visa gift card** for completing this survey. At the end of the survey, you will be directed to another survey where you will fill out contact information for delivery of your gift card. This will ensure that your identifying information is not associated with any of your answers to the survey questions.

If you have questions about your rights as a survey participant, or wish to obtain information, ask questions or discuss any concerns about this study with someone, please contact the project manager Alicia Davis, [adavis@ncsc.org](mailto:adavis@ncsc.org).

By clicking on the link below, you are consenting to participate in this research survey. If you do not wish to participate, click the "x" in the top corner of your browser to exit.

What is your gender?

- ☐ Male
- ☐ Female
- ☐ Other \_\_\_\_\_

Please indicate your race/ethnicity:

- ☐ White
- ☐ Black/African-American
- ☐ Hispanic
- ☐ Asian
- ☐ Native American/Alaska Native



☐ Other (please specify): \_\_\_\_\_

Please select your age range:

☐ 18-24

☐ 25-34

☐ 35-44

☐ 45-54

☐ 55+

Please select your county of residence: [List of counties in dropdown]

How many children do you have?

☐ 1

☐ 2

☐ 3

☐ 4

☐ 5

☐ 6

☐ More than 6

Please enter the ages of your children (if you have more than six, enter the ages of the oldest six).

Child 1 \_\_\_\_\_

Child 4 \_\_\_\_\_

Child 2 \_\_\_\_\_

Child 5 \_\_\_\_\_

Child 3 \_\_\_\_\_

Child 6 \_\_\_\_\_

Did you refer to the Parenting Act brochure later in the legal process?

- ☐ Yes
- ☐ No
- ☐ Do not remember receiving a brochure

Did you attend parenting education?

- ☐ Yes
- ☐ No--attendance was waived
- ☐ No--I didn't attend due to another reason

Why was parenting education waived?

- ☐ Child is nearing age 19
- ☐ Previously attended parenting education for earlier court case
- ☐ Was not able to find a class
- ☐ Other (please specify):\_\_\_\_\_

What was the reason you did not attend Parenting Education?

What type of parenting education did you attend?

- ☐ In-person
- ☐ Online

Did you learn anything in parenting education that you were able to use later on?

- ☐ Yes
- ☐ No

What information from your parenting education class were you able to use later on?

Did you attend mediation?

- ☐ Yes
- ☐ No

What would you like to share about your experience with the mediation process?

How did you develop your parenting plan?

- ☐ Negotiated without attorneys
- ☐ Negotiated with attorneys
- ☐ Mediated
- ☐ Trial
- ☐ Other (please specify)\_\_\_\_\_

Was there any information about mediation or the court process that you wish you had known at the beginning?

- ☐ Yes
- ☐ No

Please tell us what information you wish you'd known at the beginning of your mediation or court process.

How do you feel about sharing parenting time and working with your co-parent to address any parenting time issues that may arise in the future?

- ☐ Optimistic/confident
- ☐ Somewhat worried or concerned
- ☐ Anxious/stressed

Given that the child is the ultimate beneficiary of a good parenting plan, we'd like to ask you some questions regarding your child's academic, social, and physical well-being. Please answer the next questions about the selected child who is the subject of your parenting plan.

What kind of school is your child currently enrolled in?

- ☐ Public school                      ☐ Home-school
- ☐ Private school                      ☐ Not enrolled in school

During the past 12 months, how many times has your child's school contacted you or another adult in your household about any problems he or she is having with school? This includes school related problems but not health related problems. \_\_\_\_\_

The following is a list of statements that sometimes describe children. For each item, indicate how often it was true for your child during the past month.

My child:

	Never true	Rarely	Sometimes	Usually	Always true
...cares about doing well in school					

	Never true	Rarely	Sometimes	Usually	Always true
...does all the required homework					
...finishes the tasks [he/she] starts and follows through with what [he/she] says [he'll/she'll] do					
...stays calm and in control when faced with a challenge					
...shows interest and curiosity in learning new things					

How would you rate your child's performance in academic subjects in school?

- ☐ Above average
 ☐ Below average  
☐ Average
 ☐ Failing

How many days of school has he/she missed in the past month (for any reason)? \_\_\_\_\_

How many close friends does your child have? \_\_\_\_\_

How many times a week does your child do things with any friends outside of school? \_\_\_\_\_

During the past 12 months...

	Yes	No	Don't Know
Was your child on a sports team or did he or she take sports lessons after school or on weekends? Include any teams run by your child's school or community groups.			
Did your child participate in any clubs or organizations after school or on weekends? Examples of clubs or organizations are scouts, arts, religious groups, and boys/girls clubs.			
Did your child participate in any other organized activities or lessons, such as music, dance, language, or other arts? This question can include organized lessons in music, dance, foreign languages, performing arts, computers, and more.			
Has your child taken any medication because of difficulties with his/her emotions, concentration, or behavior?			
Has your child received any treatment or counseling from a mental health professional? Mental health professionals include psychiatrists, psychologists, psychiatric nurses, and clinical social workers.			

The following are some statements that describe the behavior of many children. Indicate whether each statement has been Often true, Sometimes true, or Not true of your child for the past 3 months.

	Often true	Sometimes true	Not true
Has sudden changes in mood or feelings			
Feels or complains that no one loves him or her			
Is high strung, tense, or nervous.			
Cheats or tell lies.			
Is too fearful or anxious.			
Argues too much.			
Has difficulty concentrating, cannot pay attention for long.			
Is easily confused, seems to be in a fog.			
Bullies, or is cruel or mean to others.			
Is disobedient at home.			
Is disobedient at school.			
Does not seem to feel sorry after he or she misbehaves.			
Has trouble getting along with other children.			
Has trouble getting along with teachers.			
Is impulsive, acts without thinking.			
Feels worthless or inferior.			
Is not liked by other children.			



	Often true	Sometimes true	Not true
Has a lot of difficulty getting his/her mind off certain thoughts, has obsessions.			
Is restless or overly active, cannot sit still.			
Is stubborn, sullen, or irritable.			
Has a very strong temper and loses it easily.			
Is unhappy, sad, or depressed.			
Is withdrawn, does not get involved with others.			
Feels others are out to get him/her.			
Hangs around with kids who get into trouble.			
Is secretive, keeping things to himself/herself.			
Worries too much?			

During the past 12 months, how many times did your child see a doctor, nurse, or other health care provider for preventive medical care such as a physical exam or well-child checkup? \_\_\_\_\_

How would you rate your child's health?

- ☐ Excellent
- ☐ Good
- ☐ Fair
- ☐ Poor

About how often do you know who your child is with when s/he is not at home? Would you say you know who s/he is with...

- ☐ All of the time
- ☐ Most of the time
- ☐ Some of the time
- ☐ Only rarely

How close does your child feel toward you?

- ☐ Extremely close
- ☐ Quite close
- ☐ Fairly close
- ☐ Not at all close

## Appendix E: Parent Survey, Waves 3, 4, and 5

### **(6 months, 1 year, 2 years post-decree)**

The National Center for State Courts (NCSC) is an independent, nonprofit court improvement organization. The NCSC is collaborating with the Office of Dispute Resolution & Special Court Programs of the Nebraska Administrative Office of the Courts to conduct an evaluation of the effectiveness and impact of the Nebraska Parenting Act (Act). As part of this evaluation, we are asking parents who have been involved in divorce, custody or paternity cases subject to the Act to share information about their experiences with the programs and services required or offered under the Act. We would like your participation in this survey of parents involved in divorce and custody cases governed by the Nebraska Parenting Act. Your participation in the survey will assist NCSC researchers in evaluating how well parts of the Act are working (e.g., Parenting Act Information Brochures, parenting education classes, parenting plan completion, and mediation). The evaluation findings should help improve these processes and services.

This survey should take about 20 minutes and includes questions regarding your experiences with Parenting Act services. The survey also includes some questions about how your children are doing in areas such as school and health. This survey is voluntary. You may decide not to begin or to stop this survey at any time without penalty. Researchers will not be able to link your survey responses to you, but they will know that you participated in the research because you accessed the survey through a unique survey link. The survey software keeps your identifying information separate from the answers you provide to the survey. We plan to publish the results of this survey, but we will not include any information that would identify you.

You will receive a \$5 Visa gift card for completing this survey. At the end of the survey, you will be directed to another survey where you will fill out contact information for delivery of your gift card. This will ensure that your identifying information is not associated with any of your answers to the survey questions.

If you have questions about your rights as a survey participant, or wish to obtain information, ask questions or discuss any concerns about this study with someone, please contact: Alicia Davis, [adavis@ncsc.org](mailto:adavis@ncsc.org).

By clicking on the link below, you are consenting to participate in this research survey. If you do not wish to participate, click the “x” in the top corner of your browser to exit.

What is your gender?

- ☐ Male
- ☐ Female
- ☐ Other \_\_\_\_\_

Please indicate your race/ethnicity:

- ☐ White
- ☐ Black/African-American
- ☐ Hispanic
- ☐ Asian
- ☐ Native American/Alaska Native

☐ Other (please specify): \_\_\_\_\_

Please select your age range:

☐ 18-24

☐ 25-34

☐ 35-44

☐ 45-54

☐ 55+

Please select your county of residence: [List of counties in dropdown]

How many children do you have?

☐ 1

☐ 2

☐ 3

☐ 4

☐ 5

☐ 6

☐ More than 6

Please enter the ages of your children (if you have more than six, enter the ages of the oldest six).

Child 1 \_\_\_\_\_

Child 4 \_\_\_\_\_

Child 2 \_\_\_\_\_

Child 5 \_\_\_\_\_

Child 3 \_\_\_\_\_

Child 6 \_\_\_\_\_

[ONLY the number indicated in the previous question will show up here]

The first questions ask your input on the mediation and parenting plan components of the Parenting Act. Please focus on parenting time when answering these questions, and not issues of legal custody, child support, property distribution, or other financial topics. This study is focusing on the effects of the Act regarding parenting time only.

Did you attend mediation?

☐ Yes

☐ No

***[If yes to Mediation]***

What would you like to share about the mediation process?

How did you develop your parenting plan?

☐ Negotiated without attorneys

☐ Negotiated with attorneys

☐ Mediated

☐ Trial

☐ Other (please specify)\_\_\_\_\_

Please indicate the extent to which you agree or disagree with the following statements regarding your parenting plan.

	Strongly Disagree	Disagree	Agree	Strongly Agree	Not Applicable
I always follow my parenting plan closely					
The parenting plan is most useful when my co-parent and I are not able to work out solutions on our own					
I can realistically adhere to all of the requirements of my plan regarding parenting time					
The parenting plan has improved communication between my co-parent and me					
The parenting plan has improved coordination between my co-parent and me (i.e., we are on the same page about what is expected)					

	Strongly Disagree	Disagree	Agree	Strongly Agree	Not Applicable
Having a parenting plan has decreased my stress concerning parenting time issues					
Overall, the parenting plan has been useful to me in understanding and managing parenting time					

What would make your parenting plan more useful to you for resolving parenting time issues?

Given that the child is the ultimate beneficiary of a good parenting plan, we'd like to ask you some questions regarding your child's academic, social, and physical well-being. Please answer the next questions about the selected child who is the subject of your parenting plan.

What kind of school is your child currently enrolled in?

- ☐ Public school
 ☐ Home-school
- ☐ Private school
 ☐ Not enrolled in school



During the past 12 months, how many times has your child's school contacted you or another adult in your household about any problems he or she is having with school? This includes school related problems but not health related problems. \_\_\_\_\_

The following is a list of statements that sometimes describe children. For each item, indicate how often it was true for your child during the past month.

My child:

	Never true	Rarely	Sometimes	Usually	Always true
...cares about doing well in school					
...does all the required homework					
...finishes the tasks [he/she] starts and follows through with what [he/she] says [he'll/she'll] do					
...stays calm and in control when faced with a challenge					
...shows interest and curiosity in learning new things					

How would you rate your child's performance in academic subjects in school?

- ☐ Above average
 ☐ Below average  
☐ Average
 ☐ Failing

How many days of school has he/she missed in the past month (for any reason)? \_\_\_\_\_

How many close friends does your child have? \_\_\_\_\_

How many times a week does your child do things with any friends outside of school? \_\_\_\_\_

During the past 12 months...

	Yes	No	Don't Know
Was your child on a sports team or did he or she take sports lessons after school or on weekends? Include any teams run by your child's school or community groups.			
Did your child participate in any clubs or organizations after school or on weekends? Examples of clubs or organizations are scouts, arts, religious groups, and boys/girls clubs.			
Did your child participate in any other organized activities or lessons, such as music, dance, language, or other arts? This question can include organized lessons in music, dance, foreign languages, performing arts, computers, and more.			
Has your child taken any medication because of difficulties with his/her emotions, concentration, or behavior?			
Has your child received any treatment or counseling from a mental health professional? Mental health professionals include psychiatrists, psychologists, psychiatric nurses, and clinical social workers.			

The following are some statements that describe the behavior of many children. Indicate whether each statement has been Often true, Sometimes true, or Not true of your child for the past 3 months.

	Often true	Sometimes true	Not true
Has sudden changes in mood or feelings			
Feels or complains that no one loves him or her			
Is high strung, tense, or nervous.			
Cheats or tell lies.			
Is too fearful or anxious.			
Argues too much.			
Has difficulty concentrating, cannot pay attention for long.			
Is easily confused, seems to be in a fog.			
Bullies, or is cruel or mean to others.			
Is disobedient at home.			
Is disobedient at school.			
Does not seem to feel sorry after he or she misbehaves.			
Has trouble getting along with other children.			
Has trouble getting along with teachers.			
Is impulsive, acts without thinking.			
Feels worthless or inferior.			
Is not liked by other children.			

	Often true	Sometimes true	Not true
Has a lot of difficulty getting his/her mind off certain thoughts, has obsessions.			
Is restless or overly active, cannot sit still.			
Is stubborn, sullen, or irritable.			
Has a very strong temper and loses it easily.			
Is unhappy, sad, or depressed.			
Is withdrawn, does not get involved with others.			
Feels others are out to get him/her.			
Hangs around with kids who get into trouble.			
Is secretive, keeping things to himself/herself.			
Worries too much?			

During the past 12 months, how many times did your child see a doctor, nurse, or other health care provider for preventive medical care such as a physical exam or well-child checkup? \_\_\_\_\_

How would you rate your child's health?

- ☐ Excellent
- ☐ Good
- ☐ Fair
- ☐ Poor

About how often do you know who your child is with when s/he is not at home? Would you say you know who s/he is with...

- ☐ All of the time
- ☐ Most of the time
- ☐ Some of the time
- ☐ Only rarely

How close does your child feel toward you?

- ☐ Extremely close
- ☐ Quite close
- ☐ Fairly close
- ☐ Not at all close

## Appendix F: Youth Survey

You are being asked to help us in the survey described below. You can decide if you want to answer this survey or not. Your parent or guardian has already said that it is all right for you to answer if you want to.

The study is looking at some parts of the law in Nebraska that are meant to help parents and children in divorce and custody cases. We want your input to learn about how these parts of the law might affect the lives of children and teens.

To get your input, we created this online survey. It will ask you some questions about how you are doing in different parts of your life, such as school and at home, and how you are feeling about yourself and other people. It will also ask you some questions about your relationship with your parents.

Before deciding to take the survey you should know the following information:

- The survey should take you about 20 minutes to complete.
- Your answers will be kept confidential, which means that we will not share them with anyone, including your parents. Your parents have already been notified that you should fill out the survey in private and that they will not have access to your responses.
- You can complete the survey on any computer, your cell phone, or other mobile device using this same link—you do not have to complete it on your home computer.
- You don't have to answer any questions that you don't want to. Just choose the button called "Skip this question" for questions you don't want to answer.

- You may stop or quit the survey at any time by clicking the "X" at the top left corner of your screen. This will close your internet window and end your survey.

You will receive a \$5 Visa gift card for completing this survey. There will be instructions at the end of the survey for how to get your gift card.

If at any point during the survey you feel like you need to talk to someone about your feelings on any of the topics covered in the survey, talk to a trusted adult who may be a parent, relative, guidance counselor, coach, or teacher. You can also click on the link at the bottom of each survey page for contact information for trained counselors available via phone, email, or text message.

If you want to know more about the study, you can send an email to the director of this survey, Alicia Davis, at [adavis@ncsc.org](mailto:adavis@ncsc.org).

If you understand what you are being asked to do and you would like to help us by answering this survey, click the "I want to take the survey" button below and then click "Next." If you decide not to take the survey, click the "I don't want to take the survey" button and then click "Next."

- ☐ Yes, I want to take the survey.
- ☐ No, I don't want to take the survey.

What is your gender?

- ☐ Male
- ☐ Female
- ☐ Other\_\_\_\_\_

Please indicate your race/ethnicity:

- ☐ White
- ☐ Black/African-American
- ☐ Hispanic
- ☐ Asian
- ☐ Native American/Alaska Native
- ☐ Other (please specify):\_\_\_\_\_

Please select your age:

- ☐ 13
- ☐ 14
- ☐ 15
- ☐ 16
- ☐ 17
- ☐ 18
- ☐ 19



---

In an average week, how many nights per week do you spend with each parent or caretaker?

(enter 0 if the answer is none)

Mother

---

Father

---

Other caretaker (guardian, grandparent, aunt,  
uncle, etc.)

---

☐ Skip this question

Read each of the following items. For each one, tell us how true it is for YOU by choosing one of the four answers: very true, sort of true, not very true, not true at all. There are no right or wrong answers.

	Very True	Sort of true	Not very true	Not true at all
I work very hard on my schoolwork				
I don't try very hard in school				
I pay attention in class				
I often come to class unprepared				

	Very True	Sort of true	Not very true	Not true at all
	Very important	Sort of important	Not very important	Not at all important
How important is it to you to do the best you can in school				

☐ Skip this question

On average, how often do you cut (unexcused absence) school, if ever?

- ☐ Never cut
- ☐ A few times a year
- ☐ A few times a month
- ☐ Once or twice a week
- ☐ Almost every day
- ☐ Skip this question

Have you been suspended from school in the past 12 months (1 year)?

- ☐ No
- ☐ Yes
- ☐ Skip this question

Overall, what grades did you receive on your last report card?

- ☐ Mostly As
- ☐ About half As and Bs
- ☐ Mostly Bs
- ☐ About half Bs and half Cs
- ☐ Mostly Cs
- ☐ About half Cs and half Ds
- ☐ Mostly Ds
- ☐ Mostly below Ds
- ☐ Other, Specify: \_\_\_\_\_
- ☐ Skip this question

How many times a week do you usually do things with any friends outside of school? \_\_\_\_\_

- ☐ Skip this question

For each item, please mark the box for Not True, Somewhat True or Certainly True. It would help us if you answered all items as best you can even if you are not absolutely certain. Please give your answers on the basis of how things have been for you over the last six months.

	Not True	Somewhat True	Certainly True
I try to be nice to other people. I care about their feelings			
I am restless, I cannot stay still for long			
I get a lot of headaches, stomach-aches or sickness			

	Not True	Somewhat True	Certainly True
I usually share with others, for example CD's, games, food			
I get very angry and often lose my temper			
I would rather be alone than with people of my age			
I usually do as I am told			
I worry a lot			
I am helpful if someone is hurt, upset or feeling ill			
I am constantly fidgeting or squirming			
I have one good friend or more			
I fight a lot			
I can make other people do what I want			
I am often unhappy, depressed or tearful			
Other people my age generally like me			
I am easily distracted, I find it difficult to concentrate			
I am nervous in new situations. I easily lose confidence			
I am kind to younger children			
I am often accused of lying or cheating			
Other children or young people pick on me or bully me			
I often offer to help others (parents, teachers, children)			
I think before I do things			
I take things that are not mine from home, school or elsewhere			

	Not True	Somewhat True	Certainly True
I get along better with adults than with people my own age			
I have many fears, I am easily scared			
I finish the work I'm doing. My attention is good			

☐ Skip this question

In general, how is your health?

☐ Excellent

☐ Fair

☐ Very good

☐ Poor

☐ Good

☐ Skip this question

In a typical week, how many days do you engage in exercise that lasts 30 minutes or more?

Now we would like to know about your relationship with your parents or parent figures. By parent figure we mean a person you live with who is like a parent to you.

Which parents or caretakers do you live with, at least part of the time? This could mean spending a week or more during the summer or anytime during the year at their house. (Choose all that apply)

☐ Mother or mother figure (if not your mother, this could be a guardian, grandmother, aunt)

☐ Father or father figure (if not your father, this could be a guardian, grandfather, uncle)

☐ Skip this question

Now we are going to list some things that might describe your mother or mother figure. Please tell us how often she does these things. That is, does she never, rarely, sometimes, usually or always do these things?

	Never	Rarely	Sometimes	Usually	Always
How often does she praise you for doing well?					
How often does she criticize you or your ideas?					
How often does she help you do things that are important to you?					
How often does she blame you for her problems?					
How often does she make plans with you and cancel for no good reason?					

☐ Skip this question

How much does your mother or mother figure know about these things? Does she know nothing, know just a little, know some things, know most things, or know everything?

	Know nothing	Knows just a little	Knows some things	Knows most things	Knows everything
How much does she know about your close friends, that is, who they are?					
How much does she know about your close friends' parents, that is, who they are?					
How much does she know about who you are with when you are not at home?					
How much does she know about who your teachers are and how well you are doing in school?					

☐ Skip this question

When you think about how she acts toward you, in general, would you say she is:

☐ Very supportive

- ☐ Somewhat supportive
- ☐ Not very supportive
- ☐ Skip this question

In general, would you say she is permissive or strict about making sure you did what you were supposed to do?

- ☐ Permissive
- ☐ Strict
- ☐ Skip this question

Now we are going to list some things that might describe your father or father figure. Please tell us how often he does these things. That is does he never, rarely, sometimes, usually or always do these things?

	Never	Rarely	Sometimes	Usually	Always
How often does he praise you for doing well?					
How often does he criticize you or your ideas?					
How often does he help you do things that are important to you?					
How often does he blame you for her problems?					
How often does he make plans with you and cancel for no good reason?					



☐ Skip this question

	Know nothing	Knows just a little	Knows some things	Knows most things	Knows everything
How much does he know about your close friends, that is, who they are?					
How much does he know about your close friends' parents, that is, who they are?					
How much does he know about who you are with when you are not at home?					
How much does he know about who your teachers are and how well you are doing in school?					

☐ Skip this question

When you think about how he acts toward you, in general, would you say he is:

- ☐ Very supportive
- ☐ Somewhat supportive
- ☐ Not very supportive
- ☐ Skip this question

In general, would you say he is permissive or strict about making sure you did what you were supposed to do?

- ☐ Permissive
- ☐ Strict
- ☐ Skip this question

## Appendix G: Parent Focus Group Protocol

### **Introduction**

We are researchers from the National Center for State Courts (give names and introduce Kathy).

As you know by now, the NCSC is working with the Office of Dispute Resolution of the Nebraska Administrative Office of the Courts to study the effectiveness and impact of the Nebraska Parenting Act. As part of this study, we want to hear from parents about how well parts of the Parenting Act are working. We are very pleased that you agreed to discuss your experiences with us today.

We'll only be discussing things that the Parenting Act covers, such as Parenting Act Information Brochures, parenting education classes, parenting plans and mediation. We won't be asking about child or spousal support or division of property. We also will be focusing on your experiences with the legal system and not personal issues.

Before we get started we want to go over some guidelines for the focus group: (Refer to House Rules). Additionally, you may stop participating or take a break at any time, if you would like to speak with someone about any upsetting feelings you experience in our discussion a mediator can talk with you this evening.

### **Questions**

1. First, to help us get acquainted, tell us what is your favorite thing to do with your child?
2. Before we talk about the Parenting Act, could you tell us what you knew about the court process when you decided to file for a divorce or custody?

3. What information do you remember getting from your attorney, another attorney or the court about the divorce process and parenting time in custody cases?

Probes: *If they don't mention the brochure ask specifically about getting a brochure*

What kind of information was in that brochure?

Did you keep the brochure and use it later?

Was there information in the brochure that was helpful? If so, how was it helpful?

4. Can you talk about the parenting education class you took?

Probes: How did you find out you needed to take the class?

How did you find a class? Where did you look to find options?

Did you attend in-person or take it online?

Was it difficult to find a class that worked for your schedule?

Was there any aspect of the class that was particularly helpful?

Can you name a take-away that you have used since the class?

5. One of the key requirements of the Parenting Act is filing a parenting plan. Was there a particular resource that was helpful in working out your parenting plan?

6. Tell us about how you and your children's other parent created your parenting plan.

Probes: Was it attorney-negotiated, mediation, created yourself, court-imposed?

If you created the parenting plan by yourself where did you access sample parenting plans?

If you participated in mediation, what parts of the process were helpful and what were not?

Did you have any concerns about your or your children's safety in creating the plan?

Did the plan include adequate provisions to address your safety concerns?

7. What needs to be in a parenting plan?

Probes: *Looking here for elements, level of detail, tradeoff between specificity and flexibility*

Have you had to modify the parenting plan and how did that process work?

8. What resources were useful to you in addressing your children's concerns or fears about the separation or divorce?

9. What advice would you have for parents who are separating on how to navigate the legal system?

10. What other information or services can courts or dispute resolution centers provide to make the process more effective and easier on parents and children?

11. Is there anything we haven't discussed about the legal process that you think we should talk about?

## Appendix H: Definitions of Data Elements

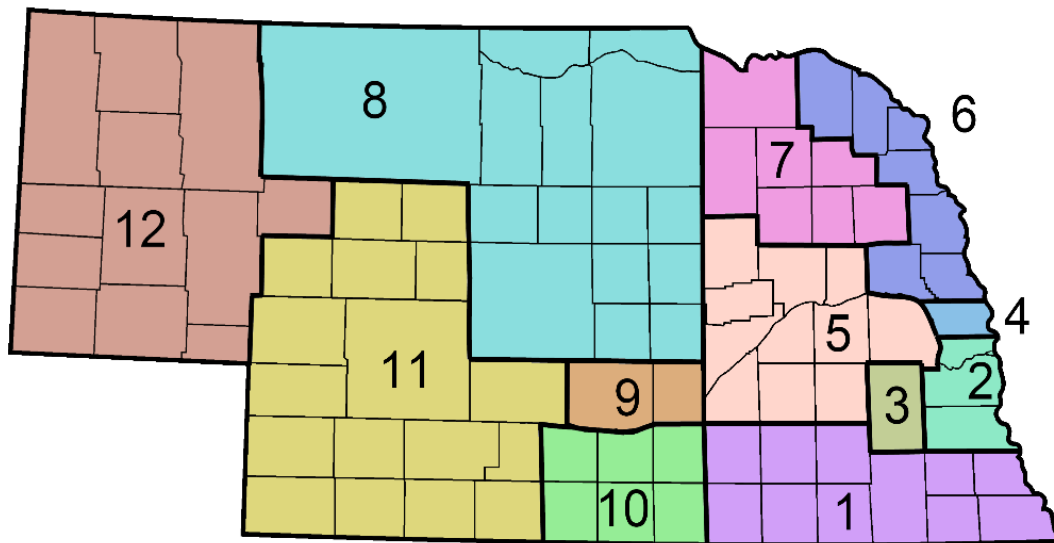
Attributes	Definitions
Categorical	Narrative explanation of “other” categories or “reasons”. Maximum of 225 characters.
<b><u>Custody Type</u></b>	Indicates who the child lives with and who makes decisions regarding the child’s welfare, including choices regarding education & health.  Types of custody include:
Joint Legal	Mutual authority and responsibility of the parents for making mutual fundamental decisions regarding the child's welfare, including choices regarding education and health
Joint Physical	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
Sole Legal	Party has complete and full authority and responsibility for making fundamental decisions regarding the child's welfare, including choices regarding education and health
Sole Physical	Party has complete and full authority and responsibility regarding the child's place of residence and the exertion of continuous parenting time for significant periods of time
Other	Custody arrangement is specified but it is unique and does not match attributes listed (i.e. Sole custody of Youngest child to Plaintiff & Sole custody of Second youngest child to Defendant)

Attributes	Definitions
<b><u>Mediator</u></b>	A mediator meeting the qualifications of section 43-2938 and acting in accordance with the Parenting Act
NA	Not Applicable - primary question was answered as “no” or “missing” with narrative space for categorical
98	Not Applicable/Missing/uncertain for numeric answers (may be there but can't tell)
01-Jan-1901	Not Applicable/Missing/uncertain when a date is called for
Property Settlement Agreement	A document or written provision that pertains to the distribution of property obtained before or during a marriage
<b><u>Residence Type</u></b>	Indicates where the child lives/resides. Types of residence include:
Primary residence	Home or place of abode where the child(ren) reside for the majority of the time (more than 50% of the time)
Shared residence	Parents share custody time with children equally
Split residence	One parent has custody of one child while the other parent has another child
Service by publication	Publishing a summons or other legal document in a newspaper in general circulation to provide constructive notice to a party who is in an unknown location
<b><u>Visitation Type</u></b>	Indicates arrangement for child to have parenting time with noncustodial parent
Weekly	Party has access to the child(ren) for a specified period of time each week

Attributes	Definitions
Every other week	Party has access to the child(ren) for a specified period of time every other week
Monthly	Party has access to the child(ren) for a specified period of time one time per each calendar month
Less than once /month	Party has access to the child(ren) for a specified period of time less than one time each calendar month
Access not specified	Physical access not indicated
No Access	One or both parties have no physical custody or access to the child(ren)
Other	Other variation of access to the child(ren) for a specified period of time (days)
<b><u>JUSTICE</u></b> <b><u>SCREENS</u></b>	* See JUSTICE System guidance notes from Sherri Dennis for more detail
INQDEP	Dependents – Use to count dependents and identify gender
INQPATY	Attorneys – Use to count the number of attorneys for plaintiff & defendant. May not be 100% accurate – especially for older cases.
INQROA	Best screen for our overall review purposes.
INQSTAT	May be helpful if uncertain about the number of reopening
SPSS TIPS	Control “C” = copy      Control “V” - Paste



## Appendix I: Nebraska District Court Judicial Districts



## Appendix J: Nebraska Parenting Act Information Brochure

# Nebraska Parenting Act Information Brochure



Information to help parents involved in  
divorce, separation and other custody matters  
to learn about Nebraska's:

- ♦ legal process
- ♦ divorce timeline
- ♦ requirements of the Parenting Act
- ♦ contents of a parenting plan
  - ♦ mediation process
- ♦ helping children during transitions
  - ♦ resources

## Dear Parent:

It is likely that you received this brochure because you are involved in a legal action regarding your child, such as divorce, separation, modification, guardianship, or related cases involving custody, parenting time, visitation, or other access to children matters. This brochure is intended to provide you with some basic information to assist you in making decisions for yourself and for your children's best interests.

In this brochure you will find:

♦ Table of contents.....	page 2
♦ Important Notice to Parents .....	page 3
♦ What is the legal process for divorce? .....	page 4
♦ Timeline in a typical divorce court process .....	page 5
♦ What is the purpose of a parenting plan? .....	page 6
♦ What is included in the parenting plan? .....	page 7
♦ What are parenting functions? .....	page 7
♦ What financial arrangements for children are needed? .....	page 7
♦ Children caught in the middle of divorce .....	page 8
♦ Placing the child at the center .....	page 9
♦ What is Parenting Act mediation and SADR? .....	page 10
♦ Why mediate your parenting plan? .....	page 11
♦ Reading list for parents .....	page 12
♦ Reading list for children .....	page 13
♦ Nebraska network of domestic violence programs .....	page 14
♦ Nebraska court-connected mediation resources .....	page 15
♦ Additional resources .....	back cover

It is hoped that you will find this information and the resources useful in your decision-making.

Nebraska State Court Administrator



This brochure is issued to inform, but not to offer legal advice, and has been prepared by the Nebraska State Court Administrator's Office. The brochure is distributed to each parent involved in a court proceeding in which parenting functions are at issue. This brochure meets the requirements of the Nebraska Parenting Act, Neb. Rev. Stat. §43-2925 and 43-2926 (2007 Cum. Supp.)

## **IMPORTANT NOTICE TO PARENTS:**

The Parenting Act requires that parents be notified that when they are involved in court proceedings in which parenting functions for a child are at issue (*custody, parenting time, visitation, access to children matters*) that:

1. **A parenting plan is required in all cases.**
  - Parents are to create a parenting plan and submit it to the court.
  - This may be done by parents themselves, through attorneys, or through mediation. If a plan has not been submitted to the court within a specified time frame, the judge will impose a parenting plan for the child.
  - The parenting plan is to conform to the provisions in the Parenting Act, Neb. Rev. Stat. §43-2920, et seq.
2. **Attendance at a parenting education class is required.**
  - Each parent must attend an approved basic level class.
  - Parenting classes are to be made available for each parent to attend separately.
  - A certificate of attendance must be filed with the court.
  - A list of approved classes is on the web. See back cover, item C.
  - The class provides information and practical tips to help parents with the impact of divorce or separation on children, and provides information about mediation, parenting plans, and the legal process.
  - A court may refer parents to a second level class if advisable.
  - Participation in the class may be delayed or waived by the court for good cause.
3. **Attendance at mediation may be required.**
  - Courts may order parents to attempt to mediate a parenting plan.
  - Court-ordered referral to mediation or specialized alternative dispute resolution will be to a State Court Administrator-approved mediator. The list of approved mediators is on the Nebraska Supreme Court website at: <http://supremecourt.ne.gov/parenting-education-providers>
  - Courts shall order parents to try mediation or specialized alternative dispute resolution if a parenting plan has not been submitted by the time specified by court rule. See local court rules at: <http://www.supremecourt.ne.gov/rules/external>



## What is the legal process for a divorce or separation?\*

**What is a divorce?** A divorce is a dissolution of marriage. It is granted by a court on the basis of a showing by either spouse that the marriage is “irretrievably broken.” The standard issues that need to be decided in a divorce include:

- Division of property and debts
- Determination of spousal support (alimony)
- Parenting - custody, residence, parenting time, visitation, other access with children
- Child support according to the Nebraska Child Support Guidelines, found at [www.supremecourt.ne.gov/rules/](http://www.supremecourt.ne.gov/rules/)

**What is a legal separation?** A court order which addresses all the above issues, but does not dissolve the marriage.

**What is the lawyer's role?** A lawyer:

- Represents the client's best interests
- Serves as an advocate and negotiator
- Follows court procedures
- Drafts and files legal documents
- Gives practical and legal advice on rights and obligations
- Represents the client in court
- Can represent only one of the two parties as a client in a divorce action; however, may be involved in assisting that particular client in drawing up papers for the couple

**In an uncontested divorce with children, what final documents are usually submitted to the court with the final decree?**

- Parenting plan
- Financial arrangements for the children - including child support
- Property settlement agreement

**Is having a lawyer required?** Individuals should consult a lawyer to assist them with the legal process. However, anyone may decide to handle the legal procedure on their own; this is called “self-help” or “pro se.” For individuals who are unable to hire an attorney for an uncontested divorce, sample forms are available on the forms page of the Nebraska Supreme Court website: [www.supremecourt.ne.gov](http://www.supremecourt.ne.gov).

\*Reference: With permission from the Nebraska State Bar Association

### Timeline in a typical divorce court process



- > **File a Complaint for Divorce**  
*(Along with other required documents)* *Date of filing*
- > **Serving Notice to Spouse of Court Filing**  
*(If Notice is not accomplished within six (6) months of filing, the divorce complaint will be dismissed)* *0–6 months*
- > **Spouse Files Answer with Court** *Within 30 days of receipt of Notice*
- > **Attendance at Parenting Education Class** *Before hearing*  
  
*Voluntary Negotiation or Mediation May Be Tried to Create a Parenting Plan*
- > **Request Hearing Date if Not Contested** *No earlier than*  
*- or -* *60 days after*
- > **Request Trial Date if Contested** *spouse served*
- > **Proposed Parenting Plan Submitted to Court** *Before hearing*  
  
*Court Shall Mandate Attendance at Mediation If Parenting Plan Not Submitted Within Local Court Rule's Timeline*
- > **Hearing or Trial** *No earlier than 60 days after spouse served*
- > **Divorce Decree**

The divorce is final 30 days after the decree is signed and filed for purposes of finance and appeal; however, neither party can remarry for 6 months plus one day after decree signed and filed with the district court clerk's office.

## What is the purpose of creating a *parenting plan*?

The purpose of creating a *parenting plan* is to help parents and children experience a healthy adjustment to the changes experienced with separation. The effort made by parents to create a plan helps put the child at the center of the parents' decisions.



Simply put, a *parenting plan* is a . . .

*“blueprint” for how children are going to be parented after their parents have separated.*

In addition to indicating how the day-to-day time with the children will be shared, and how holidays and vacation time will be determined, a parenting plan can also include decisions on *parenting functions* such as:

- Which parent cares for the children on unexpected snow days, teacher workshop days?
- How will it be decided which school the children will attend?
- Who will pick up and drop off children at day care?
- What are the transition (pick up and drop off) plans for the children going back and forth between Mom's house and Dad's house?
- How will the parents talk with each other about the children's needs and concerns?
- How will the parents ensure the safety of the children?
- How can parents keep parental conflict away from the children?

A *parenting plan* may be created by the parents themselves, or with assistance from lawyers or mediators.

A *parenting plan* is required by the court. It is a separate document filed with the court along with the child's financial arrangements and property settlement agreement.



## What is included in the parenting plan?



This plan, filed with the court and approved by the judge, should include decisions about parenting functions and the following essential elements:

- Legal custody (decision-making authority for children)
- Physical custody (residence of children)
- Parenting time, holidays, vacations
- Notifying the other parent if the child's residence will change for more than 30 days
- Transition plan for exchange of the child(ren)
- Optional items such as safety plans; other individualized items
- Remediation (re-negotiation with a mediator) if needed



### What are parenting functions?

The term "parenting functions" refers to those basic everyday activities and decisions that parents do in raising a child, such as:

- Maintaining a safe, stable, consistent, nurturing environment
- Meeting the child's needs such as food, clothing, health, supervision, emotional stability
- Attending to the child's education, including remedial or other special education
- Minimizing the child's exposure to harmful parental conflict
- Assisting the child to maintain a safe, positive, appropriate relationship with each parent and others
- Giving appropriate support for social, academic, athletic, or other special interests of the child within the family's means

**What kind of financial arrangements for children need to be included in the final divorce decree?** The Parenting Act (2007, 2008) states that the final decree of dissolution, legal separation or order establishing paternity shall include financial arrangements for each parent's responsibility for:

- Reasonable and necessary medical, dental, and eye care
- Medical reimbursements
- Day care
- Extracurricular activity
- Education
- Other extraordinary expenses of the child
- Calculation of child support expenses—Child Support Worksheet



## **Children Caught in the Middle of the Parents' Divorce: How Parents Can Help**

### **Divorce in the United States:**

- One out of two marriages end in divorce.
- Divorcing parents tend to provide less time, less discipline, and tend to be less sensitive to the child as they are caught up in their own divorce struggles and the aftermath.
- Many parents find it difficult to separate their needs from the child's need.
- Divorce is an "adult-centered vision;" children get caught in the middle of conflict.
- Parents' relationships range from "cooperative," to "business-like," to "angry" to "toxic;" and these can either help or harm children.

### **What does this mean?**

- Family disruption can create a lack of crucial parental support for the child.
- The child can experience difficulty thriving or even surviving in school, with friends, family, and at work and in the community.
- While separating, many parents experience a sense of chaos and disorganization and are unable to parent as effectively as before.
- If diminished parenting continues, it disrupts the child's once normal emotional and developmental growth and functioning.
- Children often don't feel safe or secure and can be fearful of their place in the family and in life. They are without clear guidance on what is right and wrong. They are more apt to struggle with loss, isolation, loneliness and suffering. The children often struggle with feeling divided between two homes with different values.

### **Is there good news?**

- Studies show that children of divorce tend to do well if mothers and fathers resume parenting roles, put differences aside, and allow children to continue having relationships with each parent.



- Most children do reasonably well within two years of the divorce. It is period of the separation and divorce itself which is most traumatic for children.
- Research by Robert Emery, Ph.D. shows that parents who choose to mediate their parenting decisions rather than litigate have a much higher long-term level of parental access to the children, including time spent with each parent, more frequent time with the children, and much higher participation in the child's discipline, special events, school and church functions, holidays and vacations.

## Placing the Child

at the Center



of Parents' Lives

### **Placing the child at the center includes:**

- Giving the children extra attention, extra hugs.
- Explaining the divorce or separation to the child.
- Letting the children know that the divorce is not their fault.
- Reassuring the children that both parents still love them.
- Giving your child permission to ask questions.
- Telling the child it's okay to love "the other parent."
- Allowing the child to express feelings—it's OK.
- Reassuring children that they will always be cared for, and then follow through.
- Describing what they can expect (court, living arrangements, etc).
- Providing familiar surroundings and routines.
- Following similar routines for meals, bedtime, homework.
- Handling rules and discipline in similar ways.
- Allowing the child to carry important items such as clothing, toys, security blankets with them between the parents' homes.
- Being flexible so the child can share in special events.
- Giving as much advance notice to the other parent about special occasions.
- Using mediation or specialized ADR as a way to work through children's schedules, living arrangements, and future plans with the other parent.
- Contacting community resources and using the legal system if concerned about your child's safety while with the other parent.
- Participating in a divorcing parents education class.
- Listening to your child.

### **A child is harmed when parents:**

- Pretend the separation/divorce has no effect on the child.
- Use the child as emotional support.
- Ask the child to deliver messages to the other parent.
- Ask the child questions about the other parent's life.
- "Puts down" the other parent in front of the child.
- Make the child choose between mom and dad.
- Discuss their personal problems (money, sexual issues, etc) with the child or within the child's range of hearing.
- Withhold access to the child because child support has not been paid.

## What is Parenting Act mediation and specialized ADR?

**What is Parenting Act mediation?** Parenting Act mediation is an informal problem solving process in which an experienced, impartial mediator meets with parents in a joint session to assist them in creating a parenting plan. The mediator does not make parenting decisions, but helps **both** parents to:



- Talk jointly about the child and the decisions needed for the parenting plan
- Reduce conflict or friction between the parents
- Provide a convenient, confidential place to talk
- Identify the child's needs as they relate to both current and future parenting functions
- Make mutual decisions for their child
- Create a final parenting plan that can be reviewed by lawyers, if engaged, and submitted to the court

**What is specialized ADR?** Specialized *alternative dispute resolution (SADR)* is a problem solving process with a goal similar to mediation. As in mediation, the facilitator does not make parenting decisions. The difference is that the SADR facilitator works with each parent individually and privately, rather than in joint session. This allows **each** parent to:



- Meet individually with the facilitator to talk about the child and their needs
- Identify issues and areas of concern regarding the best interests of the child
- Develop clear, safe plans for future communication, transition (exchange) of the child, and related matters
- Create a final parenting plan that satisfies each parent to be reviewed by lawyers and submitted to the court

⇒ *The mediation center, the conciliation office, or private mediator will assist parents to select the best process.*

### Why mediate your parenting plan?

- Parents can simply and directly make decisions about custody, parenting time, holidays, the child's activities and daily care
- The mediation meeting is informal, comfortable, and is courteously guided by experienced family mediators
- The sessions help parents work through divorce's difficult emotions so that the focus can be on the child's future
- Participating in mediation improves communication and problem solving
- Avoids costly and drawn out legal battles
- Improves long term benefits to the child and parents
- Timely and economical
- Confidential



### How long will mediation take and what is the cost?

- Each case is unique, but on average, one to three sessions lasting two to four hours each
- A mediation session fee is charged per person; sliding fee scale including waiver is available if financially eligible

### What are the qualifications of a Parenting Act mediator?

In Nebraska, Parenting Act mediators are required to have a minimum of 60 hours of mediation training, including how to mediate parenting plans, how to work with emotions, how to assess participants' ability to negotiate and safety, and basic financial and property issues. Specialized ADR facilitators have an additional training.

**How do I request mediation or specialized ADR?** A request to mediate a parenting plan can be made at any time. A person can contact:

- For residents of Nebraska's 92 counties other than Douglas County: contact one of the six statewide ODR-approved mediation centers (*see page 15*)
- For residents of Douglas County: contact the Douglas County District Court Conciliation and Mediation Office (*see page 15*) or Concord Mediation Center.
- Statewide residents: contact a private sector mediator—see yellow pages or web
- List of State Court Administrator-approved Parenting Act mediators: <http://www.supremecourt.ne.gov/parenting-education-providers>



### **Suggested Reading List for Parents**

Ahrons, Constance - *The Good Divorce: Keeping Your Family Together When Your Marriage Comes Apart*

Baris, Mitchell & Carla Garrity - *Children of Divorce: A Developmental Approach to Residence and Visitation*

Emery, Robert - *The Truth About Children and Divorce*

Long, Nicholas & Rex Forehand - *Making Divorce Easier on Your Child: 50 Effective Ways to Help Children Adjust*

Garon, Risa - *Stop! In the Name of Love for Your Children: A Guide to a Healthy Divorce*

Garrity, Carla & Mitchell Baris - *Caught in the Middle: Protecting the Children of High Conflict Divorce*

Knox, David & Kermit Leggett - *Divorced Dad's Survival Book*

Lewis, Jennifer & William Sammons - *Don't Divorce Your Children: Protecting Their Rights and Your Happiness*

Margulies, Sam - *Getting Divorced Without Ruining Your Life*

Newman, George - *101 Ways to be a Long-Distance SuperDad...Or Mom!*

Ricci, Isolina - *Mom's House Dad's House*

Ross, Julie & Judy Corcoran - *Joint Custody With a Jerk: Raising a Child With an Uncooperative Ex*

Schneider, Meg & Joan Zuckerberg - *Difficult Questions Kids Ask and Are Afraid to Ask About Divorce*

Thayer, Elizabeth - *The Co-Parenting Survival Guide: Letting Go of Conflict After a Difficult Divorce*

Trafford, Abigail - *Crazy Time: Surviving Divorce and Building a New Life*

Triere, Lynette & Richard Peacock - *Learning to Leave: A Woman's Guide*

Wittman, Jeffery - *Custody Chaos, Personal Peace: Sharing Custody With an Ex Who Is Driving You Crazy*



## Suggested Reading List for Children



Blume, Judy - *It's Not the End of the World*

Brown, Laurene Krasny and Marc Brown - *Dinosaurs Divorce*

Casely, Judith - *Priscilla Twice*

Gardner, Richard - *The Boys and Girls Book About Divorce*

Krementz, Jill - *How It Feels When Parents Divorce*

Lansley, Vicki - *It's Not Your Fault, Koko Bear*

Masurel, Claire - *Two Homes*

Mayle, Peter - *Why Are We Getting A Divorce?*



Neuman, M. Gary - *Helping Your Kids Cope With Divorce the Sandcastles Way*

Park, Barbara - *Don't Make Me Smile*

Ransom, Jeanie - *I Don't Want to Talk About It*

Ricci, Isolina - *Mom's House, Dad's House for Kids*

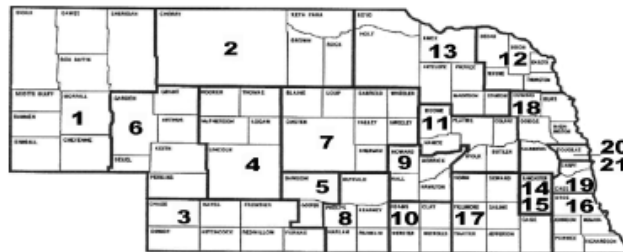
Rosenberg, Maxine - *Living With A Single Parent*

Simoneau, DK - *We're Having A Tuesday*

Spelman, Corniela - *Mama and Daddy Bear's Divorce*

DVD: *Taking the "Duh" Out of Divorce*

## Nebraska's Network of Domestic Violence Sexual Assault Programs

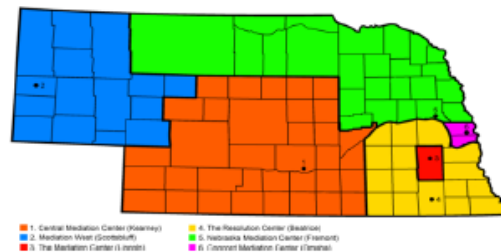


Program Name	Crisis Line #
1) DOVES, Gering.....	866-95-DOVES
2) North Central Quad County Task Force, Valentine...	877-376-2080
3) Domestic Abuse/Sexual Assault Services, McCook....	877-345-5534
4) Rape/Domestic Abuse Program, North Platte.....	888-534-3495
5) Parent-Child Center, Lexington.....	800-215-3040 or
En Español.....	866-351-9594
6) Sandhills Crisis Intervention Program, Ogallala.....	308-284-6055
7) Healing Hearts and Families, Broken Bow.....	800-942-4040
(formerly CEDARS Family Violence Services)	
8) The S.A.F.E. Center, Kearney.....	877-237-2513
9) The Crisis Center, Grand Island.....	866-995-4422
10) Spouse Abuse/Sexual Assault Crisis Cntr, Hastings..	877-322-7272
11) Center for Survivors, Columbus .....	800-658-4482
12) Haven House, Wayne.....	800-440-4633
13) Bright Horizons, Norfolk.....	877-379-3798
14) Voices of Hope, Lincoln.....	402-475-7273
(formerly Rape/Spouse Abuse Crisis Center)	
15) Friendship Home, Lincoln.....	402-437-9302
16) Project Response, Auburn.....	800-456-5764
17) Hope Crisis Center, Fairbury.....	877-388-4673
(formerly Blue Valley Crisis Intervention)	
18) Crisis Center for Domestic Abuse/Sexual	
Assault, Fremont.....	888-721-4340
19) Heartland Family Service Program, Papillion.....	800-523-3666
20) WCA-Women Against Violence, Omaha.....	402-345-7273
21) Catholic Charities—The Shelter, Omaha.....	402-558-5700

In Nebraska, call 1-800-876-6238 to reach the nearest program.  
En Español: 1-877-215-0167

## Nebraska's Court-Connected Mediation Resources

**A. Douglas County Conciliation and Mediation Office:** district court-based mediation office in the Hall of Justice, 1701 Farnam Street, 1st floor, Omaha, 402-444-7168; [www.dc4dc.com/conciliation-a-mediation](http://www.dc4dc.com/conciliation-a-mediation)



**B. Nebraska Office of Dispute Resolution-approved Mediation Centers.**  
Contact the center listed below that serves your county to schedule mediation at the location most convenient to you.

**Mediation West, Scottsbluff** 800-967-2115  
**info@mediationwest.org** or 308-635-2002  
 Arthur, Banner, Box Butte, Cheyenne, Dawes, Deuel, Garden, Grant, Hooker, Keith, Kimball, Morrill, Scotts Bluff, Sheridan, Sioux

**Central Mediation Center, Kearney** 800-203-3452  
**info@centralmediationcenter.com** or 308-237-4692  
 Adams, Blaine, Buffalo, Chase, Clay, Custer, Dawson, Dundy, Franklin, Frontier, Furnas, Garfield, Gosper, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Howard, Kearney, Lincoln, Logan, Loup, McPherson, Merrick, Nuckolls, Perkins, Phelps, Red Willow, Sherman, Thomas, Valley, Webster, Wheeler

**Concord Mediation Center, Omaha** 402-345-1131  
**contact@concord-center.com**  
 Douglas and Sarpy Counties

**Nebraska Mediation Center, Fremont** 866-846-5576  
**jmarhof@qwestoffice.net** or 402-753-9415  
 Antelope, Boone, Boyd, Brown, Burt, Cedar, Cherry, Colfax, Cuming, Dakota, Dixon, Dodge, Holt, Keya Paha, Knox, Madison, Nance, Pierce, Platte, Rock, Stanton, Thurston, Washington, Wayne

**The Mediation Center, Lincoln** 402-441-5740  
**info@themediationcenter.org**  
 Lancaster County

**The Resolution Center, Beatrice** 800-837-7826  
**trc@bvca.net** or 402-223-6061  
 Butler, Cass, Fillmore, Gage, Jefferson, Johnson, Nemaha, Otoe, Pawnee, Polk, Richardson, Saline, Saunders, Seward, Thayer, York



## Additional Resources for Parents and Children

*Below are resources for parents involved in legal matters such as divorce, separation, or modification of custody, parenting time, visitation, or access issues:*

**A. Lawyers:** phone book yellow pages; web directories; the Nebraska State Bar Association Lawyer Referral at 800-927-0117; NSBA Volunteer Lawyer Project at 800-742-3005; Legal Aid Society at 877-250-2016.

**B. Legal Self-Help Desks:** sample uncontested divorce documents with instructions; Self-Help Desks in Omaha, Lincoln, Madison, Kearney, and Grand Island; and other web-based resources at <http://court.nol.org/self-help/>

**C. Parenting Education Classes:** lists of approved classes in the local area are available from the district court clerk, county courthouse or at <http://www.supremecourt.ne.gov/parenting-education-providers>

**D. Douglas County Conciliation and Mediation Office:** district court-connected mediation office providing Parenting Act mediation, in the Hall of Justice, 1701 Farnam Street, 1st floor, Omaha, 402-444-7168; [www.dc4dc.com/conciliation-a-mediation](http://www.dc4dc.com/conciliation-a-mediation)

**E. ODR-approved Mediation Centers:** six statewide regional mediation centers providing Parenting Act mediation: <http://supremecourt.ne.gov/5682/odr-overview> for the list of centers or see page 15 of this brochure.

**F. ODR-approved Parenting Mediators:** <http://supremecourt.ne.gov/parenting-act-mediators>

**G. Parenting Plans:** available at <http://court.nol.org/self-help/#families>; through mediation offices; books; libraries and web.

**H. Domestic Violence Service Agencies:** Nebraska Domestic Violence and Sexual Assault Coalition (NDVSAC), [www.ndvsac.org](http://www.ndvsac.org), 402-476-6256; or see page 14.

**I. Batterer's Intervention Programs:** Omaha: <http://dvccomaha.org/>; statewide: contact Family Violence Council, 402-489-9292.

**J. Hotline Numbers and Web-based Resources:** Abuse/Neglect Hotline (for either child or elderly adult abuse) 800-652-1999; NE Resource and Referral System: <http://nrrs.ne.gov>; Child Support Hotline: 800-831-4573; statewide Domestic Violence Hotline: 800-876-6238; parenting: [www.helpstartshere.org](http://www.helpstartshere.org); search web or libraries for children of divorce resources; check local community listings.



Nebraska State Court Administrator  
State Capitol—Room 1213  
P. O. Box 98910  
Lincoln, NE 68509-8910  
402-471-3730  
[www.supremecourt.ne.gov](http://www.supremecourt.ne.gov)

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For persons with disabilities, this brochure will be made available in other formats upon request. Call the Office of the State Court Administrator, 402-471-3730.

## Appendix K: Sensitivity Analysis for Cost and Benefit Analysis

**Increased Use of Parenting Education Classes:** This estimate is sensitive to the estimated cost of parenting classes and to the estimated increase in the probability that a case will participate in parenting education, comparing pre- and post-Parenting Act revision cases (based on the results of the judge survey). A conservative upper limit was used on the cost estimate. In reality, due to sliding fee scale, the actual average is probably smaller, meaning that the cost is likely overestimated. In addition, if the estimate of the increase in the use of parenting education classes is too low, the cost estimate will likewise be lower. For example, if we assume that there was only a 20% increase (instead of the estimated 39%) in the use of parenting classes after implementation of the Parenting Act Amendments, the cost to a case drops to \$20 from \$39 per case. If the increase was larger than the estimated 39%, the cost estimate will likewise increase. For example, if there was a 50% increase in the use of parenting education classes after implementation of the Parenting Act Amendments, the cost to a case increases to \$50 from \$39 per case.

**Increased Use of Parenting Plan Mediation:** This estimate is sensitive to the estimated cost of mediation and the estimated increase in the use of court-ordered mediation (from the impact analysis). The estimate for the cost of mediation was based on a flat fee. In reality, scholarships and other assistance to the parties to the case will reduce this estimated cost. Cost estimates are also sensitive to the increase in court-ordered mediation. For example, if the increase was only 5% instead of the 6.7% increase determined from the database, the estimated cost would change from \$40 to \$30. If the increase was actually 1 %, the estimated cost would increase to \$60.

**Decreased Time Spent in Court Proceedings:** This estimate is sensitive to the estimated impact of the Parenting Act on the amount of time that parties to these cases spend on court proceedings (from the Judges Survey). Using a 95% confidence interval for the estimated mean of the change in the time spent in court proceedings (in this case, a decrease), gives a possible range of 0-11 hours in contrast to the mean of 1.7 hours used in the calculations. Any increase in the estimated decrease in time increases the value of this benefit while a decrease diminishes the value of this benefit.

## Appendix L: Judge Cost Benefit Survey

### **Revised and reissued 3-24-15**

The purpose of this survey is to provide information that will inform a cost/benefit analysis of the Nebraska Parenting Act being conducted by the National Center for State Courts. The survey seeks information about cases targeted by the Parenting Act, specifically cases involving disputes about custody, visitation, parenting time or other access to a child. The survey asks you estimate several parameters of interest to the analysis, such as how often particular events occur (e.g., waiving the requirement for Parenting Education classes). It also asks you to estimate the amount of time required for particular court proceedings and to indicate whether the 2007 amendments to the Parenting Act impacted these times. The questions in this revised survey prompt you to give best-guess estimates without the expectation of actual data. Please be assured that your best-guess estimate is valuable to our estimation process of costs and costs avoided. Your answers will remain confidential and no personal attributions will be made when the data is reported.

The survey takes about 10 minutes to complete, and must be completed in a single sitting. You will not be able to partially complete it and return at a later time to finish. Please complete the survey by March 30, 2015.

If you have any questions about the survey, please contact Shannon Roth at the National Center for State Courts at [sroth@ncsc.org](mailto:sroth@ncsc.org).

## **PARENT EDUCATION**

Were you on the District Court bench prior to the 2007 Parenting Act Amendment?

☐ Yes

☐ No

Did you ever require parents to take parent education classes in dissolution/custody/parenting cases prior to the passage of the 2007 Parenting Act amendments?

☐ Yes

☐ No

Please provide an approximate percentage of such cases in which parents were required to take parenting education classes prior to the passage of the 2007 Parenting Act Amendments.

% \_\_\_\_\_

Currently, do you ever waive the Act's requirement for parenting education classes?

☐ Yes

☐ No

Please provide an approximate percentage of Parenting Act cases in which you waive the requirement for parenting education classes. % \_\_\_\_\_

### **IMPACT UPON COURT PROCEEDINGS - PARENTS**

What impact, if any, have the 2007 Parenting Act amendments had on the amount of time that parties to these cases spend on court proceedings?

- ☐ None
- ☐ Increase
- ☐ Decrease
- ☐ Unsure

Please estimate the increase/decrease in actual hours on court proceedings for a typical case.

Hours: \_\_\_\_\_

### **IMPACT UPON COURT PROCEEDINGS – JUDGES – ORIGINAL ACTION**

What impact, if any, have the 2007 Parenting Act amendments had on the amount of time that judges spend in the original action (dissolution; unmarried custody) of such court proceedings?

- ☐ None
- ☐ Increase
- ☐ Decrease
- ☐ Unsure

Please estimate the increase/decrease in actual hours for a typical case.

Hours \_\_\_\_\_

**IMPACT UPON COURT PROCEEDINGS – JUDGES – MODIFICATIONS**

What impact, if any, have the 2007 Parenting Act amendments had on the amount of time of judges spend in court proceedings for modifications of the original dissolution or custody/parenting decree?

- ☐ None
- ☐ Increase
- ☐ Decrease
- ☐ Unsure

Please estimate the increase/decrease in actual hours for a typical modification case.

Hours \_\_\_\_\_

For an uncontested modification proceeding, please estimate the average amount of time (in hours) that you spend off-bench associated with a typical proceeding.

Hours \_\_\_\_\_

For an uncontested modification proceeding, please estimate the average amount of time (in hours) that you spend on-bench associated with a typical proceeding.

Hours \_\_\_\_\_

For a contested modification proceeding, please estimate the average amount of time (in hours) that you spend off-bench associated with a typical proceeding.

Hours \_\_\_\_\_

For a contested modification proceeding, please estimate the average amount of time (in hours) that you spend on-bench associated with a typical proceeding.

Hours \_\_\_\_\_

Please estimate the percentage of modifications of the original dissolution or custody/parenting decree that are contested.

% \_\_\_\_\_

### OVERALL COMMENTS ABOUT CASE PROCESSING TIME

Please provide additional comments as to the impact of the 2007 Parenting Act amendments upon court proceedings, case processing time, during the original action as well as upon modifications of parenting and custody matters. Include any comments as to what factors have increased or decreased the time spent in court proceedings, and to the extent you can, the reasons why they have had this impact.

--



## Appendix M: Attorney Survey Cost Benefit Analysis

The purpose of this survey is to provide information that will inform a cost/benefit analysis of the Nebraska Parenting Act being conducted by the National Center for State Courts. The survey seeks information about the types of cases targeted by the Parenting Act, specifically cases involving disputes about custody, visitation, parenting time or other access to a child. The survey asks you estimate several parameters of interest to the analysis, such as how often particular events occur (e.g., Parenting Act cases being settled without mediation). It also asks about the impact of certain key provisions of the Act, such as the Child Information Affidavit, on parameters of interest to the study such as the amount of time state court expended in negotiation. Please answer these questions based on actual data where possible. If no data exist, and we recognize that it will not in many cases, please answer based on your professional experience. Your responses will be confidential and no personal attributions will be made when reporting the data.

The survey takes about 10 minutes to complete, and must be completed in a single sitting. You will not be able to partially complete it and return at a later time to finish. Please complete the survey by March 27, 2015.

If you have any questions about the survey, please contact Shannon Roth at the National Center for State Courts at [sroth@ncsc.org](mailto:sroth@ncsc.org).

Has the amount of time expended in negotiations between parties in these cases been impacted by the Parenting Act?

☐ Yes

☐ No

Has the overall amount of time expended in negotiation of Parenting Act cases increased or decreased?

☐ Increased

☐ Decreased

Please specify the change in time expended in negotiation (hours) for a typical case.

--

This time is...

☐ An estimate

☐ Based on actual data

Please indicate how the following provisions of the Parenting Act have impacted the amount of time expended in negotiation:

**Mediation:**

Does mediation increase or decrease the amount of time expended in negotiation?

☐ Increase

☐ Decrease

Are more issues being resolved in mediation than typically would have been resolved in negotiations or court proceedings prior to the Parenting Act?

☐ Yes

☐ No

What percentage of cases involving custody or parenting time disputes are settled without mediation?

% \_\_\_\_\_

This percent is...

☐ An estimate

☐ Based on actual data

What percentage are settled after mediation?

% \_\_\_\_\_

This percent is...

☐ An estimate

☐ Based on actual data

For cases in which the parties have mediated, what percentage goes to trial after mediation?

% \_\_\_\_\_

This percent is...

- ☐ An estimate
- ☐ Based on actual data

**Filing of a Temporary Child Information Affidavit:**

Do you file a temporary child information affidavit prior to temporary hearings on custody and parenting time?

- ☐ Yes
- ☐ No

In what percentage of cases do you file a temporary child information affidavit?

% \_\_\_\_\_

This percent is...

- ☐ An estimate
- ☐ Based on actual data

Does the filing of Temporary Child Information Affidavits increase or decrease the following:

	Increase	Decrease	No Impact
The amount of time expended in negotiation between parties?			

	Increase	Decrease	No Impact
The level of contentiousness of proceedings?			
The amount of time required to prepare a parenting plan?			
The amount of time spent in mediation?			

Does it resolve some issues before mediation?

☐ Yes

☐ No

Does it resolve custody and parenting issues before trial?

☐ Yes

☐ No

Please identify any other factors stemming from the Parenting Act that have affected the amount of time expended in negotiations between parties in these types of cases.

Please explain if these factors have increased or decreased negotiation time, and to the extent you can, the reasons why they have had this impact.

**Discovery:**

Do you think that the Parenting Act has influenced the frequency with which discovery occurs in Parenting Act cases?

- ☐ Increase
- ☐ Decrease
- ☐ No effect

Please indicate the average amount of time that you spend on discovery in those Parenting Act cases that require it:

This time is...

- ☐ An estimate
- ☐ Based on actual data

**Fees:**

What is your typical fee (per hour) for "representing a parent" in a Parenting Act case?

Per hour \$ \_\_\_\_\_

What is your typical fee (per hour) for litigating a Parenting Act case?

Per hour \$ \_\_\_\_\_

What is your average number of hours per non-litigated parenting act case?

# of hours \_\_\_\_\_

What is your average number of hours per litigated parenting act case?

# of hours \_\_\_\_\_

Does mediation of a parenting plan increase, decrease or keep the same the # of hours you bill your client?

☐ Increase

☐ Decrease

☐ Keep the same

If a Parenting Act case involving custody or parenting time disputes has been settled and subsequently modifications have been filed for reasons related to parenting functions or custody, parenting time, visitation, or other access, please estimate the following:

The average duration of a typical court proceeding to resolve the issue (in hours): \_\_\_\_\_

This time is...

- ☐ An estimate
- ☐ Based on actual data

The average amount of time that you spend on such cases pre-trial (in hours): \_\_\_\_\_

This time is...

- ☐ An estimate
- ☐ Based on actual data

What fee (per hour) would you typically charge for filing a modification for reasons related to parenting functions or custody, parenting time, visitation, and other access to a previously resolved Parenting Act case? Per hour \$ \_\_\_\_\_



## Appendix N: References

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