
**Volunteer Lawyers Project
Nebraska State Bar Association**

Custody & Parenting Time



The Best Interests Standard

When custody cases come before a court, whether in the context of divorce or if the parents were not legally married, the principle that guides Nebraska judges in making their decisions is—“What is in the best interest of the children?”—This principle should guide parents as well, especially because the parents are better equipped to determine what is best for their child than a judge, who may never even meet the child in person before making decisions that affect the child’s and parents’ lives.

The Nebraska Parenting Act

In all cases where the custody or parenting time of minor children is at issue, the parents are required to do certain things: 1) They must complete a co-parenting class approved by the Nebraska Supreme Court and file their certificate of completion in the pending case; and 2) The parents are required to attempt mediation regarding the parenting issues prior to bringing a contested case before the judge to make a final decision. In addition, there must be a plan for financial support for the children that is separate from the plan for parenting time with the children.

Custody

What is the difference between legal custody and physical custody?

Legal custody is the authority to make major decisions for the children, including decisions regarding medical care, education, and religion. Legal custody does not affect day-to-day parenting decisions, which are made by the parent exercising parenting time. Physical/residential custody is the right to have the children physically in the care, custody, and control of one parent at a given time.

What is joint custody?

Joint legal custody is shared authority for major decision-making regarding the children. Joint physical custody is sharing parenting time on a closer to equal basis. Generally, joint custody means that a parent has actual physical time with the child between 109 and 182.5 days each year. There is a general movement towards shared physical custody in courts in Nebraska.

Joint custody requires parents to work together as a team for their children and may not be right for everyone. However, the court may place a minor child in joint custody after conducting a hearing in open court and specifically finding that joint custody is in the best interests of the minor child regardless of whether the parents request joint custody or agree to it. Child support may still be ordered in a joint custody arrangement; and, the decision of whether to reduce support is made by the judge if the parties cannot agree.

How does the judge determine custody if the parents can’t agree?

In many cases, parents agree on custody before the divorce hearing and the court usually accepts the parents’ agreement if it appears to be in the best interest of the children. If the parents cannot develop a parenting plan, the judge will order one after hearing evidence from both sides. The types of facts the judge will consider in ordering a parenting plan include:

- Each parent’s relationship with the children.
- Each parent’s ability to spend time with the children.
- Each parent’s ability to provide for the children’s needs.
- The character and stability of each child and each parent.
- The mental and physical health of the parents and the children.
- The effects on the children of continuing or disrupting their existing situation.
- Credible evidence of abuse inflicted on any family or household member, if any.

At what age can a child choose where and with whom to live?

Children cannot “decide for themselves” until they are 19 years old and legal adults. However, judges in Nebraska will take a child’s wishes into consideration in making a custody determination only if the child is of sufficient age and maturity and the child’s wishes are based on good, sound reasons.

How long must a parent live in Nebraska before filing for custody?

In most situations, Nebraska law requires that the child has lived here in Nebraska for six months before Nebraska courts have the authority to make custody determinations. If there is an existing custody order or the process has started in another state, the other state may have continuing jurisdiction; and, you may not be able to continue or start the case in Nebraska. These questions are very technical and specific; and, parents should talk to an attorney about whether and when to file in Nebraska.

What is temporary custody?

Temporary custody occurs when an order is issued prior to the finalization of the case. This order is entered “in the meantime” while the case is still ongoing so that the parents and child have some rules while more information is gathered to present to the judge if the parents cannot agree on final orders. A “final order” means that there is not currently a pending, active case open with the courts regarding the custody of the child. It does not mean that a new case, called a “modification,” cannot be opened in the future if certain requirements are met.

How may custody be modified in the future?

The court has legal authority to modify custody of a child until the child reaches the age of majority (19 in Nebraska). To change custody, a new complaint must be filed in the case; and, the requesting parent must be able to show that there is a significant change in circumstances that requires a change; and, it is in the best interests of the child to change custody. Judges do not like to create instability for children by changing custody unless there is an important reason to do so. A lawyer can help evaluate the likelihood a judge would change custody based on the law and the specific facts involved in a case.

Parents sometimes agree between themselves to a change in custody. In this situation, the parent who was originally ordered to pay child support must continue to do so unless he or she obtained a court order terminating or suspending support payments. Informal agreements between the parents are not enough to change or stop child support.

Parenting Time

What is the difference between parenting time and visitation?

The purpose of parenting time is to ensure each child continues to have a meaningful, ongoing relationship with both parents even if the parents do not live in the same household. The Nebraska Parenting Act refers to time a child is spending with a parent as “parenting time” rather than visitation, regardless of what the custodial orders say. If a person other than a parent has court-ordered time with a child, that person is exercising “visitation” with the child.

How is the parenting time schedule for each parent determined?

In many cases, the parents agree on a parenting time schedule and develop their own Parenting Plan before the final hearing. If the parties agree on a Parenting Plan, the judge will usually approve of the Plan if it is in the best interests of the children. If the parents cannot agree, the judge will create a schedule and order the parents to follow it. Some courts have established a standard schedule or minimum parenting time plan that is a part of the local court rules in that county. However, judges and parents can be very flexible in setting a schedule that meets the needs of each family. Parenting Plans typically set a regular parenting time schedule and address the schedule for holidays, breaks from school, traveling with the children, and any other special circumstance for the family.

Can the parents change the parenting time schedule?

Parents may change their parenting time schedule temporarily if they both agree to it. However, any permanent, ongoing changes must be ordered by the court if the parents want to be able to enforce the change if the other parent later changes their mind.

Rights of Parents and Others

Must the parents give notice of any change of address?

Yes. For so long as a child in a custody case is a minor (until age 19 in Nebraska), the court continues to have legal authority over the parents and child. State law requires both parents to keep the Clerk of the District Court advised of their current address or employer. This helps in the enforcement of orders for custody, parenting time, and child support.

Can a child’s last name be changed without the other parent’s permission?

The district courts in Nebraska have the authority to change names, including for a minor child. However, the judge will not automatically grant such a request. The other parent must be given notice of the request and an opportunity to object. If the non-requesting parent objects, the request is usually denied, unless very specific circumstances exist, such as the objecting parent has not supported or contacted the child (abandonment) or is imprisoned, for example.

Can children be adopted by a step-parent?

Nebraska law allows a step-parent to adopt a minor child when very specific requirements are met. The proposed adoptive parent must be legally married to one of the child’s parents and the child must have lived with the parent and step-parent for at least six months prior to the adoption Petition being filed. The rights of the natural parent must be relinquished (meaning the natural parent will agree and sign a consent) or terminated (by a court order of termination or an order allowing a substitute consent). Judges will not terminate a natural parent’s rights without their consent unless abandonment or severe abuse can be proven. A lawyer can help further explain this process.

What happens if one of a child’s parents dies?

In Nebraska, the natural parents have a superior right to custody unless proven unfit or their rights have been terminated. Courts will give preference to the surviving natural parent to take custody of the child. Both parents may name a successor guardian in their wills in the event both parents die before their children are adults.

Do parents need court permission to move out-of-state with their children?

If there is an open (pending) case or prior orders, yes. If the other parent agrees to the move, the court will generally allow it. If the other parent objects, there are specific factors the judge must consider: first, if there is a legitimate reason for the parent’s move (beyond affecting the child’s relationship with the other parent); and second, if the move is in the minor child’s best interests, including the effect the move would have on the child’s quality of life and relationship with each parent and extended family.

Can parenting time of a parent be terminated?

Nebraska courts will deny parenting time to a parent only in extraordinary circumstances where there is provable harm to the children involved. Even where there are circumstances that would make unrestricted parenting time inappropriate, judges will attempt to limit or supervise parenting time before terminating the parent’s right to see their children.

May one parent withhold parenting time if the other parent does not pay child support? May a parent withhold support if the other doesn’t allow parenting time?

No. Child support and parenting time are separate matters. Neither parent has the right to stop obeying a part of a court order because of the actions or refusals by the other parent. Failure to follow the court orders for either support or parenting time are punishable by contempt.

Can persons other than a child's parents be awarded visitation with the child?

In certain limited circumstances, persons who are not a minor child's natural parents may be allowed court-ordered visitation with the child. For example, there is a specific law in Nebraska for grandparents. If a child is part of a custody action or one of the children's parents has died, grandparents may be entitled to visitation if they can prove they have had a prior beneficial relationship with the child and the visitation would not interfere with the parental relationship. Likewise, certain unrelated persons who have an established parental-like relationship with the child (such as a former step-parent or guardian) may be able to petition the court for ongoing visitation.

Can persons other than a child's parents be awarded custody of a child?

In extraordinary circumstances, persons who are not a minor child's natural parents may be granted custody by the courts through guardianship. This can only occur if the requesting person can show that the natural parents' parental rights have been suspended by circumstances. In addition, Nebraska law allows a parent to grant another person the right to act as a parent temporarily by having their signature notarized on a Temporary Delegation of Parental Powers, which expires after six months. Again, however, if there is a fit natural parent available, that parent's rights supersede any other person's rights to, or interests in, the child under Nebraska law.

A reminder to parents

Parents would do well to remember that disagreements and conflicts between adults are frightening and sad for children. Parents can ease this difficulty by allowing and encouraging the children to have a positive relationship with each parent, by providing needed support—both emotional and financial—and by keeping their children's well-being and security the most important consideration.

The information in this brochure is for educational purposes only. It is not legal advice or a substitute for legal advice by a lawyer. If you want legal advice, you should contact a lawyer licensed to practice law in Nebraska.

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