

# The New Parenting Act in LB554:

Who Has to Do What

by Suzanne Carney



Spring of 2007 brought the passage of L.B. 554, which amends or repeals 42 existing statutes dealing with family issues. The great majority of the new law goes into effect on January 1, 2008. The bill's greatest impact is seen in its first 24 sections, the replacement of the current Parenting Act with a significantly more comprehensive version.

The premiere feature of the revised Parenting Act is its unequivocal focus on the best interest of the child. Eschewing to favor either "mothers' rights" or "fathers' rights," the Act puts children at the center instead of in the middle. With the best interests of children standard at the core of the Act, issues of safety and consistency are explicitly addressed in a way not previously seen in statute.

## Suzanne Carney

Suzanne Curran Carney, J.D., LL.M., has been an attorney since 1976 when she graduated from Creighton University School of Law. Her practice has been largely in the area of juvenile and family law. Her interest in mediation goes back to 1981 when she took first family mediation training. She was a frequent volunteer mediator for several of the community mediation centers in Nebraska. She shared a private mediation practice with her husband, Larry. In 2003, Suzanne earned her Master of Laws in Dispute Resolution from the University of Missouri at Columbia. The ADR section of the ABA published her family law mediation simulation in 2003. Since September of 2004, she has been on staff at Central Mediation Center in Kearney, Nebraska.

During the legislative process leading up to its passage and in discussions following that event, LB 554 has at times been called a mandatory mediation law. A closer examination of the provisions of the new Parenting Act shows that, despite its alliterative appeal, "mandatory mediation" is an imprecise description. True, the courts may<sup>1</sup> (after July 1, 2010, must<sup>2</sup>) order parents to mediation at an approved mediation center or court conciliation program but only if the parents have not timely developed a parenting plan through direct discussion, voluntary mediation, or their attorneys' negotiations<sup>3</sup>.

The order to mediate does not require the parties to reach an agreement or to stay at the table for a specified number of hours. The parties are mandated to do two things: participate in the screening<sup>4</sup> and attend one session. The screening is an assessment for "child abuse or neglect, domestic intimate partner abuse, unresolved parental conflict, other forms of intimidation or coercion, or a party's inability to negotiate freely and make informed decisions."<sup>5</sup> The parents are further required to attend the initial session of mediation or specialized alternative dispute resolution (SADR).<sup>6</sup> Based on the current practice in approved mediation centers,<sup>7</sup> the screening and first session will, in most instances, be scheduled on the same day.<sup>8</sup>

This article does not attempt to provide a comprehensive description or critical review of LB 554. Its purpose is limited to outlining the obligations imposed by the new Parenting Act on lawyers, parents, judges, and mediators involved in cases that re-align the relationship between parent and child, original actions and modifications under Chapters 30, 42, and 43.<sup>9</sup> Some of these obligations already exist in the current Parenting Act; some are modified and others are new.

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### ATTORNEYS

- Lawyers representing parties must document that the parties received the requisite written information about a variety of related subjects from the clerk of the court.<sup>10</sup>

- Whether court appointed or privately retained, representing parents or children's interests, all counsel in parenting plan cases must participate in approved training to recognize "child abuse or neglect, domestic intimate partner abuse, and unresolved parental conflict."<sup>11</sup>

- Attorneys must screen for the conditions identified in the training and "other issues in regard to coercion, intimidation, and barriers to safety and full and informed decisionmaking."<sup>12</sup>

### PARTIES

- All parents must attend an approved basic parenting education course<sup>13</sup> and, if ordered by the court, a second-level parenting education course in cases of abuse or unresolved parental conflict.<sup>14</sup>

- Parents must participate in screening and the initial session of mediation or specialized alternative dispute resolution (SADR) as ordered by the court if they have not otherwise developed a parenting plan within the time set by the court.<sup>15</sup>

- The parents are expected to pay for parenting education although the court may waive the fee.<sup>16</sup> They are further responsible for the costs associated with mediation or SADR.<sup>17</sup> Approved centers charge according to a sliding fee scale.<sup>18</sup>

- A party seeking a temporary order relating to parenting issues has to file and serve a detailed child information affidavit.<sup>19</sup>

- When seeking a final order relating to parenting issues, a party must file and serve a detailed final child information affidavit.<sup>20</sup>

### JUDGES

- When making decisions in "any proceeding involving a child," the court must use as its standard the best interests of the child.<sup>21</sup>

- When the parents submit a parenting plan, the court must determine, after a hearing on the record, if the plan is in the best interests of the child.<sup>22</sup>

- The court must develop an appropriate parenting plan if the parents' plan is inadequate<sup>23</sup> or if the parents have failed to produce any plan.<sup>24</sup>

- Judges who handle parenting plan cases must participate in approved training to recognize "child abuse or neglect, domestic intimate partner abuse, and unresolved parental conflict."

- The court must order parents to participate in:

Approved parenting education;<sup>25</sup>

Mediation if they have not timely submitted an acceptable parenting plan, after July 1, 2010;<sup>26</sup>

- When there are allegations of domestic intimate partner abuse or unresolved parental conflict, the court may not order mediation but may, prior to July 1, 2010, order parties who have failed to submit a parenting plan to SADR and must do so after that date.<sup>27</sup>

- After hearing on a motion for temporary parenting order, the court must enter an order including the listed specifics.<sup>28</sup>

- The court must consider these circumstances as provided in the Act when developing a parenting plan:

History of child abuse, abandonment, or neglect, domestic intimate partner abuse, parental interference;<sup>29</sup>

Requirement to register as a sex offender;<sup>30</sup>

Protection, restraining, or criminal no-contact orders.<sup>31</sup>

### MEDIATORS

- Parenting plan mediators must participate in approved training to recognize child abuse or neglect, domestic intimate partner abuse, and unresolved parental conflict.<sup>32</sup>

- Mediators must screen for child abuse or neglect, domestic intimate partner abuse, and unresolved parental conflict prior to mediation.<sup>33</sup>

- When a mediator receives a parenting plan referral, s/he must give the parties information about mediation and SADR.<sup>34</sup>

- In order to mediate general parenting cases under the Act, mediators must have successfully completed basic mediation training and family mediation training approved by the Office of Dispute Resolution. Additionally, parenting plan mediators must have served an apprenticeship<sup>35</sup>

- In order to mediate high conflict cases under the Act, mediators must:

Be affiliated with a court conciliation program or approved mediation center;<sup>36</sup>

Qualify as a parenting plan mediator for general parenting cases;<sup>37</sup>

Meet additional standards, as yet unspecified, set by the State Court Administrator;<sup>38</sup>

Complete a minimum of 24 hours training in SADR mediation.<sup>39</sup>

- When mediating parenting plan cases, the mediator must:

Assess the parties individually before the initial session for:

Child abuse or neglect;



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Unresolved parental conflict;  
Domestic intimate partner abuse;  
Intimidation or coercion;  
Inability to negotiate freely and make informed decisions;  
Proceed appropriately as indicated by the assessment;  
Continue assessing for safety and appropriateness throughout the process;<sup>40</sup>  
Avoid conflict of interest;<sup>41</sup>

- Mediate in an appropriate and professional manner as described in the Act.<sup>42</sup>
- Advise the parties to consult with an attorney.<sup>43</sup>
- A parenting plan mediator must observe the standards of practice adopted by the State Court Administrator. (Note: this is not limited to mediators affiliated with mediation centers.)<sup>44</sup>
- Parenting plan mediations must be held in private.<sup>45</sup>

The Uniform Mediation Act and the Dispute Resolution Act govern parenting plan mediations but, if there is a conflict between the laws, the Parenting Act takes precedence.<sup>46</sup>

The new Parenting Act also places obligations on the court clerks and the State Court Administrator office. The clerks must provide specified information to parties to parenting plan cases and must document having done so.<sup>47</sup>

The State Court Administrator (SCA) has the responsibility for oversight of the implementation of the Parenting Act. It has rule making authority under the Act.<sup>48</sup> SCA is tasked with the development or approval of informational material and the various training/educational courses.<sup>49</sup> It will design the forms used for temporary and final child information affidavits<sup>50</sup>, as well as the domestic violence screening tool.<sup>51</sup> SCA will adopt standards for parenting plan mediators<sup>52</sup>, establish the sliding payment scale,<sup>53</sup> and use the Parenting Act Fund to carry out the Parenting Act.<sup>54</sup>

The issues governed by the Parenting Act have a profound impact on many Nebraska families and on the practice of many Nebraska lawyers. With its explicit mandate to measure all outcomes in family cases against the standard of the best interests of children,, the Act holds the promise of creating a better future for some of our society's most vulnerable members. As with any new legislation, those involved will have questions, concerns, and opinions about its implementation and effect. Clearly, ongoing dialogue among those affected will be needed to produce the optimum result for our clients, our colleagues, and most importantly, our children. 

## Endnotes

- <sup>1</sup> LB 554 §7 (2); § 18 (3)
- <sup>2</sup> LB 554 §7 ((2); § 18 (3)
- <sup>3</sup> LB 554 § 10 (1)
- <sup>4</sup> LB 554 § 20 (6)
- <sup>5</sup> LB 554 §8 (2); § 20 (1)
- <sup>6</sup> LB 554 § 20 (6)
- <sup>7</sup> LB 554 § 18 (1)
- <sup>8</sup> Based on telephone survey of ODR approved centers, 7/25/07.
- <sup>9</sup> LB 554 § 5 (1)
- <sup>10</sup> LB 554 § 6 (3)
- <sup>11</sup> LB 554 § 8 (1)
- <sup>12</sup> LB 554 § 8 (4)
- <sup>13</sup> LB 554 § 9 (1) (4)
- <sup>14</sup> LB 554 § 9 (2)
- <sup>15</sup> LB 554 § 20 (6); § 7 (1)
- <sup>16</sup> LB 554 § 9 (7)
- <sup>17</sup> LB 554 § 23
- <sup>18</sup> Ibid
- <sup>19</sup> LB 554 § 11
- <sup>20</sup> LB 554 § 12
- <sup>21</sup> LB 554 § 2
- <sup>22</sup> LB 554 § 16
- <sup>23</sup> Ibid
- <sup>24</sup> LB 554 § 7
- <sup>25</sup> LB 554 § 9 (1)
- <sup>26</sup> LB 554 § 18(3)
- <sup>27</sup> LB 554 §18 (2) (3)
- <sup>28</sup> LB 554 § 11 (2)
- <sup>29</sup> LB 554 §13
- <sup>30</sup> LB 554 §14
- <sup>31</sup> LB 554 §15
- <sup>32</sup> LB 554 § 8 (1)
- <sup>33</sup> LB 554 § 8 (3)
- <sup>34</sup> LB 554 § 17
- <sup>35</sup> LB 554 § 19 (2)
- <sup>36</sup> LB 554 § 19 (3) (a)
- <sup>37</sup> LB 554 § 19 (3) (b)
- <sup>38</sup> LB 554 § 19 (3) (c)
- <sup>39</sup> LB 554 § 19 (3) (d)
- <sup>40</sup> LB 554 § 20 (1)
- <sup>41</sup> LB 554 § 20 (2) (3)
- <sup>42</sup> LB 554 § 20 (4)
- <sup>43</sup> LB 554 § 20 (4)
- <sup>44</sup> LB 554 § 21 (1)
- <sup>45</sup> LB 554 § 21 (2)
- <sup>46</sup> LB 554 § 22
- <sup>47</sup> LB 554 § 6
- <sup>48</sup> LB 554 § 24 (1)
- <sup>49</sup> LB 554 § 7; § 8 (2); § 9 (4); § (5);
- <sup>50</sup> LB 554 § 11 (40); § 12 (2)
- <sup>51</sup> LB 554 § 8 (2)
- <sup>52</sup> LB 554 § 21 (1)
- <sup>53</sup> LB 554 § 23
- <sup>54</sup> LB 554 § 24 (2)