

## CHAPTER 42

### MILITARY SERVICE MEMBERS — VISITATION OR PHYSICAL CARE PARENTING TIME

H.F. 195

**AN ACT** relating to assignment of visitation or physical care parenting time for children of military service members on active duty and including effective date provisions.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 598.41D, Code 2011, is amended to read as follows:

**598.41D Assignment of visitation or physical care parenting time — parent serving active duty — family member.**

1. Notwithstanding any provision to the contrary, a parent who has been granted court-ordered visitation with the parent's minor child may file an application for modification of a decree or a petition for modification of an order regarding child visitation, prior to or during the time the parent is serving active duty in the military service of the United States, to temporarily assign that parent's visitation rights to a family member of the minor child, as specified by the parent. The application or petition shall be accompanied by an affidavit from the family member indicating the family member's knowledge of the application or petition and willingness to exercise the parent's visitation rights during the parent's absence. The application or petition shall also request any change in the visitation schedule necessitated by the assignment.

2. Notwithstanding any provision to the contrary, a parent who has been granted court-ordered physical care or joint physical care of the parent's minor child may file an application for modification of a decree or a petition for modification of an order regarding child custody, prior to or during the time the parent is serving active duty in the military service of the United States, to temporarily assign the parent's physical care parenting time to a family member of the minor child, as specified by the parent. The application or petition shall be accompanied by an affidavit from the family member indicating the family member's knowledge of the application or petition and willingness to exercise the parent's physical care parenting time during the parent's absence. The application or petition shall also request any change in the physical care parenting time schedule necessitated by the assignment.

~~2.~~ 3. *a.* If the active duty of a parent affects the parent's ability or anticipated ability to appear at a regularly scheduled hearing, the court shall provide for an expedited hearing in matters instituted under this section.

*b.* If the active duty or anticipated active duty of a parent prevents the parent from appearing in person at a hearing, the court shall provide, upon reasonable advance notice, for the parent to present testimony and evidence by electronic means in matters instituted under this section. For the purposes of this paragraph, "electronic means" includes communication by telephone, video teleconference, or the internet.

3. 4. *a.* The court may grant the parent's request for temporary assignment of visitation or physical care parenting time and any change in the visitation or physical care parenting time schedule requested if the court finds that such assignment of visitation or physical care parenting time is in the best interest of the child.

*b.* In determining the best interest of the child, the court shall ensure all of the following:

(1) That the specified family member is not a sex offender as defined in section 692A.101.

(2) That the specified family member does not have a history of domestic abuse, as defined in section 236.2. In determining whether a history of domestic abuse exists, the court's consideration shall include but is not limited to commencement of an action pursuant to section 236.3, the issuance of a protective order against the individual or the issuance of a court order or consent agreement pursuant to section 236.5, the issuance of an emergency order pursuant to section 236.6, the holding of an individual in contempt pursuant to section 664A.7, the response of a peace officer to the scene of alleged domestic abuse or the arrest of an individual following response to a report of alleged domestic abuse, or a conviction for domestic abuse assault pursuant to section 708.2A.

(3) That the specified family member does not have a record of founded child or dependent adult abuse.

(4) That the specified family member has an established relationship with the child and assigning visitation or physical care parenting time to the specified family member will provide the child the opportunity to maintain an ongoing family relationship that is important to the child.

(5) That the specified family member ~~is able~~ demonstrates an ability to personally and financially support the child and will support the child's relationship with both of the child's parents during the assigned visitation or physical care parenting time.

~~4. 5.~~ An order granting assignment of visitation rights or physical care parenting time under this section does not create separate rights to visitation or physical care parenting time for a person other than the parent. An order granting assignment of visitation or physical care parenting time under this section does not grant any custodial or parental rights to any person who is not the parent of the child.

~~6.~~ An order granted under this section may temporarily assign visitation or physical care parenting time that is equal to or less than the visitation or physical care parenting time awarded to the parent whose visitation or physical care parenting time is assigned.

~~5. 7.~~ The parent whose visitation rights are or physical care parenting time is temporarily assigned shall provide a copy of the order granting assignment of visitation or physical care parenting time to the school and school district of the child to whom the order applies.

~~6. 8.~~ An order granting temporary assignment of visitation rights or physical care parenting time pursuant to this section shall terminate upon notification of the court by the parent or automatically upon the parent's completion of active duty, whichever occurs first.

~~7. 9.~~ After a parent completes active duty, if an application for modification of a decree or a petition for modification of an order is filed, the parent's absence due to active duty or the assignment of visitation rights or physical care parenting time does not constitute a substantial change in circumstances, and the court shall not consider a parent's absence due to that active duty or the assignment of visitation rights or physical care parenting time in making a determination regarding the best interest of the child relative to such an application or petition filed after a parent completes active duty.

~~8. 10.~~ As used in this section, "active duty" means active military duty pursuant to orders issued under Tit. X of the United States Code. However, this section shall not apply to active guard and reserve duty or similar full-time military duty performed by a parent when the child remains in actual custody of the parent.

~~11.~~ As used in this section, "parenting time" means actual time spent with the child as specified in a decree or order, but does not include any other element of legal custody, physical care, or joint physical care.

Sec. 2. EFFECTIVE UPON ENACTMENT. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 12, 2011