

MAR 11 1982

HOUSE FILE 2442

Place On Calendar

BY COMMITTEE ON JUDICIARY
AND LAW ENFORCEMENT

(Formerly Study Bill 505)

Passed House, Date 3-18-82 (7.889) Passed Senate, Date 4-7-82 (P1090)
Vote: Ayes 88 Nays 1 Vote: Ayes 44 Nays 0
Approved 5/17/1982

A BILL FOR

1 An Act relating to custody of children upon dissolution of
2 marriage.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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2442

1 Section 1. Section 598.1, Code 1981, is amended by adding
2 the following new subsections:

3 NEW SUBSECTION. "Joint custody" or "joint legal custody"
4 means an award of custody of a minor child to both parents
5 under which both parents have rights and responsibilities
6 toward the child and under which neither parent has rights
7 superior to those of the other parent. The court may award
8 physical care to one parent only.

9 NEW SUBSECTION. "Physical care" means the right and
10 responsibility to maintain the principal home of the minor
11 child and provide for the routine care of the child.

12 Sec. 2. Chapter 598, Code 1981, is amended by adding the
13 following new section:

14 NEW SECTION. CUSTODY OF CHILDREN.

15 1. The court, insofar as is reasonable and in the best
16 interest of the child, shall order the custody award, including
17 liberal visitation rights where appropriate, which will assure
18 a minor child frequent and continuing contact with both parents
19 after the parents have separated or dissolved the marriage,
20 and which will encourage parents to share the rights and
21 responsibilities of raising the child. Unless otherwise
22 ordered by the court in the custody decree, both parents shall
23 have legal access to information concerning the child,
24 including but not limited to medical, educational and law
25 enforcement records.

26 2. On the petition of either parent, the court shall con-
27 sider granting joint custody in cases where the parents do
28 not agree to joint custody. If the court does not grant joint
29 custody under this subsection, the court shall state in its
30 decision the reasons for denying joint custody. Before ruling
31 upon the joint custody petition in these cases, the court
32 may require the parties to participate in custody mediation
33 counseling to determine whether joint custody is in the best
34 interest of the child. The court may require the child's
35 participation in the mediation counseling insofar as the court

1 determines the child's participation is advisable.

2 The costs of custody mediation counseling shall be paid
3 in full or in part by the parties and taxed as court costs;
4 however, if the court determines that the parties will be
5 unable to pay the costs without prejudicing their financial
6 ability to provide themselves and any minor children with
7 economic necessities, the costs may be paid in full or in
8 part from the court expense fund.

9 3. In considering what custody arrangement under either
10 subsection 1 or 2 is in the best interests of the minor child,
11 the court shall consider the following factors:

12 a. Whether each parent would be a suitable custodian for
13 the child.

14 b. Whether the psychological and emotional needs and
15 development of the child will suffer due to lack of active
16 contact with and attention from both parents.

17 c. Whether the parents can communicate with each other
18 regarding the child's needs.

19 d. Whether both parents have actively cared for the child
20 before and since the separation.

21 e. Whether each parent can support the other parent's
22 relationship with the child.

23 f. Whether the custody arrangement is in accord with the
24 child's wishes or whether the child has strong opposition.

25 4. Joint legal custody does not require joint physical
26 care. When the court determines such action would be in the
27 child's best interest, physical care may be given to one joint
28 custodial parent and not to the other. However, physical
29 care given to one parent does not affect the other parent's
30 rights and responsibilities as a legal custodian of the child.

31 Sec. 3. Section 598.21, subsection 1, paragraph g, Code
32 1981, is amended to read as follows:

33 g. The desirability of awarding the family home or the
34 right to live in the family home for a reasonable period to
35 the party having custody of any the children, or if the parties

1 have joint legal custody, to the party having physical care
2 of the children.

3 Sec. 4. Section 598.21, subsection 3, paragraph e, Code
4 1981, is amended to read as follows:

5 e. The earning capacity of the party seeking maintenance,
6 including educational background, training, employment skills,
7 work experience, length of absence from the job market,
8 ~~eustedia~~ responsibilities for children under either an award
9 of custody or physical care, and the time and expense necessary
10 to acquire sufficient education or training to enable the
11 party to find appropriate employment.

12 Sec. 5. Section 598.21, subsection 4, paragraph d, Code
13 1981, is amended to read as follows:

14 d. The desirability that the eustedian party awarded
15 either sole custody or, in the case of joint custody, physical
16 care remain in the home as a full-time parent.

17 Sec. 6. Section 598.21, subsection 4, paragraph e, Code
18 1981, is amended to read as follows:

19 e. The cost of day care if the eustedian party awarded
20 either sole custody or, in the case of joint custody, physical
21 care works outside the home, or the value of ~~eustedia~~ the
22 child care services performed by the eustedian party if the
23 eustedian party remains in the home.

24 Sec. 7. Section 598.21, subsection 6, Code 1981, is amended
25 to read as follows:

26 6. The court may provide for joint custody of the children
27 by the parties pursuant to section 2 of this Act. ~~Orders~~
28 All orders relating to custody of a child are subject to the
29 ~~provisions of~~ chapter 598A.

30 Sec. 8. Section 598.21, subsection 8, Code 1981, is amended
31 to read as follows:

32 8. The court may subsequently modify orders made under
33 this section when there is a substantial change in
34 circumstances. Any The court contemplating a change in child
35 support because of alleged change in circumstances shall take

1 ~~into-consideration~~ consider each parent's earning capacity,
2 economic circumstances and cost of living. Modifications
3 of orders pertaining to child custody shall be made pursuant
4 to chapter 598A. If the petition for a modification of an
5 order pertaining to child custody asks either for joint custody
6 or that joint custody be modified to an award of sole custody,
7 the modification, if any, shall be made pursuant to section
8 2 of this Act.

9 EXPLANATION

10 This bill creates standards relating to custody of children
11 in dissolution of marriage cases. It provides that the court
12 shall consider awarding joint custody if either parent requests
13 joint custody and the court finds that joint custody is in
14 the child's best interests. Factors for the court to consider
15 before making any custody award are set forth in subsection
16 3 of section 2. Under the bill, the court may award joint
17 legal custody to both parents while awarding one parent the
18 right to physically care for the child in the parent's home.
19 The bill takes effect July 1 following its enactment.

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REPRESENTATIVE CONLON

STATE OF IOWA
FISCAL NOTE

Request No. 82-302

In compliance with a written request received March 11, 1982, there is hereby submitted a Fiscal Note for House File 2442 pursuant to Joint Rule 16. Background information used in developing this Fiscal Note is available from the Legislative Fiscal Bureau, to members of the Legislature upon request.

House File 2442, An Act relating to custody of children upon dissolution of marriage.

No fiscal note required under Joint Rule 16.

FILED MARCH 12, 1982

BY GERRY RANKIN, Fiscal Director

HOUSE FILE 2442

H-5405

- 1 Amend House File 2442 as follows:
2 1. Page 2, line 24, by inserting after the
3 word "opposition" the words ", taking into consider-
4 ation the child's age and maturity".

H-5405 FILED MARCH 12, 1982

BY SPEAR of Lee

Adopted 3/18 (p. 888)

HOUSE FILE 2442

H-5439

- 1 Amend House File 2442 as follows:
2 1. Page 2, by adding after line 30 the following:
3 "Sec. ____ Section 598.12, Code 1981, is amended
4 to read as follows:
5 598.12 ATTORNEY FOR MINOR CHILD.
6 1. The court may appoint an attorney to represent
7 the interests of the minor child or children of the
8 parties. Such The attorney shall be empowered to
9 make independent investigations and to cause witnesses
10 to appear and testify before the court on matters
11 pertinent to the interests of the children.
12 2. The court may require that the department of
13 social services or an appropriate agency make an
14 investigation of both parties regarding the home
15 conditions, parenting capabilities, and other matters
16 pertinent to the best interests of the child or
17 children in a dispute concerning custody of the child
18 or children. The investigation report completed by
19 the department of social services or an appropriate
20 agency shall be submitted to the court and available
21 to both parties. The investigation report completed
22 by the department of social services or an appropriate
23 agency shall be a part of the record unless otherwise
24 ordered by the court.
25 3. The court shall enter an order in favor of
26 such the attorney, the department of social services,
27 or an appropriate agency for fees and disbursements,
28 which amount shall be charged against the party
29 responsible for court costs unless the court determines
30 that the party responsible for costs is indigent in
31 which event the fees shall be borne by the county."
32 2. Renumber as necessary.

BY DODERER of Johnson

SMALLEY of Polk
WELSH of Dubuque
CONLON of Muscatine

TRUCANO of Polk
POFFENBERGER of Dallas
RAPP of Black Hawk

H-5439 FILED
MARCH 16, 1982

Adopted 3/18 (p. 889)

H-5434

1 Amend House File 2442 as follows:
2 1. Page 2, by inserting after line 30 the
3 following:
4 "5. When the parent awarded custody or physical
5 care of the child cannot act as custodian or caretaker
6 because the parent has died or has been judicially
7 adjudged incompetent, the court shall award custody
8 including physical care of the child to the surviving
9 parent unless the court finds that such an award is
10 not in the child's best interests."

H-5434 FILED MARCH 15, 1982

BY BRANDT of Black Hawk

Adopted 3/18/82

*See Judiciary 3/23 Amend fees 5446 &
To Pass 4/1 (p. 990)*

HOUSE FILE 2442

Judiciary
Small, Chair
Murray
Baugh

HOUSE FILE 2442

BY COMMITTEE ON JUDICIARY
AND LAW ENFORCEMENT

(As Amended and Passed by the House)

Re Passed House, Date 4-14-82 (p. 1471) Passed Senate, Date 4-7-82 (p. 1090)

Vote: Ayes 97 Nays 0 Vote: Ayes 44 Nays 0

Approved May 17, 1982

*Repassed Senate as further amended by House
4-19-82 (p. 1265)
47-0*

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House Amendments _____

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9 NEW SUBSECTION. "Physical care" means the right and
10 responsibility to maintain the principal home of the minor
11 child and provide for the routine care of the child.

12 Sec. 2. Chapter 598, Code 1981, is amended by adding the
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15 1. The court, insofar as is reasonable and in the best
16 interest of the child, shall order the custody award, including
17 liberal visitation rights where appropriate, which will assure
18 a minor child frequent and continuing contact with both parents
19 after the parents have separated or dissolved the marriage,
20 and which will encourage parents to share the rights and
21 responsibilities of raising the child. Unless otherwise
22 ordered by the court in the custody decree, both parents shall
23 have legal access to information concerning the child,
24 including but not limited to medical, educational and law
25 enforcement records.

5446 26 2. On the petition of either parent, the court shall con-
27 sider granting joint custody in cases where the parents do
28 not agree to joint custody. If the court does not grant joint
29 custody under this subsection, the court shall state in its
30 decision the reasons for denying joint custody. Before ruling
31 upon the joint custody petition in these cases, the court
32 may require the parties to participate in custody mediation
33 counseling to determine whether joint custody is in the best
34 interest of the child. The court may require the child's
35 participation in the mediation counseling insofar as the court

1 determines the child's participation is advisable.

504-2
2 The costs of custody mediation counseling shall be paid
3 in full or in part by the parties and taxed as court costs;
4 however, if the court determines that the parties will be
5 unable to pay the costs without prejudicing their financial
6 ability to provide themselves and any minor children with
7 economic necessities, the costs may be paid in full or in
8 part from the court expense fund.

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10 subsection 1 or 2 is in the best interests of the minor child,
11 the court shall consider the following factors:

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13 the child.

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15 development of the child will suffer due to lack of active
16 contact with and attention from both parents.

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18 regarding the child's needs.

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20 before and since the separation.

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22 relationship with the child.

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24 child's wishes or whether the child has strong opposition,
25 taking into consideration the child's age and maturity.

504-2
26 4. Joint legal custody does not require joint physical
27 care. When the court determines such action would be in the
28 child's best interest, physical care may be given to one joint
29 custodial parent and not to the other. However, physical
30 care given to one parent does not affect the other parent's
31 rights and responsibilities as a legal custodian of the child.

32 5. When the parent awarded custody or physical care of
33 the child cannot act as custodian or caretaker because the
34 parent has died or has been judicially adjudged incompetent,
35 the court shall award custody including physical care of the

1 child to the surviving parent unless the court finds that
2 such an award is not in the child's best interests.

3 Sec. 3. Section 598.12, Code 1981, is amended to read
4 as follows:

5 598.12 ATTORNEY FOR MINOR CHILD.

6 1. The court may appoint an attorney to represent the
7 interests of the minor child or children of the parties.

8 Such The attorney shall be empowered to make independent
9 investigations and to cause witnesses to appear and testify
10 before the court on matters pertinent to the interests of
11 the children.

12 2. The court may require that the department of social
13 services or an appropriate agency make an investigation of
14 both parties regarding the home conditions, parenting
15 capabilities, and other matters pertinent to the best interests
16 of the child or children in a dispute concerning custody of
17 the child or children. The investigation report completed
18 by the department of social services or an appropriate agency
19 shall be submitted to the court and available to both parties.
20 The investigation report completed by the department of social
21 services or an appropriate agency shall be a part of the
22 record unless otherwise ordered by the court.

23 3. The court shall enter an order in favor of such the
24 attorney, the department of social services, or an appropriate
25 agency for fees and disbursements, which amount shall be
26 charged against the party responsible for court costs unless
27 the court determines that the party responsible for costs
28 is indigent in which event the fees shall be borne by the
29 county.

30 Sec. 4. Section 598.21, subsection 1, paragraph g, Code
31 1981, is amended to read as follows:

32 g. The desirability of awarding the family home or the
33 right to live in the family home for a reasonable period to
34 the party having custody of any the children, or if the parties
35 have joint legal custody, to the party having physical care

1 of the children.

2 Sec. 5. Section 598.21, subsection 3, paragraph e, Code
3 1981, is amended to read as follows:

4 e. The earning capacity of the party seeking maintenance,
5 including educational background, training, employment skills,
6 work experience, length of absence from the job market,
7 eustodial responsibilities for children under either an award
8 of custody or physical care, and the time and expense necessary
9 to acquire sufficient education or training to enable the
10 party to find appropriate employment.

11 Sec. 6. Section 598.21, subsection 4, paragraph d, Code
12 1981, is amended to read as follows:

13 d. The desirability that the eustodian party awarded
14 either sole custody or, in the case of joint custody, physical
15 care remain in the home as a full-time parent.

16 Sec. 7. Section 598.21, subsection 4, paragraph e, Code
17 1981, is amended to read as follows:

18 e. The cost of day care if the eustodian party awarded
19 either sole custody or, in the case of joint custody, physical
20 care works outside the home, or the value of eustodial the
21 child care services performed by the eustodian party if the
22 eustodian party remains in the home.

23 Sec. 8. Section 598.21, subsection 6, Code 1981, is amended
24 to read as follows:

25 6. The court may provide for joint custody of the children
26 by the parties pursuant to section 2 of this Act. ~~Orders~~
27 All orders relating to custody of a child are subject to the
28 ~~provisions of~~ chapter 598A.

29 Sec. 9. Section 598.21, subsection 8, Code 1981, is amended
30 to read as follows:

31 8. The court may subsequently modify orders made under
32 this section when there is a substantial change in
33 circumstances. Any The court contemplating a change in child
34 support because of alleged change in circumstances shall ~~take~~
35 ~~into-consideration~~ consider each parent's earning capacity,

1 economic circumstances and cost of living. Modifications
2 of orders pertaining to child custody shall be made pursuant
3 to chapter 598A. If the petition for a modification of an
4 order pertaining to child custody asks either for joint custody
5 or that joint custody be modified to an award of sole custody,
6 the modification, if any, shall be made pursuant to section
7 2 of this Act.

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SENATE AMENDMENT TO HOUSE FILE 2442

H-5801

- 1 Amend House File 2442 as amended, passed, and
- 2 reprinted by the House, as follows:
- 3 1. Page 1, line 26, by striking the word "petition"
- 4 and inserting in lieu thereof the word "application".
- 5 2. Page 2, by striking lines 3 through 8 and
- 6 inserting in lieu thereof the following: "in full
- 7 or in part by the parties and taxed as court costs."
- 8 3. Page 2, by inserting after line 25 the
- 9 following:
- 10 "g. Whether one or both the parents agree or are
- 11 opposed to joint custody.
- 12 h. Whether the geographic proximity of the parents
- 13 are such that there will be no substantial disruption
- 14 of the child's schooling, association with friends,
- 15 religious training, and other routines."

H-5801 FILED APRIL 8, 1982

RECEIVED FROM THE SENATE
House amended & concurred 4/14 (p. 1471)

HOUSE FILE 2442

H-5838

- 1 Amend amendment H-5801, the Senate amendment to
- 2 House File 2442, as follows:
- 3 1. Page 1, by striking lines 12 through 15 and
- 4 inserting in lieu thereof the following:
- 5 "h. The geographic proximity of the parents."

H-5838 FILED
APRIL 13, 1982

BY DODERER of Johnson
SMALLEY of Polk

Adopted 4/14/82 (p. 1471)

HOUSE AMENDMENT TO SENATE AMENDMENT TO HOUSE FILE 2442
S-5632

- 1 Amend amendment H-5801, the Senate amendment to
- 2 House File 2442, as follows:
- 3 1. Page 1, by striking lines 12 through 15 and
- 4 inseting in lieu thereof the following:
- 5 "h. The geographic proximity of the parents."

S-5632 FILED
APRIL 16, 1982

RECEIVED FROM THE HOUSE
Senate concurred 4/19 (p. 1265)

HOUSE FILE 2442

S-5446

- 1 Amend House File 2442 as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 1, line 26, by striking the word "petition"
4 and inserting in lieu thereof the word "application".
5 2. Page 2, by striking lines 3 through 8 and
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13 are such that there will be no substantial disruption
14 of the child's schooling, association with friends,
15 religious training, and other routines."

S-5446 FILED
APRIL 1, 1982
Adopted 4/1 (p. 1090)

BY COMMITTEE ON JUDICIARY
LUCAS J. DeKOSTER, CHAIR

HOUSE FILE 2442

AN ACT

RELATING TO CUSTODY OF CHILDREN UPON DISSOLUTION OF MARRIAGE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 598.1, Code 1981, is amended by adding the following new subsections:

NEW SUBSECTION. "Joint custody" or "joint legal custody" means an award of custody of a minor child to both parents under which both parents have rights and responsibilities toward the child and under which neither parent has rights superior to those of the other parent. The court may award physical care to one parent only.

NEW SUBSECTION. "Physical care" means the right and responsibility to maintain the principal home of the minor child and provide for the routine care of the child.

Sec. 2. Chapter 598, Code 1981, is amended by adding the following new section:

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1. The court, insofar as is reasonable and in the best interest of the child, shall order the custody award, including liberal visitation rights where appropriate, which will assure a minor child frequent and continuing contact with both parents after the parents have separated or dissolved the marriage, and which will encourage parents to share the rights and responsibilities of raising the child. Unless otherwise ordered by the court in the custody decree, both parents shall have legal access to information concerning the child, including but not limited to medical, educational and law enforcement records.

2. On the application of either parent, the court shall consider granting joint custody in cases where the parents do not agree to joint custody. If the court does not grant

joint custody under this subsection, the court shall state in its decision the reasons for denying joint custody. Before ruling upon the joint custody petition in these cases, the court may require the parties to participate in custody mediation counseling to determine whether joint custody is in the best interest of the child. The court may require the child's participation in the mediation counseling insofar as the court determines the child's participation is advisable.

The costs of custody mediation counseling shall be paid in full or in part by the parties and taxed as court costs.

3. In considering what custody arrangement under either subsection 1 or 2 is in the best interests of the minor child, the court shall consider the following factors:

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5. When the parent awarded custody or physical care of the child cannot act as custodian or caretaker because the parent has died or has been judicially adjudged incompetent, the court shall award custody including physical care of the child to the surviving parent unless the court finds that such an award is not in the child's best interests.

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2. The court may require that the department of social services or an appropriate agency make an investigation of both parties regarding the home conditions, parenting capabilities, and other matters pertinent to the best interests of the child or children in a dispute concerning custody of the child or children. The investigation report completed by the department of social services or an appropriate agency shall be submitted to the court and available to both parties. The investigation report completed by the department of social services or an appropriate agency shall be a part of the record unless otherwise ordered by the court.

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e. The cost of day care if the ~~custodian party~~ awarded either sole custody or, in the case of joint custody, physical care works outside the home, or the value of ~~custodial~~ the child care services performed by the ~~custodian party~~ if the ~~custodian party~~ remains in the home.

Sec. 8. Section 598.21, subsection 6, Code 1981, is amended to read as follows:

6. The court may provide for joint custody of the children by the parties pursuant to section 2 of this Act. ~~Orders~~ All orders relating to custody of a child are subject to the ~~provisions of~~ chapter 598A.

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DELWYN STROMER
Speaker of the House

TERRY E. BRANSTAD
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2442, Sixty-ninth General Assembly.

ELIZABETH A. ISAACSON
Chief Clerk of the House

Approved _____, 1982

ROBERT D. RAY
Governor