

3/18/98 Referred to Appropri.

FILED MAR 2 1998

SENATE FILE 2393  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 2198)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to families including domestic relations  
2 provisions, parenting obligations, and providing an effective  
3 date.

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

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S.F. 2393

1 Section 1. Section 598.1, Code Supplement 1997, is amended  
2 to read as follows:

3 598.1 DEFINITIONS.

4 As used in this chapter:

5 1. "Best interest of the child" includes, but is not  
6 limited to, the opportunity for maximum continuous physical  
7 and emotional contact possible with both parents, unless  
8 direct physical or significant emotional harm to the child may  
9 result from this contact. Refusal by one parent to provide  
10 this opportunity without just cause shall be considered  
11 harmful to the best interest of the child.

12 2. "Dissolution of marriage" means a termination of the  
13 marriage relationship and shall be synonymous with the term  
14 "divorce".

15 3. ~~"Joint-custody"-or-"joint-legal-custody"~~ "Joint  
16 parenting obligations" means an award of ~~legal-custody-of~~  
17 parenting obligations regarding a minor child to both parents  
18 jointly under which both parents have ~~legal-custodial~~ rights  
19 and responsibilities toward the child and under which neither  
20 parent has ~~legal-custodial~~ rights superior to those of the  
21 other parent. Rights and responsibilities of joint ~~legal~~  
22 custody parenting obligations include, but are not limited to,  
23 equal participation in decisions affecting the child's legal  
24 status, medical care, education, extracurricular activities,  
25 and religious instruction.

26 4. "Joint physical care" means an award of physical care  
27 of a minor child to both ~~joint-legal-custodial~~ parents under  
28 which both parents have rights and responsibilities toward the  
29 child including, but not limited to, shared parenting time  
30 with the child, maintaining homes for the child, providing  
31 routine care for the child and under which neither parent has  
32 physical care rights superior to those of the other parent.

33 5. ~~---"legal-custody"-or-"custody"-means-an-award-of-the~~  
34 ~~rights-of-legal-custody-of-a-minor-child-to-a-parent-under~~  
35 ~~which-a-parent-has-legal-custodial-rights-and-responsibilities~~

1 toward-the-child.--Rights-and-responsibilities-of-legal  
2 custody-include,-but-are-not-limited-to,-decision-making  
3 affecting-the-child's-legal-status,-medical-care,-education,-  
4 extracurricular-activities,-and-religious-instruction-

5 6- 5. "Minor child" means any person under legal age.

6 6. "Parent" includes a third party with parenting  
7 obligations and authority to participate in a parenting plan.

8 7. "Parenting obligations" means an award under which a  
9 parent has rights and responsibilities toward the minor child.

10 The rights and responsibilities include, but are not limited  
11 to, decision making affecting the child's legal status,  
12 medical care, education, extracurricular activities, and  
13 religious instruction.

14 7- 8. "Physical care" means the right and responsibility  
15 to maintain a home for the minor child and provide for the  
16 routine care of the child.

17 8- 9. "Postsecondary education subsidy" means an amount  
18 which either of the parties may be required to pay under a  
19 temporary order or final judgment or decree for educational  
20 expenses of a child who is between the ages of eighteen and  
21 twenty-two years if the child is regularly attending a course  
22 of vocational-technical training either as a part of a regular  
23 school program or under special arrangements adapted to the  
24 individual person's needs; or is, in good faith, a full-time  
25 student in a college, university, or community college; or has  
26 been accepted for admission to a college, university, or  
27 community college and the next regular term has not yet begun.

28 9- 10. "Support" or "support payments" means an amount  
29 which the court may require either of the parties to pay under  
30 a temporary order or a final judgment or decree, and may  
31 include alimony, child support, maintenance, and any other  
32 term used to describe these obligations. For orders entered  
33 on or after July 1, 1990, unless the court specifically orders  
34 otherwise, medical support is not included in the monetary  
35 amount of child support. The obligations shall include

1 support for a child who is between the ages of eighteen and  
2 nineteen years who is engaged full-time in completing high  
3 school graduation or equivalency requirements in a manner  
4 which is reasonably expected to result in completion of the  
5 requirements prior to the person reaching nineteen years of  
6 age; and may include support for a child of any age who is  
7 dependent on the parties to the dissolution proceedings  
8 because of physical or mental disability.

9 Sec. 2. Section 598.5, subsection 9, Code Supplement 1997,  
10 is amended to read as follows:

11 9. Set forth any application for permanent alimony or  
12 support, child-custody parenting obligations, or disposition  
13 of property, as well as attorneys' fees and suit money,  
14 without enumerating the amounts thereof.

15 Sec. 3. Section 598.7A, unnumbered paragraph 1, Code 1997,  
16 is amended to read as follows:

17 In addition to the custody parenting obligations mediation  
18 provided pursuant to section 598.41, unless the court  
19 determines that a history of domestic abuse exists as  
20 specified in section 598.41, subsection 3, paragraph "j", or  
21 unless the court determines that direct physical harm or  
22 significant emotional harm to the child, other children, or a  
23 parent is likely to result, or unless the action involves a  
24 child support or medical support obligation enforced by the  
25 child support recovery unit, on the application of either  
26 party or on the court's own motion, the court shall determine  
27 in each domestic relations proceeding or modification of any  
28 order relating to those proceedings whether the parties to the  
29 proceeding shall participate in mediation to attempt to  
30 resolve differences between the parties without court  
31 intervention. The court may order participation in mediation  
32 at any time prior to the entering of a final order or the  
33 granting of a final decree.

34 Sec. 4. Section 598.8, subsection 1, Code 1997, is amended  
35 to read as follows:

1 1. Except as otherwise provided in subsection 2, hearings  
2 for dissolution of marriage shall be held in open court upon  
3 the oral testimony of witnesses, or upon the depositions of  
4 such witnesses taken as in other equitable actions or taken by  
5 a commissioner appointed by the court. The court may in its  
6 discretion close the hearing. Hearings held for the purpose  
7 of determining child-custody parenting obligations may be  
8 limited in attendance by the court. Upon request of either  
9 party, the court shall provide security in the courtroom  
10 during the custody parenting obligations hearing if a history  
11 of domestic abuse relating to either party exists.

12 Sec. 5. Section 598.11, unnumbered paragraph 1, Code 1997,  
13 is amended to read as follows:

14 The court may order either party to pay the clerk a sum of  
15 money for the separate support and maintenance of the other  
16 party and the children and to enable such party to prosecute  
17 or defend the action. The court may on its own motion and  
18 shall upon application of either party or an attorney  
19 appointed under section 598.12 determine the temporary custody  
20 of parenting obligations regarding any minor child whose  
21 welfare may be affected by the filing of the petition for  
22 dissolution.

23 Sec. 6. Section 598.12, subsection 2, Code 1997, is  
24 amended to read as follows:

25 2. The court may require that the department of human  
26 services or an appropriate agency make an investigation of  
27 both parties regarding the home conditions, parenting  
28 capabilities, and other matters pertinent to the best  
29 interests of the child or children in a dispute concerning  
30 custody-of parenting obligations regarding the child or  
31 children. The investigation report completed by the  
32 department of human services or an appropriate agency shall be  
33 submitted to the court and available to both parties. The  
34 investigation report completed by the department of human  
35 services or an appropriate agency shall be a part of the

1 record unless otherwise ordered by the court.

2 Sec. 7. Section 598.19A, subsection 1, Code 1997, is  
3 amended to read as follows:

4 1. The parties to any action which involves the issues of  
5 ~~child-custody~~ parenting obligations or visitation shall  
6 participate in a court-approved course to educate and  
7 sensitize the parties to the needs of any child or party  
8 during and subsequent to the proceeding within forty-five days  
9 of the service of notice and petition for the action or within  
10 forty-five days of the service of notice and application for  
11 modification of an order. Participation in the course may be  
12 waived or delayed by the court for good cause including, but  
13 not limited to, a default by any of the parties.

14 Participation in the course is not required if the proceeding  
15 involves termination of parental rights of any of the parties.  
16 A final decree shall not be granted or a final order shall not  
17 be entered until the parties have complied with this section.

18 Sec. 8. Section 598.21, subsection 1, paragraph g, Code  
19 Supplement 1997, is amended to read as follows:

20 g. The ~~desirability-of~~ awarding of the family home or the  
21 right to live in the family home for a reasonable period to  
22 ~~the a party having-custody-of-the-children, or-if-the-parties~~  
23 ~~have-joint-legal-custody, to-the-party-having-physical-care-of~~  
24 ~~the-children~~ based upon the parenting obligations of the  
25 party.

26 Sec. 9. Section 598.21, subsection 3, paragraph e, Code  
27 Supplement 1997, is amended to read as follows:

28 e. The earning capacity of the party seeking maintenance,  
29 including educational background, training, employment skills,  
30 work experience, length of absence from the job market,  
31 responsibilities for children under ~~either~~ an award of ~~custody~~  
32 ~~or-physical-care~~ parenting obligations, and the time and  
33 expense necessary to acquire sufficient education or training  
34 to enable the party to find appropriate employment.

35 Sec. 10. Section 598.21, subsection 4, paragraph d, Code

1 Supplement 1997, is amended to read as follows:

2 d. For purposes of calculating a support obligation under  
3 this section, the income of the parent from whom support is  
4 sought shall be used as the noncustodial parent income for  
5 purposes of application of the guidelines, regardless of the  
6 ~~legal-custody-of-the-child~~ parenting obligations awarded.

7 Sec. 11. Section 598.21, subsection 6, Code Supplement  
8 1997, is amended to read as follows:

9 6. The court may provide for joint ~~custody-of-the-children~~  
10 by-the-parties parenting obligations pursuant to section  
11 598.41. All orders relating to ~~custody-of-a-child~~ parenting  
12 obligations are subject to chapter 598A.

13 Sec. 12. Section 598.21, subsection 8, unnumbered  
14 paragraph 2, Code Supplement 1997, is amended to read as  
15 follows:

16 Unless otherwise provided pursuant to 28 U.S.C. § 1738B, a  
17 modification of a support order entered under chapter 234,  
18 252A, 252C, 600B, this chapter, or any other support chapter  
19 or proceeding between parties to the order is void unless the  
20 modification is approved by the court, after proper notice and  
21 opportunity to be heard is given to all parties to the order,  
22 and entered as an order of the court. If support payments  
23 have been assigned to the department of human services  
24 pursuant to section 234.39, 239B.6, or 252E.11, or if services  
25 are being provided pursuant to chapter 252B, the department is  
26 a party to the support order. Modifications of orders  
27 pertaining to ~~child-custody~~ parenting obligations shall be  
28 made pursuant to chapter 598A. If the petition for a  
29 modification of an order pertaining to ~~child-custody~~ parenting  
30 obligations asks either for joint custody parenting  
31 obligations or that joint custody parenting obligations be  
32 modified to an award of sole custody parenting obligations,  
33 the modification, if any, shall be made pursuant to section  
34 598.41.

35 Sec. 13. Section 598.21, subsection 8A, Code Supplement

1 1997, is amended to read as follows:

2 8A. If a parent awarded joint ~~legal-custody~~ parenting  
3 obligations and physical care or sole ~~legal-custody~~ parenting  
4 obligations is relocating the residence of the minor child to  
5 a location which is one hundred fifty miles or more from the  
6 residence of the minor child at the time that ~~custody-was~~  
7 parenting obligations were awarded, the court may consider the  
8 relocation a substantial change in circumstances. If the  
9 court determines that the relocation is a substantial change  
10 in circumstances, the court shall modify the ~~custody~~ parenting  
11 obligations order to, at a minimum, preserve, as nearly as  
12 possible, the existing relationship between the minor child  
13 and the nonrelocating parent. If modified, the order may  
14 include a provision for extended visitation during summer  
15 vacations and school breaks and scheduled telephone contact  
16 between the nonrelocating parent and the minor child. The  
17 modification may include a provision assigning the  
18 responsibility for transportation of the minor child for  
19 visitation purposes to either or both parents. If the court  
20 makes a finding of past interference by the relocating parent  
21 ~~awarded-joint-legal-custody-and-physical-care-or-sole-legal~~  
22 ~~custody~~ with the minor child's access to the other parent, the  
23 court may order the posting of a cash bond to assure future  
24 compliance with the visitation provisions of the decree. The  
25 supreme court shall prescribe guidelines for the forfeiting of  
26 the bond and restoration of the bond following forfeiting of  
27 the bond.

28 Sec. 14. Section 598.21, subsection 10, Code Supplement  
29 1997, is amended to read as follows:

30 10. Notwithstanding any other provision of law to the  
31 contrary, when an application for modification or adjustment  
32 of support is submitted by the child support recovery unit,  
33 the sole issues which may be considered by the court in that  
34 action are the application of the guidelines in establishing  
35 the amount of support pursuant to subsection 4, and provision

1 for medical support under chapter 252E. When an application  
2 for a cost-of-living alteration of support is submitted by the  
3 child support recovery unit pursuant to section 252H.24, the  
4 sole issue which may be considered by the court in the action  
5 is the application of the cost-of-living alteration in  
6 establishing the amount of child support. Issues related to  
7 custody parenting obligations, visitation, or other provisions  
8 unrelated to support shall be considered only under a separate  
9 application for modification.

10 Sec. 15. Section 598.23, subsection 2, paragraphs b and d,  
11 Code Supplement 1997, are amended to read as follows:

12 b. Modifies visitation to compensate for lost visitation  
13 time or establishes joint custody parenting obligations for  
14 the child or transfers custody parenting obligations.

15 d. Imposes sanctions or specific requirements or orders  
16 the parties to participate in mediation to enforce the joint  
17 custody parenting obligations provisions of the decree.

18 Sec. 16. Section 598.25, unnumbered paragraph 1, Code  
19 1997, is amended to read as follows:

20 Whenever a proceeding is initiated in a court for adoption  
21 involving the children of parents or guardians whose marriage  
22 has been dissolved, or for modification of a judgment of  
23 alimony, child support, or custody parenting obligations  
24 granted in an action for dissolution of marriage, the  
25 following requirements must be met if such proceedings are  
26 initiated in a court other than the court which granted the  
27 dissolution decree.

28 Sec. 17. Section 598.35, subsections 5, 6, and 7, Code  
29 Supplement 1997, are amended to read as follows:

30 5. The parents of the child are divorced, and the parent  
31 who is not the child of the grandparent or who is not the  
32 grandchild of the great-grandparent has ~~legal-custody-of~~  
33 parenting obligations regarding the child, and the spouse of  
34 the child's ~~custodial~~ other parent has been issued a final  
35 adoption decree pursuant to section 600.13.

1 6. The paternity of a child born out of wedlock is  
2 judicially established and the grandparent of the child is the  
3 parent of the father of the child or the great-grandparent of  
4 the child is the grandparent of the father of the child and  
5 the mother of the child has ~~custody-of~~ parenting obligations  
6 regarding the child, or the grandparent of a child born out of  
7 wedlock is the parent of the mother of the child or the great-  
8 grandparent of the child is the grandparent of the mother of  
9 the child and ~~custody-has~~ parenting obligations have been  
10 awarded to the father of the child.

11 7. A parent of the child unreasonably refuses to allow  
12 visitation by the grandparent or great-grandparent or  
13 unreasonably restricts visitation. This subsection applies to  
14 but is not limited in application to a situation in which the  
15 parents of the child are divorced and the parent who is the  
16 child of the grandparent or who is the grandchild of the  
17 great-grandparent has ~~legal-custody-of~~ parenting obligations  
18 regarding the child.

19 Sec. 18. Section 598.41, Code Supplement 1997, is amended  
20 to read as follows:

21 598.41 ~~CUSTODY-OF~~ PARENTING OBLIGATIONS REGARDING  
22 CHILDREN.

23 1. a. The court, insofar as is reasonable and in the best  
24 interest of the child, shall order the custody parenting  
25 obligations award, including liberal visitation rights where  
26 appropriate, which will assure the child the opportunity for  
27 the maximum continuing physical and emotional contact with  
28 both parents after the parents have separated or dissolved the  
29 marriage, and which will encourage parents to share the rights  
30 and responsibilities of raising the child unless direct  
31 physical harm or significant emotional harm to the child,  
32 other children, or a parent is likely to result from such  
33 contact with one parent.

34 b. Notwithstanding paragraph "a", if the court finds that  
35 a history of domestic abuse exists, a rebuttable presumption

1 against the awarding of joint custody parenting obligations  
2 exists.

3 c. The court shall consider the denial by one parent of  
4 the child's opportunity for maximum continuing contact with  
5 the other parent, without just cause, a significant factor in  
6 determining the proper custody parenting obligations  
7 arrangement. Just cause may include a determination by the  
8 court pursuant to subsection 3, paragraph "j", that a history  
9 of domestic abuse exists between the parents.

10 d. If a history of domestic abuse exists as determined by  
11 a court pursuant to subsection 3, paragraph "j", and if a  
12 parent who is a victim of such domestic abuse relocates or is  
13 absent from the home based upon the fear of or actual acts or  
14 threats of domestic abuse perpetrated by the other parent, the  
15 court shall not consider the relocation or absence of that  
16 parent as a factor against that parent in the awarding of  
17 custody parenting obligations or visitation.

18 e. Unless otherwise ordered by the court in the custody  
19 parenting obligations decree, both parents shall have legal  
20 access to information concerning the child, including but not  
21 limited to medical, educational and law enforcement records.

22 2. a. On the application of either parent, the court shall  
23 consider granting joint custody parenting obligations in cases  
24 where the parents do not agree to joint custody parenting  
25 obligations.

26 b. If the court does not grant joint custody parenting  
27 obligations under this subsection, the court shall cite clear  
28 and convincing evidence, pursuant to the factors in subsection  
29 3, that joint custody-is parenting obligations are  
30 unreasonable and not in the best interest of the child to the  
31 extent that the ~~legal-custodial~~ relationship between the child  
32 and a parent should be severed.

33 c. A finding by the court that a history of domestic abuse  
34 exists, as specified in subsection 3, paragraph "j", which is  
35 not rebutted, shall outweigh consideration of any other factor

1 specified in subsection 3 in the determination of the awarding  
2 of custody parenting obligations under this subsection.

3 d. Before ruling upon the joint custody parenting  
4 obligations petition in these cases, unless the court  
5 determines that a history of domestic abuse exists as  
6 specified in subsection 3, paragraph "j", or unless the court  
7 determines that direct physical harm or significant emotional  
8 harm to the child, other children, or a parent is likely to  
9 result, the court may require the parties to participate in  
10 custody parenting obligations mediation to determine whether  
11 joint custody-is parenting obligations are in the best  
12 interest of the child. The court may require the child's  
13 participation in the mediation insofar as the court determines  
14 the child's participation is advisable.

15 e. The costs of custody parenting obligations mediation  
16 shall be paid in full or in part by the parties and taxed as  
17 court costs.

18 3. In considering what custody parenting obligations  
19 arrangement under subsection 2 is in the best interest of the  
20 minor child, the court shall consider the following factors:

21 a. Whether each parent would ~~be-a-suitable-custodian-for~~  
22 suitably fulfill parenting obligations regarding the child.

23 b. Whether the psychological and emotional needs and  
24 development of the child will suffer due to lack of active  
25 contact with and attention from both parents.

26 c. Whether the parents can communicate with each other  
27 regarding the child's needs.

28 d. Whether both parents have actively cared for the child  
29 before and since the separation.

30 e. Whether each parent can support the other parent's  
31 relationship with the child.

32 f. Whether the custody parenting obligation arrangement is  
33 in accord with the child's wishes or whether the child has  
34 strong opposition, taking into consideration the child's age  
35 and maturity.

1 g. Whether one or both of the parents agree or are opposed  
2 to joint custody parenting obligations.

3 h. The geographic proximity of the parents.

4 i. Whether the safety of the child, other children, or the  
5 other parent will be jeopardized by the awarding of joint  
6 custody parenting obligations or by unsupervised or  
7 unrestricted visitation.

8 j. Whether a history of domestic abuse, as defined in  
9 section 236.2, exists. In determining whether a history of  
10 domestic abuse exists, the court's consideration shall  
11 include, but is not limited to, commencement of an action  
12 pursuant to section 236.3, the issuance of a protective order  
13 against the parent or the issuance of a court order or consent  
14 agreement pursuant to section 236.5, the issuance of an  
15 emergency order pursuant to section 236.6, the holding of a  
16 parent in contempt pursuant to section 236.8, the response of  
17 a peace officer to the scene of alleged domestic abuse or the  
18 arrest of a parent following response to a report of alleged  
19 domestic abuse, or a conviction for domestic abuse assault  
20 pursuant to section 708.2A.

21 4. Subsection 3 shall not apply when parents agree to  
22 joint custody parenting obligations.

23 5. Joint physical care may be in the best interest of the  
24 child, but an award of joint legal-custody parenting  
25 obligations does not require joint physical care. When the  
26 court determines such action would be in the best interest of  
27 the child and would preserve the relationship between each  
28 parent and the child, joint physical care may be awarded to  
29 both joint-custodial parents or physical care may be awarded  
30 to one joint-custodial parent. If one joint-custodial parent  
31 is awarded physical care, the parent responsible for providing  
32 physical care shall support the other parent's relationship  
33 with the child. Physical care awarded to one parent does not  
34 affect the other parent's rights and responsibilities as-a in  
35 regard to an award of joint legal-custodian-of-the-child

1 parenting obligations. Rights and responsibilities as of a  
2 parent with joint legal-custodian-of-the-child parenting  
3 obligations include, but are not limited to, equal  
4 participation in decisions affecting the child's legal status,  
5 medical care, education, extracurricular activities, and  
6 religious instruction.

7 6. When a parent awarded legal-custody parenting  
8 obligations or physical care of a child cannot act-as  
9 custodian-or-caretaker comply with the award because the  
10 parent has died or has been judicially adjudged incompetent,  
11 the court shall award legal-custody parenting obligations  
12 including physical care of the child to the surviving parent  
13 unless the court finds that such an award is not in the  
14 child's best interest.

15 7. If an application for modification of a decree or a  
16 petition for modification of an order is filed, based upon  
17 differences between the parents regarding the custody  
18 parenting obligations arrangement established under the decree  
19 or order, unless the court determines that a history of  
20 domestic abuse exists as specified in subsection 3, paragraph  
21 "j", or unless the court determines that direct physical harm  
22 or significant emotional harm to the child, other children, or  
23 a parent is likely to result, the court may require the  
24 parents to participate in mediation to attempt to resolve the  
25 differences between the parents.

26 Sec. 19. DIRECTIONS TO CODE EDITOR. The Code editor is  
27 directed to review sections of the Code referring to "custody"  
28 for the purpose of amending such sections to reflect the  
29 terminology "parenting obligations" and to include such  
30 amendments in the substantive Code editor's bill to be  
31 introduced during the 1999 regular session.

32 Sec. 20. Sections 8 through 26 of this Act take effect  
33 July 1, 1999.

34

#### EXPLANATION

35 This bill provides for changes related to families

1 including domestic relations provisions and parenting  
2 obligations.

3     The bill changes the terminology relating to custody of  
4 children by replacing the term "custody" with the term  
5 "parenting obligations" in chapter 598 of the Code. The bill  
6 also directs the Code editor to review sections of the Code  
7 using the word "custody" for the purposes of changing the term  
8 to reflect the terminology "parenting obligations", and to  
9 include any amendments in the substantive Code editor's bill  
10 to be introduced during the 1999 legislative session.

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SENATE FILE 2393

S-5275

1 Amend Senate File 2393 as follows:

DIV 2 I. Page 1, by inserting before line 1 the

A 3 following:

4 "Section 1. Section 331.605, subsection 6, Code  
5 1997, is amended to read as follows:

6 6. a. For filing an application for the license  
7 to marry, ~~thirty-dollars~~ the following fees:

8 (1) If the applicants who are the parties desiring  
9 the license provide documentation of participation in  
10 premarital counseling, ten dollars.

11 (2) If the applicants who are the parties desiring  
12 the license do not provide documentation of  
13 participation in premarital counseling, fifty dollars.

14 b. For issuing an application for an order of the  
15 district court authorizing the issuance of a license  
16 to marry before the expiration of three days from the  
17 date of filing the application for the license, ~~five~~  
18 fifty dollars.

19 c. The district court shall authorize the issuance  
20 of a marriage license without the payment of any fees  
21 imposed in this subsection upon showing that the  
22 applicant is unable to pay the fees.

23 d. For the purpose of this subsection, "premarital  
24 counseling" means as defined in section 595.20.

25 e. Any fee collected under this subsection in  
26 excess of a ten dollar fee shall be forwarded to the  
27 treasurer of state for deposit in the general fund of  
28 the state.

29 Sec. 2. NEW SECTION. 595.3B MARRIAGE RESOURCES  
30 DOCUMENTATION.

31 1. Upon the filing of an application for a license  
32 to marry and prior to the issuance of a license to  
33 marry, the county registrar shall provide the  
34 applicants with written information regarding the  
35 legal rights and responsibilities incident to marriage  
36 and dissolution of marriage and which provides a  
37 listing of family resources for applicants to utilize  
38 in strengthening the marriage. The chief judge of  
39 each judicial district shall develop the listing of  
40 resources to be provided to the applicants under this  
41 section.

42 2. The county registrar shall make available, to  
43 applicants for a license to marry, forms to document  
44 participation in premarital counseling. The forms  
45 shall be developed by the judicial council and shall  
46 be made available to the county registrar.

47 Sec. 3. Section 595.4, Code Supplement 1997, is  
48 amended to read as follows:

49 595.4 AGE AND QUALIFICATION -- VERIFIED  
50 APPLICATION -- WAITING PERIOD -- EXCEPTION.

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1 1. Previous to the issuance of any license to  
2 marry, the parties desiring the license shall sign and  
3 file a verified application with the county registrar  
4 which application either may be mailed to the parties  
5 at their request or may be signed by them at the  
6 office of the county registrar in the county in which  
7 the license is to be issued. The application shall  
8 include the social security number of each applicant  
9 and shall set forth at least one affidavit of some  
10 competent and disinterested person stating the facts  
11 as to age and qualification of the parties. The  
12 application or an attachment to the application shall  
13 also include a request for the applicants to provide  
14 documentation of participation in premarital  
15 counseling or to note that the applicants have not  
16 participated in premarital counseling. Upon the  
17 filing of the application for a license to marry, the  
18 county registrar shall file the application in a  
19 record kept for that purpose and shall take all  
20 necessary steps to ensure the confidentiality of the  
21 social security number of each applicant. All  
22 information included on an application may be provided  
23 as mutually agreed upon by the division of records and  
24 statistics and the child support recovery unit,  
25 including by automated exchange.

26 2. After expiration of three days from the date of  
27 filing the application by the parties, the county  
28 registrar shall issue the license. If the license has  
29 not been issued within six months from the date of the  
30 application, the application is void.

31 3. A license to marry may be issued prior to the  
32 expiration of three days from the date of filing the  
33 application for the license in cases of emergency or  
34 extraordinary circumstances. An order authorizing the  
35 issuance of a license may be granted by a judge of the  
36 district court under conditions of emergency or  
37 extraordinary circumstances upon application of the  
38 parties filed with the county registrar. No order may  
39 be granted unless the parties have filed an  
40 application for a marriage license in a county within  
41 the judicial district. An application for an order  
42 shall be made on forms furnished by the county  
43 registrar at the same time the application for the  
44 license to marry is made. After examining the  
45 application for the marriage license, the county  
46 registrar shall refer the parties to a judge of the  
47 district court for action on the application for an  
48 order authorizing the issuance of a marriage license  
49 prior to expiration of three days from the date of  
50 filing the application for the license. The judge

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-2-

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Page 3

1 shall, if satisfied as to the existence of an  
 2 emergency or extraordinary circumstances, grant an  
 3 order authorizing the issuance of a license to marry  
 4 prior to the expiration of three days from the date of  
 5 filing the application for the license to marry. The  
 6 county registrar shall issue a license to marry upon  
 7 presentation by the parties of the order authorizing a  
 8 license to be issued. A fee of five fifty dollars  
 9 shall be paid to the county registrar at the time the  
 10 application for the order is made, which fee is in  
 11 addition to the fee prescribed by law for the issuance  
 12 of a marriage license.

13 Sec. 4. NEW SECTION. 595.20 PREMARITAL  
 14 COUNSELING.

15 1. "Premarital counseling" means one or more  
 16 meetings totaling at least six hours, between two  
 17 parties intending to enter into marriage with each  
 18 other and a neutral party for the purposes of  
 19 discussing the rights, expectations, needs,  
 20 obligations, and other facets of marriage and to  
 21 develop communication skills and conflict resolution  
 22 techniques.

23 2. For the purposes of this section, premarital  
 24 counseling may be provided by a neutral party who is  
 25 any of the following:

26 a. A member of the clergy.

27 b. A person who is, or who is under the  
 28 supervision of a person qualified to solemnize a  
 29 marriage in this state who has training in premarital  
 30 counseling.

31 c. A person licensed pursuant to chapter 154B to  
 32 practice psychology, 154C to practice social work, or  
 33 154D to practice marital and family therapy, if the  
 34 person has training in premarital counseling.

35 3. Applicants for a marriage license pursuant to  
 36 section 595.4 shall provide documentation of  
 37 participation in premarital counseling at the time of  
 38 applying for the marriage license to be eligible for  
 39 the reduced application fee pursuant to section  
 40 331.605, subsection 6. The documentation shall be  
 41 signed by the person who provided the premarital  
 42 counseling."

43 2. Page 13, by inserting after line 25 the  
 44 following:

45 "Sec. \_\_\_\_ . MEDIATION PILOT PROJECT.

46 1. The judicial council shall establish a  
 47 mediation pilot project in two judicial districts in  
 48 the state. The two judicial districts selected shall  
 49 be those districts which have existing mediation  
 50 programs.

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Div  
A

B

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1 2. The pilot project provides counseling and other services.  
2 in domestic relations proceedings.  
3 wishing to avoid court intervention.  
4 relations to the judicial districts served.  
5 3. The situation described in the pilot project  
6 program shall include, but is not limited to:  
7 following:  
8 a. A projected budget for the program  
9 which will be imposed for services provided.  
10 b. A general description of the program  
11 services to be provided, how the existing system  
12 will be incorporated into the existing services, and how  
13 conciliation and mediation services, and how  
14 mediation and domestic relations resources within  
15 the judicial district of mediation services.  
16 c. A listing of mediation services to be accessed by individuals  
17 seeking mediation.  
18 d. The types of mediation services to be used in addressing various  
19 domestic relations issues.  
20 e. A plan for collecting data, and for monitoring  
21 progress of the mediation program.  
22 4. The judicial districts selected for the program shall provide  
23 a general report of the mediation program, including an evaluation of the  
24 program and recommendations, by January 1, 1999.  
25 a. Other services shall address all of the following:  
26 individuals who are added into the mediation program or  
27 relations who are married or who have domestic  
28 relations issues.  
29 b. Methods for improving the current domestic  
30 mediation system for addressing the needs of individuals.  
31 a. Methods for determining which cases are not  
32 appropriate for mediation, providing for waiver of a  
33 determination requirement for certain cases, and  
34 mediation when parties have reached an impasse in  
35 services.  
36 e. Methods for ensuring quality mediation  
37 services.  
38 f. Methods for ensuring that parties involved in  
39 mediation are satisfied with the process.  
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Page 5

- 1 mediation understand the limitations of mediation
- 2 including that mediation is not a substitute for legal
- 3 counsel."
- 4 3. By renumbering as necessary.

By ANDY McKEAN  
MARY NEUHAUSER

*Div. B*

S-5275 FILED MARCH 18, 1998  
DIV.A-RULED OUT OF ORDER, DIV.B-ADOPTED

*(P.777)*

Mckean  
Neuhauser  
McKibben

SSB 2198  
Judiciary

SENATE/HOUSE FILE SF/HF 2393  
BY (PROPOSED GOVERNOR'S BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to families including domestic relations  
2 provisions and parenting obligations.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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DIVISION I

DOMESTIC RELATIONS PROVISIONS

1  
2  
3 Section 1. Section 331.424, subsection 1, paragraph h,  
4 Code 1997, is amended by striking the paragraph and  
5 renumbering the subsequent paragraphs.

6 Sec. 2. Section 598.5, subsection 7, Code Supplement 1997,  
7 is amended to read as follows:

8 7. Allege that there has been a breakdown of the marriage  
9 relationship to the extent that the legitimate objects of  
10 matrimony have been destroyed and there remains no reasonable  
11 likelihood that the marriage can be preserved as supported by  
12 an affidavit signed by a marital and family therapist licensed  
13 pursuant to chapter 154D, a public or private marriage  
14 counselor, or a member of the clergy.

15 Sec. 3. Section 598.5, subsection 10, Code Supplement  
16 1997, is amended by striking the subsection.

17 Sec. 4. Section 598.7A, Code 1997, is amended to read as  
18 follows:

19 598.7A DOMESTIC RELATIONS PROCEEDING -- MEDIATION.

20 In addition to the custody mediation provided pursuant to  
21 section 598.41, unless the court determines that a history of  
22 domestic abuse exists as specified in section 598.41,  
23 subsection 3, paragraph "j", or unless the court determines  
24 that direct physical harm or significant emotional harm to the  
25 child, other children, or a parent is likely to result, or  
26 unless the parties are not free of intimidation or fear,  
27 mental illness or deficiency, or substance abuse, so as to be  
28 unable to negotiate on the party's own behalf, or unless the  
29 action involves a child support or medical support obligation  
30 enforced by the child support recovery unit, ~~on-the~~  
31 ~~application-of-either-party-or-on-the-court's-own-motion,~~ the  
32 ~~court-shall-determine~~ in each domestic relations proceeding or  
33 modification of any order relating to those proceedings  
34 whether the court shall order the parties to the proceeding  
35 shall to participate in mediation to attempt to resolve

1 differences between the parties without court intervention.  
2 ~~The court may order participation in mediation at any time~~  
3 ~~prior to the entering of a final order or the granting of a~~  
4 ~~final decree.~~

5 The costs of mediation and mediation administration shall  
6 be paid in full or in part by the parties, as determined by  
7 the court and taxed as court costs.

8 Sec. 5. Section 598.16, Code 1997, is amended to read as  
9 follows:

10 598.16 CONCILIATION----DOMESTIC RELATIONS DIVISIONS.

11 A majority of the judges in any judicial district, with the  
12 cooperation of any county board of supervisors in the  
13 district, may establish a domestic relations division of the  
14 district court of the county where the board is located. The  
15 division shall offer counseling and related services to  
16 persons before the court.

17 ~~Upon the application of the petitioner in the petition or~~  
18 ~~by the respondent in the responsive pleading thereto or~~  
19 ~~within twenty days of appointment of an attorney appointed~~  
20 ~~under section 598.12, the court shall require the parties to~~  
21 ~~participate in conciliation efforts for a period of sixty days~~  
22 ~~from the issuance of an order setting forth the conciliation~~  
23 ~~procedure and the conciliator.~~

24 ~~At any time upon its own motion or upon the application of~~  
25 ~~a party the court may require the parties to participate in~~  
26 ~~conciliation efforts for sixty days or less following the~~  
27 ~~issuance of such an order.~~

28 ~~Every order for conciliation shall require the conciliator~~  
29 ~~to file a written report by a date certain which shall state~~  
30 ~~the conciliation procedures undertaken and such other matters~~  
31 ~~as may have been required by the court. The report shall be a~~  
32 ~~part of the record unless otherwise ordered by the court. Such~~  
33 ~~conciliation procedure may include, but is not limited to,~~  
34 ~~referrals to the domestic relations division of the court, if~~  
35 ~~established, public or private marriage counselors, family~~

1 service-agencies, community-health-centers, physicians-and  
2 clergy;

3 ~~The costs of conciliation procedures shall be paid in full~~  
4 ~~or in part by the parties and taxed as court costs, however,~~  
5 ~~if the court determines that the parties will be unable to pay~~  
6 ~~the costs without prejudicing their financial ability to~~  
7 ~~provide themselves and any minor children with economic~~  
8 ~~necessities, the costs may be paid in full or in part by the~~  
9 ~~county.~~

10 Persons providing counseling and other services pursuant to  
11 this section are not court employees, but are subject to court  
12 supervision.

13 Sec. 6. Section 598.19, Code 1997, is amended to read as  
14 follows:

15 598.19 WAITING PERIOD BEFORE DECREE.

16 No decree dissolving a marriage shall be granted in any  
17 proceeding before ninety days shall have elapsed from the day  
18 the original notice is served, or from the last day of  
19 publication of notice, or from the date that waiver or  
20 acceptance of original notice is filed ~~or until after~~  
21 ~~conciliation is completed~~, whichever period shall be longer.  
22 However, the court may in its discretion, on written motion  
23 supported by affidavit setting forth grounds of emergency or  
24 necessity and facts which satisfy the court that immediate  
25 action is warranted or required to protect the substantive  
26 rights or interests of any party or person who might be  
27 affected by the decree, hold a hearing and grant a decree  
28 dissolving the marriage prior to the expiration of the  
29 applicable period, provided that requirements of notice have  
30 been complied with. In such case the grounds of emergency or  
31 necessity and the facts with respect thereto shall be recited  
32 in the decree unless otherwise ordered by the court. The  
33 court may enter an order finding the respondent in default and  
34 ~~waiving conciliation~~ when the respondent has failed to file an  
35 appearance within the time set forth in the original notice.

1 Sec. 7. Section 602.11101, subsection 7, Code 1997, is  
2 amended by striking the subsection.

3 DIVISION II  
4 PARENTING OBLIGATIONS

5 Sec. 8. Section 598.1, Code Supplement 1997, is amended to  
6 read as follows:

7 598.1 DEFINITIONS.

8 As used in this chapter:

9 1. "Best interest of the child" includes, but is not  
10 limited to, the opportunity for maximum continuous physical  
11 and emotional contact possible with both parents, unless  
12 direct physical or significant emotional harm to the child may  
13 result from this contact. Refusal by one parent to provide  
14 this opportunity without just cause shall be considered  
15 harmful to the best interest of the child.

16 2. "Dissolution of marriage" means a termination of the  
17 marriage relationship and shall be synonymous with the term  
18 "divorce".

19 3. ~~"Joint-custody"-or-"joint-legal-custody"~~ "Joint  
20 parenting obligations" means an award of ~~legal-custody-of~~  
21 parenting obligations regarding a minor child to both parents  
22 jointly under which both parents have ~~legal-custodial~~ rights  
23 and responsibilities toward the child and under which neither  
24 parent has ~~legal-custodial~~ rights superior to those of the  
25 other parent. Rights and responsibilities of joint ~~legal~~  
26 custody parenting obligations include, but are not limited to,  
27 equal participation in decisions affecting the child's legal  
28 status, medical care, education, extracurricular activities,  
29 and religious instruction.

30 4. "Joint physical care" means an award of physical care  
31 of a minor child to both ~~joint-legal-custodial~~ parents under  
32 which both parents have rights and responsibilities toward the  
33 child including, but not limited to, shared parenting time  
34 with the child, maintaining homes for the child, providing  
35 routine care for the child and under which neither parent has

1 physical care rights superior to those of the other parent.

2 5. ~~---"Legal custody" or "custody" means an award of the~~  
3 ~~rights of legal custody of a minor child to a parent under~~  
4 ~~which a parent has legal custodial rights and responsibilities~~  
5 ~~toward the child. ---Rights and responsibilities of legal~~  
6 ~~custody include, but are not limited to, decision making~~  
7 ~~affecting the child's legal status, medical care, education,~~  
8 ~~extracurricular activities, and religious instruction.~~

9 6. 5. "Minor child" means any person under legal age.

10 6. "Parent" includes a third party with parenting  
11 obligations and authority to participate in a parenting plan.

12 7. "Parenting obligations" means an award under which a  
13 parent has rights and responsibilities toward the minor child.  
14 The rights and responsibilities include, but are not limited  
15 to, decision making affecting the child's legal status,  
16 medical care, education, extracurricular activities, and  
17 religious instruction.

18 7. 8. "Physical care" means the right and responsibility  
19 to maintain a home for the minor child and provide for the  
20 routine care of the child.

21 8. 9. "Postsecondary education subsidy" means an amount  
22 which either of the parties may be required to pay under a  
23 temporary order or final judgment or decree for educational  
24 expenses of a child who is between the ages of eighteen and  
25 twenty-two years if the child is regularly attending a course  
26 of vocational-technical training either as a part of a regular  
27 school program or under special arrangements adapted to the  
28 individual person's needs; or is, in good faith, a full-time  
29 student in a college, university, or community college; or has  
30 been accepted for admission to a college, university, or  
31 community college and the next regular term has not yet begun.

32 9. 10. "Support" or "support payments" means an amount  
33 which the court may require either of the parties to pay under  
34 a temporary order or a final judgment or decree, and may  
35 include alimony, child support, maintenance, and any other

1 term used to describe these obligations. For orders entered  
 2 on or after July 1, 1990, unless the court specifically orders  
 3 otherwise, medical support is not included in the monetary  
 4 amount of child support. The obligations shall include  
 5 support for a child who is between the ages of eighteen and  
 6 nineteen years who is engaged full-time in completing high  
 7 school graduation or equivalency requirements in a manner  
 8 which is reasonably expected to result in completion of the  
 9 requirements prior to the person reaching nineteen years of  
 10 age; and may include support for a child of any age who is  
 11 dependent on the parties to the dissolution proceedings  
 12 because of physical or mental disability.

13 Sec. 9. Section 598.5, subsection 9, Code Supplement 1997,  
 14 is amended to read as follows:

15 9. Set forth any application for permanent alimony or  
 16 support, child-custody parenting obligations, or disposition  
 17 of property, as well as attorneys' fees and suit money,  
 18 without enumerating the amounts thereof.

19 Sec. 10. Section 598.7A, unnumbered paragraph 1, Code  
 20 1997, is amended to read as follows:

21 In addition to the custody parenting obligations mediation  
 22 provided pursuant to section 598.41, unless the court  
 23 determines that a history of domestic abuse exists as  
 24 specified in section 598.41, subsection 3, paragraph "j", or  
 25 unless the court determines that direct physical harm or  
 26 significant emotional harm to the child, other children, or a  
 27 parent is likely to result, or unless the action involves a  
 28 child support or medical support obligation enforced by the  
 29 child support recovery unit, on the application of either  
 30 party or on the court's own motion, the court shall determine  
 31 in each domestic relations proceeding or modification of any  
 32 order relating to those proceedings whether the parties to the  
 33 proceeding shall participate in mediation to attempt to  
 34 resolve differences between the parties without court  
 35 intervention. The court may order participation in mediation

1 at any time prior to the entering of a final order or the  
2 granting of a final decree.

3 Sec. 11. Section 598.8, subsection 1, Code 1997, is  
4 amended to read as follows:

5 1. Except as otherwise provided in subsection 2, hearings  
6 for dissolution of marriage shall be held in open court upon  
7 the oral testimony of witnesses, or upon the depositions of  
8 such witnesses taken as in other equitable actions or taken by  
9 a commissioner appointed by the court. The court may in its  
10 discretion close the hearing. Hearings held for the purpose  
11 of determining child-custody parenting obligations may be  
12 limited in attendance by the court. Upon request of either  
13 party, the court shall provide security in the courtroom  
14 during the custody parenting obligations hearing if a history  
15 of domestic abuse relating to either party exists.

16 Sec. 12. Section 598.11, unnumbered paragraph 1, Code  
17 1997, is amended to read as follows:

18 The court may order either party to pay the clerk a sum of  
19 money for the separate support and maintenance of the other  
20 party and the children and to enable such party to prosecute  
21 or defend the action. The court may on its own motion and  
22 shall upon application of either party or an attorney  
23 appointed under section 598.12 determine the temporary custody  
24 of parenting obligations regarding any minor child whose  
25 welfare may be affected by the filing of the petition for  
26 dissolution.

27 Sec. 13. Section 598.12, subsection 2, Code 1997, is  
28 amended to read as follows:

29 2. The court may require that the department of human  
30 services or an appropriate agency make an investigation of  
31 both parties regarding the home conditions, parenting  
32 capabilities, and other matters pertinent to the best  
33 interests of the child or children in a dispute concerning  
34 custody-of parenting obligations regarding the child or  
35 children. The investigation report completed by the

1 department of human services or an appropriate agency shall be  
2 submitted to the court and available to both parties. The  
3 investigation report completed by the department of human  
4 services or an appropriate agency shall be a part of the  
5 record unless otherwise ordered by the court.

6 Sec. 14. Section 598.19A, subsection 1, Code 1997, is  
7 amended to read as follows:

8 1. The parties to any action which involves the issues of  
9 child-custody parenting obligations or visitation shall  
10 participate in a court-approved course to educate and  
11 sensitize the parties to the needs of any child or party  
12 during and subsequent to the proceeding within forty-five days  
13 of the service of notice and petition for the action or within  
14 forty-five days of the service of notice and application for  
15 modification of an order. Participation in the course may be  
16 waived or delayed by the court for good cause including, but  
17 not limited to, a default by any of the parties.

18 Participation in the course is not required if the proceeding  
19 involves termination of parental rights of any of the parties.  
20 A final decree shall not be granted or a final order shall not  
21 be entered until the parties have complied with this section.

22 Sec. 15. Section 598.21, subsection 1, paragraph g, Code  
23 Supplement 1997, is amended to read as follows:

24 g. The ~~desirability-of~~ awarding of the family home or the  
25 right to live in the family home for a reasonable period to  
26 ~~the a party having-custody-of-the-children,-or-if-the-parties~~  
27 ~~have-joint-legal-custody,-to-the-party-having-physical-care-of~~  
28 ~~the-children~~ based upon the parenting obligations of the  
29 party.

30 Sec. 16. Section 598.21, subsection 3, paragraph e, Code  
31 Supplement 1997, is amended to read as follows:

32 e. The earning capacity of the party seeking maintenance,  
33 including educational background, training, employment skills,  
34 work experience, length of absence from the job market,  
35 responsibilities for children under either an award of custody

1 ~~or-physical-care~~ parenting obligations, and the time and  
2 expense necessary to acquire sufficient education or training  
3 to enable the party to find appropriate employment.

4 Sec. 17. Section 598.21, subsection 4, paragraph d, Code  
5 Supplement 1997, is amended to read as follows:

6 d. For purposes of calculating a support obligation under  
7 this section, the income of the parent from whom support is  
8 sought shall be used as the noncustodial parent income for  
9 purposes of application of the guidelines, regardless of the  
10 ~~legal-custody-of-the-child~~ parenting obligations awarded.

11 Sec. 18. Section 598.21, subsection 6, Code Supplement  
12 1997, is amended to read as follows:

13 6. The court may provide for joint ~~custody-of-the-children~~  
14 ~~by-the-parties~~ parenting obligations pursuant to section  
15 598.41. All orders relating to ~~custody-of-a-child~~ parenting  
16 obligations are subject to chapter 598A.

17 Sec. 19. Section 598.21, subsection 8, unnumbered  
18 paragraph 2, Code Supplement 1997, is amended to read as  
19 follows:

20 Unless otherwise provided pursuant to 28 U.S.C. § 1738B, a  
21 modification of a support order entered under chapter 234,  
22 252A, 252C, 600B, this chapter, or any other support chapter  
23 or proceeding between parties to the order is void unless the  
24 modification is approved by the court, after proper notice and  
25 opportunity to be heard is given to all parties to the order,  
26 and entered as an order of the court. If support payments  
27 have been assigned to the department of human services  
28 pursuant to section 234.39, 239B.6, or 252E.11, or if services  
29 are being provided pursuant to chapter 252B, the department is  
30 a party to the support order. Modifications of orders  
31 pertaining to ~~child-custody~~ parenting obligations shall be  
32 made pursuant to chapter 598A. If the petition for a  
33 modification of an order pertaining to ~~child-custody~~ parenting  
34 obligations asks either for joint parenting  
35 obligations or that joint parenting obligations be

1 modified to an award of sole custody parenting obligations,  
2 the modification, if any, shall be made pursuant to section  
3 598.41.

4 Sec. 20. Section 598.21, subsection 8A, Code Supplement  
5 1997, is amended to read as follows:

6 8A. If a parent awarded joint ~~legal-custody~~ parenting  
7 obligations and physical care or sole ~~legal-custody~~ parenting  
8 obligations is relocating the residence of the minor child to  
9 a location which is one hundred fifty miles or more from the  
10 residence of the minor child at the time that ~~custody-was~~  
11 parenting obligations were awarded, the court may consider the  
12 relocation a substantial change in circumstances. If the  
13 court determines that the relocation is a substantial change  
14 in circumstances, the court shall modify the custody parenting  
15 obligations order to, at a minimum, preserve, as nearly as  
16 possible, the existing relationship between the minor child  
17 and the nonrelocating parent. If modified, the order may  
18 include a provision for extended visitation during summer  
19 vacations and school breaks and scheduled telephone contact  
20 between the nonrelocating parent and the minor child. The  
21 modification may include a provision assigning the  
22 responsibility for transportation of the minor child for  
23 visitation purposes to either or both parents. If the court  
24 makes a finding of past interference by the relocating parent  
25 ~~awarded-joint-legal-custody-and-physical-care-or-sole-legal~~  
26 ~~custody~~ with the minor child's access to the other parent, the  
27 court may order the posting of a cash bond to assure future  
28 compliance with the visitation provisions of the decree. The  
29 supreme court shall prescribe guidelines for the forfeiting of  
30 the bond and restoration of the bond following forfeiting of  
31 the bond.

32 Sec. 21. Section 598.21, subsection 10, Code Supplement  
33 1997, is amended to read as follows:

34 10. Notwithstanding any other provision of law to the  
35 contrary, when an application for modification or adjustment

1 of support is submitted by the child support recovery unit,  
2 the sole issues which may be considered by the court in that  
3 action are the application of the guidelines in establishing  
4 the amount of support pursuant to subsection 4, and provision  
5 for medical support under chapter 252E. When an application  
6 for a cost-of-living alteration of support is submitted by the  
7 child support recovery unit pursuant to section 252H.24, the  
8 sole issue which may be considered by the court in the action  
9 is the application of the cost-of-living alteration in  
10 establishing the amount of child support. Issues related to  
11 custody parenting obligations, visitation, or other provisions  
12 unrelated to support shall be considered only under a separate  
13 application for modification.

14 Sec. 22. Section 598.23, subsection 2, paragraphs b and d,  
15 Code Supplement 1997, are amended to read as follows:

16 b. Modifies visitation to compensate for lost visitation  
17 time or establishes joint custody parenting obligations for  
18 the child or transfers custody parenting obligations.

19 d. Imposes sanctions or specific requirements or orders  
20 the parties to participate in mediation to enforce the joint  
21 custody parenting obligations provisions of the decree.

22 Sec. 23. Section 598.25, unnumbered paragraph 1, Code  
23 1997, is amended to read as follows:

24 Whenever a proceeding is initiated in a court for adoption  
25 involving the children of parents or guardians whose marriage  
26 has been dissolved, or for modification of a judgment of  
27 alimony, child support, or custody parenting obligations  
28 granted in an action for dissolution of marriage, the  
29 following requirements must be met if such proceedings are  
30 initiated in a court other than the court which granted the  
31 dissolution decree.

32 Sec. 24. Section 598.35, subsections 5, 6, and 7, Code  
33 Supplement 1997, are amended to read as follows:

34 5. The parents of the child are divorced, and the parent  
35 who is not the child of the grandparent or who is not the

1 grandchild of the great-grandparent has ~~legal-custody-of~~  
2 parenting obligations regarding the child, and the spouse of  
3 the child's ~~custodial~~ other parent has been issued a final  
4 adoption decree pursuant to section 600.13.

5 6. The paternity of a child born out of wedlock is  
6 judicially established and the grandparent of the child is the  
7 parent of the father of the child or the great-grandparent of  
8 the child is the grandparent of the father of the child and  
9 the mother of the child has ~~custody-of~~ parenting obligations  
10 regarding the child, or the grandparent of a child born out of  
11 wedlock is the parent of the mother of the child or the great-  
12 grandparent of the child is the grandparent of the mother of  
13 the child and ~~custody-has~~ parenting obligations have been  
14 awarded to the father of the child.

15 7. A parent of the child unreasonably refuses to allow  
16 visitation by the grandparent or great-grandparent or  
17 unreasonably restricts visitation. This subsection applies to  
18 but is not limited in application to a situation in which the  
19 parents of the child are divorced and the parent who is the  
20 child of the grandparent or who is the grandchild of the  
21 great-grandparent has ~~legal-custody-of~~ parenting obligations  
22 regarding the child.

23 Sec. 25. Section 598.41, Code Supplement 1997, is amended  
24 to read as follows:

25 598.41 ~~EUSTODY-OF~~ PARENTING OBLIGATIONS REGARDING  
26 CHILDREN.

27 1. a. The court, insofar as is reasonable and in the best  
28 interest of the child, shall order the ~~custody~~ parenting  
29 obligations award, including liberal visitation rights where  
30 appropriate, which will assure the child the opportunity for  
31 the maximum continuing physical and emotional contact with  
32 both parents after the parents have separated or dissolved the  
33 marriage, and which will encourage parents to share the rights  
34 and responsibilities of raising the child unless direct  
35 physical harm or significant emotional harm to the child,

1 other children, or a parent is likely to result from such  
2 contact with one parent.

3 b. Notwithstanding paragraph "a", if the court finds that  
4 a history of domestic abuse exists, a rebuttable presumption  
5 against the awarding of joint custody parenting obligations  
6 exists.

7 c. The court shall consider the denial by one parent of  
8 the child's opportunity for maximum continuing contact with  
9 the other parent, without just cause, a significant factor in  
10 determining the proper custody parenting obligations  
11 arrangement. Just cause may include a determination by the  
12 court pursuant to subsection 3, paragraph "j", that a history  
13 of domestic abuse exists between the parents.

14 d. If a history of domestic abuse exists as determined by  
15 a court pursuant to subsection 3, paragraph "j", and if a  
16 parent who is a victim of such domestic abuse relocates or is  
17 absent from the home based upon the fear of or actual acts or  
18 threats of domestic abuse perpetrated by the other parent, the  
19 court shall not consider the relocation or absence of that  
20 parent as a factor against that parent in the awarding of  
21 custody parenting obligations or visitation.

22 e. Unless otherwise ordered by the court in the custody  
23 parenting obligations decree, both parents shall have legal  
24 access to information concerning the child, including but not  
25 limited to medical, educational and law enforcement records.

26 2. a. On the application of either parent, the court shall  
27 consider granting joint custody parenting obligations in cases  
28 where the parents do not agree to joint custody parenting  
29 obligations.

30 b. If the court does not grant joint custody parenting  
31 obligations under this subsection, the court shall cite clear  
32 and convincing evidence, pursuant to the factors in subsection  
33 3, that joint custody-is parenting obligations are  
34 unreasonable and not in the best interest of the child to the  
35 extent that the ~~legal-custodial~~ relationship between the child

1 and a parent should be severed.

2 c. A finding by the court that a history of domestic abuse  
3 exists, as specified in subsection 3, paragraph "j", which is  
4 not rebutted, shall outweigh consideration of any other factor  
5 specified in subsection 3 in the determination of the awarding  
6 of custody parenting obligations under this subsection.

7 d. Before ruling upon the joint custody parenting  
8 obligations petition in these cases, unless the court  
9 determines that a history of domestic abuse exists as  
10 specified in subsection 3, paragraph "j", or unless the court  
11 determines that direct physical harm or significant emotional  
12 harm to the child, other children, or a parent is likely to  
13 result, the court may require the parties to participate in  
14 custody parenting obligations mediation to determine whether  
15 joint custody-is parenting obligations are in the best  
16 interest of the child. The court may require the child's  
17 participation in the mediation insofar as the court determines  
18 the child's participation is advisable.

19 e. The costs of custody parenting obligations mediation  
20 shall be paid in full or in part by the parties and taxed as  
21 court costs.

22 3. In considering what custody parenting obligations  
23 arrangement under subsection 2 is in the best interest of the  
24 minor child, the court shall consider the following factors:

25 a. Whether each parent would ~~be-a-suitable-custodian-for~~  
26 suitably fulfill parenting obligations regarding the child.

27 b. Whether the psychological and emotional needs and  
28 development of the child will suffer due to lack of active  
29 contact with and attention from both parents.

30 c. Whether the parents can communicate with each other  
31 regarding the child's needs.

32 d. Whether both parents have actively cared for the child  
33 before and since the separation.

34 e. Whether each parent can support the other parent's  
35 relationship with the child.

1 f. Whether the custody parenting obligation arrangement is  
2 in accord with the child's wishes or whether the child has  
3 strong opposition, taking into consideration the child's age  
4 and maturity.

5 g. Whether one or both of the parents agree or are opposed  
6 to joint custody parenting obligations.

7 h. The geographic proximity of the parents.

8 i. Whether the safety of the child, other children, or the  
9 other parent will be jeopardized by the awarding of joint  
10 custody parenting obligations or by unsupervised or  
11 unrestricted visitation.

12 j. Whether a history of domestic abuse, as defined in  
13 section 236.2, exists. In determining whether a history of  
14 domestic abuse exists, the court's consideration shall  
15 include, but is not limited to, commencement of an action  
16 pursuant to section 236.3, the issuance of a protective order  
17 against the parent or the issuance of a court order or consent  
18 agreement pursuant to section 236.5, the issuance of an  
19 emergency order pursuant to section 236.6, the holding of a  
20 parent in contempt pursuant to section 236.8, the response of  
21 a peace officer to the scene of alleged domestic abuse or the  
22 arrest of a parent following response to a report of alleged  
23 domestic abuse, or a conviction for domestic abuse assault  
24 pursuant to section 708.2A.

25 4. Subsection 3 shall not apply when parents agree to  
26 joint custody parenting obligations.

27 5. Joint physical care may be in the best interest of the  
28 child, but an award of joint legal-custody parenting  
29 obligations does not require joint physical care. When the  
30 court determines such action would be in the best interest of  
31 the child and would preserve the relationship between each  
32 parent and the child, joint physical care may be awarded to  
33 both joint-custodial parents or physical care may be awarded  
34 to one joint-custodial parent. If one joint-custodial parent  
35 is awarded physical care, the parent responsible for providing

1 physical care shall support the other parent's relationship  
 2 with the child. Physical care awarded to one parent does not  
 3 affect the other parent's rights and responsibilities ~~as-a~~ in  
 4 regard to an award of joint legal-custodian-of-the-child  
 5 parenting obligations. Rights and responsibilities as of a  
 6 parent with joint legal-custodian-of-the-child parenting  
 7 obligations include, but are not limited to, equal  
 8 participation in decisions affecting the child's legal status,  
 9 medical care, education, extracurricular activities, and  
 10 religious instruction.

11 6. When a parent awarded ~~legal-custody~~ parenting  
 12 obligations or physical care of a child cannot ~~act-as~~  
 13 ~~custodian-or-caretaker~~ comply with the award because the  
 14 parent has died or has been judicially adjudged incompetent,  
 15 the court shall award ~~legal-custody~~ parenting obligations  
 16 including physical care of the child to the surviving parent  
 17 unless the court finds that such an award is not in the  
 18 child's best interest.

19 7. If an application for modification of a decree or a  
 20 petition for modification of an order is filed, based upon  
 21 differences between the parents regarding the ~~custody~~  
 22 parenting obligations arrangement established under the decree  
 23 or order, unless the court determines that a history of  
 24 domestic abuse exists as specified in subsection 3, paragraph  
 25 "j", or unless the court determines that direct physical harm  
 26 or significant emotional harm to the child, other children, or  
 27 a parent is likely to result, the court may require the  
 28 parents to participate in mediation to attempt to resolve the  
 29 differences between the parents.

30 Sec. 26. DIRECTIONS TO CODE EDITOR. The Code editor is  
 31 directed to review sections of the Code referring to "custody"  
 32 for the purpose of amending such sections to reflect the  
 33 terminology "parenting obligations" and to include such  
 34 amendments in the substantive Code editor's bill to be  
 35 introduced during the 1998 regular session.

1 Sec. 27. Sections 201 through 218 of this Act take effect  
2 July 1, 1999.

3 EXPLANATION

4 This bill provides for changes related to families  
5 including domestic relations provisions and parenting  
6 obligations. The bill requires that an affidavit signed by a  
7 marital and family therapist, public or private counselor, or  
8 a member of the clergy support the allegation of a breakdown  
9 of the marriage relationship in a petition for dissolution of  
10 marriage. The bill also requires mediation in all domestic  
11 relations proceedings or modification of any order relating to  
12 those proceedings. Currently, mediation in these cases is  
13 discretionary on the part of the court. Exceptions to the  
14 required mediation include if a history of domestic abuse  
15 exists; if there is a possibility of direct physical harm or  
16 emotional harm to a party or a child; if a party are is not  
17 free of intimidation or fear, mental illness or deficiency, or  
18 substance abuse so as to be unable to negotiate on the party's  
19 own behalf; or if the action involves a child support or  
20 medical support obligation enforced by the child support  
21 recovery unit. The bill also strikes provisions which  
22 required participation in conciliation efforts and makes  
23 conforming changes in the Code.

24 The bill also changes the terminology relating to custody  
25 of children by replacing the term "custody" with the term  
26 "parenting obligations" in chapter 598 of the Code. The bill  
27 also directs the Code editor to review sections of the Code  
28 using the word "custody" for the purposes of changing the term  
29 to reflect the terminology "parenting obligations", and to  
30 include any amendments in the substantive Code editor's bill  
31 to be introduced during the 1998 legislative session.

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