

MAR 16 1995

JUDICIARY

HOUSE FILE 469
BY JOCHUM

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the consideration of a history of domestic
2 abuse within a family by a court in determining custody or
3 visitation rights.

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

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HF 469

1 Section 1. Section 598.41, subsections 1 and 2, Code 1995,
2 are amended to read as follows:

3 1. The court, insofar as is reasonable and in the best
4 interest of the child, shall order the custody award,
5 including liberal visitation rights where appropriate, which
6 will assure the child the opportunity for the maximum
7 continuing physical and emotional contact with both parents
8 after the parents have separated or dissolved the marriage,
9 unless direct physical harm or significant emotional harm to
10 the child, other children, or a parent is likely to result
11 from such contact with one parent, and which will encourage
12 parents to share the rights and responsibilities of raising
13 the child. The court shall consider the denial by one parent
14 of the child's opportunity for maximum continuing contact with
15 the other parent, without just cause, a significant factor in
16 determining the proper custody arrangement. Just cause may
17 include a determination by the court pursuant to subsection 3,
18 paragraph "i", that a parent has a history of perpetration of
19 domestic abuse that will jeopardize the safety of or will
20 result in direct physical harm or significant emotional harm
21 to the child, other children, or the other parent.

22 Additionally, if a parent who is a victim of domestic abuse as
23 determined by the court pursuant to subsection 3, paragraph
24 "i", relocates or is not present during the determination of
25 custody or visitation based upon the fear of or actual acts or
26 threats of domestic abuse perpetrated by the other parent, the
27 court shall not consider the relocation or absence of that
28 parent as a factor against that parent in the awarding of
29 custody or visitation to the absent parent. Unless otherwise
30 ordered by the court in the custody decree, both parents shall
31 have legal access to information concerning the child,
32 including but not limited to medical, educational and law
33 enforcement records.

34 2. On the application of either parent, the court shall
35 consider granting joint custody in cases where the parents do

1 not agree to joint custody. If the court does not grant joint
2 custody under this subsection, the court shall cite clear and
3 convincing evidence, pursuant to the factors in subsection 3,
4 that joint custody is unreasonable and not in the best
5 interest of the child to the extent that the legal custodial
6 relationship between the child and a parent should be severed.
7 Before ruling upon the joint custody petition in these cases,
8 unless the court finds a history of domestic abuse exists
9 which is likely to result in direct physical harm or
10 significant emotional harm to the child, other children, or a
11 parent, the court may require the parties to participate in
12 custody mediation counseling to determine whether joint
13 custody is in the best interest of the child. The court may
14 require the child's participation in the mediation counseling
15 insofar as the court determines the child's participation is
16 advisable.

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

19 Sec. 2. Section 598.41, subsection 3, paragraph i, Code
20 1995, is amended to read as follows:

21 i. Whether the safety of the child, other children, or the
22 other parent will be jeopardized or whether direct physical
23 harm or significant emotional harm to the child, other
24 children, or other parent will result by the awarding of joint
25 custody or by unsupervised or unrestricted visitation. In
26 considering this factor, the court shall consider the history
27 of a parent as a perpetrator of domestic abuse, including the
28 parent's history of perpetration of acts intended to cause
29 pain, injury, or to place the victim in fear of physical
30 contact which will be painful, injurious, insulting, or
31 offensive coupled with the apparent ability to execute the
32 act. Evidence of the parent's history may include
33 commencement of an action pursuant to section 236.3, the
34 issuance of a protective order against the parent or the
35 issuance of a court order or consent agreement pursuant to

1 section 236.5, the issuance of an emergency order pursuant to
2 section 236.6, the holding of a parent in contempt pursuant to
3 section 236.8, the response of a peace officer to the scene of
4 alleged domestic abuse or the arrest of a parent following
5 response to a report of alleged domestic abuse, or a
6 conviction for domestic abuse assault pursuant to section
7 708.2A.

8 EXPLANATION

9 This bill requires the court to consider in the awarding of
10 custody and visitation rights to a parent the likelihood of
11 direct physical harm or significant emotional harm to the
12 child, other children, or a parent as evidenced by the
13 perpetration of domestic abuse by that parent. The court is
14 instructed to consider the perpetrator's history of causing
15 pain or injury or of placing the other parent in fear of pain,
16 injury, or acts intended to result in physical contact which
17 is insulting or offensive to the other parent coupled with the
18 apparent ability to execute the act as established by certain
19 evidence described in the bill. The bill also provides that
20 if a parent relocates or is not present during the
21 determination of the awarding of custody or visitation by the
22 court due to the acts of domestic abuse by the other parent,
23 the court is not to consider the relocation or absence of the
24 parent as a factor weighing against that parent in the
25 awarding of custody or visitation.

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