

# Senate Study Bill 2198

## Bill Text

PAG LIN

1 1 DIVISION I  
1 2 DOMESTIC RELATIONS PROVISIONS  
1 3 Section 1. Section [331.424](#), subsection 1, paragraph h,  
1 4 Code 1997, is amended by striking the paragraph and  
1 5 renumbering the subsequent paragraphs.  
1 6 Sec. 2. Section [598.5](#), subsection 7, Code Supplement 1997,  
1 7 is amended to read as follows:  
1 8 7. Allege that there has been a breakdown of the marriage  
1 9 relationship to the extent that the legitimate objects of  
1 10 matrimony have been destroyed and there remains no reasonable  
1 11 likelihood that the marriage can be preserved as supported by  
1 12 an affidavit signed by a marital and family therapist licensed  
1 13 pursuant to chapter 154D, a public or private marriage  
1 14 counselor, or a member of the clergy.  
1 15 Sec. 3. Section [598.5](#), subsection 10, Code Supplement  
1 16 1997, is amended by striking the subsection.  
1 17 Sec. 4. Section [598.7A](#), Code 1997, is amended to read as  
1 18 follows:  
1 19 598.7A DOMESTIC RELATIONS PROCEEDING MEDIATION.  
1 20 In addition to the custody mediation provided pursuant to  
1 21 section 598.41, unless the court determines that a history of  
1 22 domestic abuse exists as specified in section 598.41,  
1 23 subsection 3, paragraph "j", or unless the court determines  
1 24 that direct physical harm or significant emotional harm to the  
1 25 child, other children, or a parent is likely to result, or  
1 26 unless the parties are not free of intimidation or fear,  
1 27 mental illness or deficiency, or substance abuse, so as to be  
1 28 unable to negotiate on the party's own behalf, or unless the  
1 29 action involves a child support or medical support obligation  
1 30 enforced by the child support recovery unit,  
~~on the~~  
-  
1 31  
~~application of either party or on the court's own motion, the~~  
-  
1 32  
~~court shall determine~~  
- in each domestic relations proceeding or  
1 33 modification of any order relating to those proceedings  
1 34  
~~whether~~  
- the court shall order the parties to the proceeding  
1 35  
~~shall~~  
- to participate in mediation to attempt to resolve  
2 1 differences between the parties without court intervention.  
2 2  
~~The court may order participation in mediation at any time~~  
-  
2 3

~~prior to the entering of a final order or the granting of a~~

2 4

~~final decree.~~

2 5 The costs of mediation and mediation administration shall  
2 6 be paid in full or in part by the parties, as determined by  
2 7 the court and taxed as court costs.

2 8 Sec. 5. Section 598.16, Code 1997, is amended to read as  
2 9 follows:

2 10 598.16

~~CONCILIATION~~

~~DOMESTIC RELATIONS DIVISIONS.~~

2 11 A majority of the judges in any judicial district, with the  
2 12 cooperation of any county board of supervisors in the  
2 13 district, may establish a domestic relations division of the  
2 14 district court of the county where the board is located. The  
2 15 division shall offer counseling and related services to  
2 16 persons before the court.

2 17

~~Upon the application of the petitioner in the petition or~~

2 18

~~by the respondent in the responsive pleading thereto or,~~

2 19

~~within twenty days of appointment, of an attorney appointed~~

2 20

~~under section 598.12, the court shall require the parties to~~

2 21

~~participate in conciliation efforts for a period of sixty days~~

2 22

~~from the issuance of an order setting forth the conciliation~~

2 23

~~procedure and the conciliator.~~

2 24

~~At any time upon its own motion or upon the application of~~

2 25

~~a party the court may require the parties to participate in~~

2 26

~~conciliation efforts for sixty days or less following the~~

2 27

~~issuance of such an order.~~

2 28

~~Every order for conciliation shall require the conciliator~~

~~2 29~~

~~to file a written report by a date certain which shall state~~

~~2 30~~

~~the conciliation procedures undertaken and such other matters~~

~~2 31~~

~~as may have been required by the court. The report shall be a~~

~~2 32~~

~~part of the record unless otherwise ordered by the court. Such~~

~~2 33~~

~~conciliation procedure may include, but is not limited to,~~

~~2 34~~

~~referrals to the domestic relations division of the court, if~~

~~2 35~~

~~established, public or private marriage counselors, family~~

~~3 1~~

~~service agencies, community health centers, physicians and~~

~~3 2~~

~~clergy.~~

~~3 3~~

~~The costs of conciliation procedures shall be paid in full~~

~~3 4~~

~~or in part by the parties and taxed as court costs; however,~~

~~3 5~~

~~if the court determines that the parties will be unable to pay~~

~~3 6~~

~~the costs without prejudicing their financial ability to~~

~~3 7~~

~~provide themselves and any minor children with economic~~

~~3 8~~

~~necessities, the costs may be paid in full or in part by the~~

~~3 9~~

~~county.~~

3 10

~~Persons providing counseling and other services pursuant to~~

3 11

~~this section are not court employees, but are subject to court~~

3 12

~~supervision.~~

3 13 Sec. 6. Section [598.19](#), Code 1997, is amended to read as  
3 14 follows:

3 15 598.19 WAITING PERIOD BEFORE DECREE.

3 16 No decree dissolving a marriage shall be granted in any  
3 17 proceeding before ninety days shall have elapsed from the day  
3 18 the original notice is served, or from the last day of  
3 19 publication of notice, or from the date that waiver or  
3 20 acceptance of original notice is filed

~~or until after~~

3 21

~~conciliation is completed~~

-, whichever period shall be longer.

3 22 However, the court may in its discretion, on written motion  
3 23 supported by affidavit setting forth grounds of emergency or  
3 24 necessity and facts which satisfy the court that immediate  
3 25 action is warranted or required to protect the substantive  
3 26 rights or interests of any party or person who might be  
3 27 affected by the decree, hold a hearing and grant a decree  
3 28 dissolving the marriage prior to the expiration of the  
3 29 applicable period, provided that requirements of notice have  
3 30 been complied with. In such case the grounds of emergency or  
3 31 necessity and the facts with respect thereto shall be recited  
3 32 in the decree unless otherwise ordered by the court. The  
3 33 court may enter an order finding the respondent in default

~~and~~

3 34

~~waiving conciliation~~

- when the respondent has failed to file an  
3 35 appearance within the time set forth in the original notice.

4 1 Sec. 7. Section [602.11101](#), subsection 7, Code 1997, is  
4 2 amended by striking the subsection.

4 3 DIVISION II  
4 4 PARENTING OBLIGATIONS

4 5 Sec. 8. Section [598.1](#), Code Supplement 1997, is amended to  
4 6 read as follows:

4 7 598.1 DEFINITIONS.

4 8 As used in this chapter:

4 9 1. "Best interest of the child" includes, but is not  
4 10 limited to, the opportunity for maximum continuous physical  
4 11 and emotional contact possible with both parents, unless  
4 12 direct physical or significant emotional harm to the child may  
4 13 result from this contact. Refusal by one parent to provide  
4 14 this opportunity without just cause shall be considered  
4 15 harmful to the best interest of the child.

4 16 2. "Dissolution of marriage" means a termination of the  
4 17 marriage relationship and shall be synonymous with the term  
4 18 "divorce".

4 19 3.

~~"Joint custody" or "joint legal custody"~~

~~- "Joint~~

~~4 20 parenting obligations means an award of~~

~~legal custody of~~

~~-~~  
~~4 21 parenting obligations regarding a minor child to both parents~~

~~4 22 jointly under which both parents have~~

~~legal custodial~~

~~- rights~~

~~4 23 and responsibilities toward the child and under which neither~~

~~4 24 parent has~~

~~legal custodial~~

~~- rights superior to those of the~~

~~4 25 other parent. Rights and responsibilities of joint~~

~~legal~~

~~-~~

~~4 26~~

~~custody~~

~~- parenting obligations include, but are not limited to,~~

~~4 27 equal participation in decisions affecting the child's legal~~

~~4 28 status, medical care, education, extracurricular activities,~~

~~4 29 and religious instruction.~~

~~4 30 4. "Joint physical care" means an award of physical care~~

~~4 31 of a minor child to both~~

~~joint legal custodial~~

~~- parents under~~

~~4 32 which both parents have rights and responsibilities toward the~~

~~4 33 child including, but not limited to, shared parenting time~~

~~4 34 with the child, maintaining homes for the child, providing~~

~~4 35 routine care for the child and under which neither parent has~~

~~5 1 physical care rights superior to those of the other parent.~~

~~5 2~~

~~5. "Legal custody" or "custody" means an award of the~~

~~-~~

~~5 3~~

~~rights of legal custody of a minor child to a parent under~~

~~-~~

~~5 4~~

~~which a parent has legal custodial rights and responsibilities~~

~~-~~

~~5 5~~

~~toward the child. Rights and responsibilities of legal~~

~~-~~

~~5 6~~

~~custody include, but are not limited to, decision making~~

~~-~~

~~5 7~~

~~affecting the child's legal status, medical care, education,~~

~~-~~

~~5 8~~

~~extracurricular activities, and religious instruction.~~

~~-~~

~~5 9~~

~~6.~~

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

5 10 6. "Parent" includes a third party with parenting  
5 11 obligations and authority to participate in a parenting plan.  
5 12 7. "Parenting obligations" means an award under which a  
5 13 parent has rights and responsibilities toward the minor child.  
5 14 The rights and responsibilities include, but are not limited  
5 15 to, decision making affecting the child's legal status,  
5 16 medical care, education, extracurricular activities, and  
5 17 religious instruction.  
5 18

~~7.~~

- 8. "Physical care" means the right and responsibility  
5 19 to maintain a home for the minor child and provide for the  
5 20 routine care of the child.  
5 21

~~8.~~

- 9. "Postsecondary education subsidy" means an amount  
5 22 which either of the parties may be required to pay under a  
5 23 temporary order or final judgment or decree for educational  
5 24 expenses of a child who is between the ages of eighteen and  
5 25 twenty-two years if the child is regularly attending a course  
5 26 of vocational-technical training either as a part of a regular  
5 27 school program or under special arrangements adapted to the  
5 28 individual person's needs; or is, in good faith, a full-time  
5 29 student in a college, university, or community college; or has  
5 30 been accepted for admission to a college, university, or  
5 31 community college and the next regular term has not yet begun.  
5 32

~~9.~~

- 10. "Support" or "support payments" means an amount  
5 33 which the court may require either of the parties to pay under  
5 34 a temporary order or a final judgment or decree, and may  
5 35 include alimony, child support, maintenance, and any other  
6 1 term used to describe these obligations. For orders entered  
6 2 on or after July 1, 1990, unless the court specifically orders  
6 3 otherwise, medical support is not included in the monetary  
6 4 amount of child support. The obligations shall include  
6 5 support for a child who is between the ages of eighteen and  
6 6 nineteen years who is engaged full-time in completing high  
6 7 school graduation or equivalency requirements in a manner  
6 8 which is reasonably expected to result in completion of the  
6 9 requirements prior to the person reaching nineteen years of  
6 10 age; and may include support for a child of any age who is  
6 11 dependent on the parties to the dissolution proceedings  
6 12 because of physical or mental disability.  
6 13 Sec. 9. Section [598.5](#), subsection 9, Code Supplement 1997,  
6 14 is amended to read as follows:  
6 15 9. Set forth any application for permanent alimony or  
6 16 support,

~~child custody~~

- parenting obligations, or disposition  
6 17 of property, as well as attorneys' fees and suit money,  
6 18 without enumerating the amounts thereof.  
6 19 Sec. 10. Section [598.7A](#), unnumbered paragraph 1, Code  
6 20 1997, is amended to read as follows:  
6 21 In addition to the

~~custody~~

- parenting obligations mediation  
6 22 provided pursuant to section 598.41, unless the court  
6 23 determines that a history of domestic abuse exists as  
6 24 specified in section 598.41, subsection 3, paragraph "j", or

6 25 unless the court determines that direct physical harm or  
6 26 significant emotional harm to the child, other children, or a  
6 27 parent is likely to result, or unless the action involves a  
6 28 child support or medical support obligation enforced by the  
6 29 child support recovery unit, on the application of either  
6 30 party or on the court's own motion, the court shall determine  
6 31 in each domestic relations proceeding or modification of any  
6 32 order relating to those proceedings whether the parties to the  
6 33 proceeding shall participate in mediation to attempt to  
6 34 resolve differences between the parties without court  
6 35 intervention. The court may order participation in mediation  
7 1 at any time prior to the entering of a final order or the  
7 2 granting of a final decree.

7 3 Sec. 11. Section [598.8](#), subsection 1, Code 1997, is  
7 4 amended to read as follows:

7 5 1. Except as otherwise provided in subsection 2, hearings  
7 6 for dissolution of marriage shall be held in open court upon  
7 7 the oral testimony of witnesses, or upon the depositions of  
7 8 such witnesses taken as in other equitable actions or taken by  
7 9 a commissioner appointed by the court. The court may in its  
7 10 discretion close the hearing. Hearings held for the purpose  
7 11 of determining

~~child custody~~

- parenting obligations may be

7 12 limited in attendance by the court. Upon request of either  
7 13 party, the court shall provide security in the courtroom  
7 14 during the

~~custody~~

- parenting obligations hearing if a history

7 15 of domestic abuse relating to either party exists.

7 16 Sec. 12. Section [598.11](#), unnumbered paragraph 1, Code  
7 17 1997, is amended to read as follows:

7 18 The court may order either party to pay the clerk a sum of  
7 19 money for the separate support and maintenance of the other  
7 20 party and the children and to enable such party to prosecute  
7 21 or defend the action. The court may on its own motion and  
7 22 shall upon application of either party or an attorney  
7 23 appointed under section 598.12 determine the temporary

~~custody~~

-

7 24

~~of~~

- parenting obligations regarding any minor child whose

7 25 welfare may be affected by the filing of the petition for  
7 26 dissolution.

7 27 Sec. 13. Section [598.12](#), subsection 2, Code 1997, is  
7 28 amended to read as follows:

7 29 2. The court may require that the department of human  
7 30 services or an appropriate agency make an investigation of  
7 31 both parties regarding the home conditions, parenting  
7 32 capabilities, and other matters pertinent to the best  
7 33 interests of the child or children in a dispute concerning  
7 34

~~custody of~~

- parenting obligations regarding the child or

7 35 children. The investigation report completed by the  
8 1 department of human services or an appropriate agency shall be  
8 2 submitted to the court and available to both parties. The  
8 3 investigation report completed by the department of human  
8 4 services or an appropriate agency shall be a part of the  
8 5 record unless otherwise ordered by the court.

8 6 Sec. 14. Section [598.19A](#), subsection 1, Code 1997, is

8 7 amended to read as follows:

8 8 1. The parties to any action which involves the issues of  
8 9

~~child custody~~

- ~~parenting obligations~~ or visitation shall

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

8 18 Participation in the course is not required if the proceeding  
8 19 involves termination of parental rights of any of the parties.  
8 20 A final decree shall not be granted or a final order shall not  
8 21 be entered until the parties have complied with this section.

8 22 Sec. 15. Section [598.21](#), subsection 1, paragraph g, Code  
8 23 Supplement 1997, is amended to read as follows:

8 24 g. The

~~desirability of~~

- awarding of the family home or the

8 25 right to live in the family home for a reasonable period to  
8 26

~~the~~

- a party

~~having custody of the children, or if the parties~~

-  
8 27

~~have joint legal custody, to the party having physical care of~~

-  
8 28

~~the children~~

- ~~based upon the parenting obligations of the~~

8 29 ~~party.~~

8 30 Sec. 16. Section [598.21](#), subsection 3, paragraph e, Code  
8 31 Supplement 1997, is amended to read as follows:

8 32 e. The earning capacity of the party seeking maintenance,  
8 33 including educational background, training, employment skills,  
8 34 work experience, length of absence from the job market,  
8 35 responsibilities for children under

~~either~~

- an award of

~~custody~~

-  
9 1

~~or physical care~~

- ~~parenting obligations~~, and the time and

9 2 expense necessary to acquire sufficient education or training  
9 3 to enable the party to find appropriate employment.

9 4 Sec. 17. Section [598.21](#), subsection 4, paragraph d, Code  
9 5 Supplement 1997, is amended to read as follows:

9 6 d. For purposes of calculating a support obligation under  
9 7 this section, the income of the parent from whom support is  
9 8 sought shall be used as the noncustodial parent income for  
9 9 purposes of application of the guidelines, regardless of the

9 10

~~legal custody of the child~~

- parenting obligations awarded.

9 11 Sec. 18. Section [598.21](#), subsection 6, Code Supplement

9 12 1997, is amended to read as follows:

9 13 6. The court may provide for joint

~~custody of the children~~

-

9 14

~~by the parties~~

- parenting obligations pursuant to section

9 15 598.41. All orders relating to

~~custody of a child~~

- parenting

9 16 obligations are subject to chapter 598A.

9 17 Sec. 19. Section [598.21](#), subsection 8, unnumbered

9 18 paragraph 2, Code Supplement 1997, is amended to read as

9 19 follows:

9 20 Unless otherwise provided pursuant to 28 U.S.C. } 1738B, a

9 21 modification of a support order entered under chapter 234,

9 22 252A, 252C, 600B, this chapter, or any other support chapter

9 23 or proceeding between parties to the order is void unless the

9 24 modification is approved by the court, after proper notice and

9 25 opportunity to be heard is given to all parties to the order,

9 26 and entered as an order of the court. If support payments

9 27 have been assigned to the department of human services

9 28 pursuant to section 234.39, 239B.6, or 252E.11, or if services

9 29 are being provided pursuant to chapter 252B, the department is

9 30 a party to the support order. Modifications of orders

9 31 pertaining to

~~child custody~~

- parenting obligations shall be

9 32 made pursuant to chapter 598A. If the petition for a

9 33 modification of an order pertaining to

~~child custody~~

- parenting

9 34 obligations asks either for joint

~~custody~~

- parenting

9 35 obligations or that joint

~~custody~~

- parenting obligations be

10 1 modified to an award of sole

~~custody~~

- parenting obligations,

10 2 the modification, if any, shall be made pursuant to section

10 3 598.41.

10 4 Sec. 20. Section [598.21](#), subsection 8A, Code Supplement

10 5 1997, is amended to read as follows:

10 6 8A. If a parent awarded joint

~~legal custody~~

- parenting

10 7 obligations and physical care or sole

~~legal custody~~

- parenting

10 8 obligations is relocating the residence of the minor child to

10 9 a location which is one hundred fifty miles or more from the

10 10 residence of the minor child at the time that

~~custody was~~

-  
10 11 parenting obligations were awarded, the court may consider the  
10 12 relocation a substantial change in circumstances. If the  
10 13 court determines that the relocation is a substantial change  
10 14 in circumstances, the court shall modify the

~~custody~~

- parenting

10 15 obligations order to, at a minimum, preserve, as nearly as  
10 16 possible, the existing relationship between the minor child  
10 17 and the nonrelocating parent. If modified, the order may  
10 18 include a provision for extended visitation during summer  
10 19 vacations and school breaks and scheduled telephone contact  
10 20 between the nonrelocating parent and the minor child. The  
10 21 modification may include a provision assigning the  
10 22 responsibility for transportation of the minor child for  
10 23 visitation purposes to either or both parents. If the court  
10 24 makes a finding of past interference by the relocating parent  
10 25

~~awarded joint legal custody and physical care or sole legal~~

-  
10 26

~~custody~~

- with the minor child's access to the other parent, the  
10 27 court may order the posting of a cash bond to assure future  
10 28 compliance with the visitation provisions of the decree. The  
10 29 supreme court shall prescribe guidelines for the forfeiting of  
10 30 the bond and restoration of the bond following forfeiting of  
10 31 the bond.  
10 32 Sec. 21. Section [598.21](#), subsection 10, Code Supplement  
10 33 1997, is amended to read as follows:  
10 34 10. Notwithstanding any other provision of law to the  
10 35 contrary, when an application for modification or adjustment  
11 1 of support is submitted by the child support recovery unit,  
11 2 the sole issues which may be considered by the court in that  
11 3 action are the application of the guidelines in establishing  
11 4 the amount of support pursuant to subsection 4, and provision  
11 5 for medical support under chapter 252E. When an application  
11 6 for a cost-of-living alteration of support is submitted by the  
11 7 child support recovery unit pursuant to section 252H.24, the  
11 8 sole issue which may be considered by the court in the action  
11 9 is the application of the cost-of-living alteration in  
11 10 establishing the amount of child support. Issues related to  
11 11

~~custody~~

- parenting obligations, visitation, or other provisions  
11 12 unrelated to support shall be considered only under a separate  
11 13 application for modification.

11 14 Sec. 22. Section [598.23](#), subsection 2, paragraphs b and d,  
11 15 Code Supplement 1997, are amended to read as follows:

11 16 b. Modifies visitation to compensate for lost visitation  
11 17 time or establishes joint

~~custody~~

- parenting obligations for  
11 18 the child or transfers

~~custody~~

- parenting obligations.

11 19 d. Imposes sanctions or specific requirements or orders  
11 20 the parties to participate in mediation to enforce the joint  
11 21

~~custody~~

- parenting obligations provisions of the decree.

11 22 Sec. 23. Section [598.25](#), unnumbered paragraph 1, Code  
11 23 1997, is amended to read as follows:

11 24 Whenever a proceeding is initiated in a court for adoption  
11 25 involving the children of parents or guardians whose marriage  
11 26 has been dissolved, or for modification of a judgment of  
11 27 alimony, child support, or

~~custody~~

- parenting obligations

11 28 granted in an action for dissolution of marriage, the  
11 29 following requirements must be met if such proceedings are  
11 30 initiated in a court other than the court which granted the  
11 31 dissolution decree.

11 32 Sec. 24. Section [598.35](#), subsections 5, 6, and 7, Code  
11 33 Supplement 1997, are amended to read as follows:

11 34 5. The parents of the child are divorced, and the parent  
11 35 who is not the child of the grandparent or who is not the  
12 1 grandchild of the great-grandparent has

~~legal custody of~~

- parenting obligations regarding the child, and the spouse of  
12 3 the child's

~~custodial~~

- other parent has been issued a final

12 4 adoption decree pursuant to section 600.13.

12 5 6. The paternity of a child born out of wedlock is  
12 6 judicially established and the grandparent of the child is the  
12 7 parent of the father of the child or the great-grandparent of  
12 8 the child is the grandparent of the father of the child and  
12 9 the mother of the child has

~~custody of~~

- parenting obligations

12 10 regarding the child, or the grandparent of a child born out of  
12 11 wedlock is the parent of the mother of the child or the great-  
12 12 grandparent of the child is the grandparent of the mother of  
12 13 the child and

~~custody has~~

- parenting obligations have been

12 14 awarded to the father of the child.

12 15 7. A parent of the child unreasonably refuses to allow  
12 16 visitation by the grandparent or great-grandparent or  
12 17 unreasonably restricts visitation. This subsection applies to  
12 18 but is not limited in application to a situation in which the  
12 19 parents of the child are divorced and the parent who is the  
12 20 child of the grandparent or who is the grandchild of the  
12 21 great-grandparent has

~~legal custody of~~

- parenting obligations

12 22 regarding the child.

12 23 Sec. 25. Section [598.41](#), Code Supplement 1997, is amended  
12 24 to read as follows:

12 25 598.41

~~CUSTODY OF~~

- PARENTING OBLIGATIONS REGARDING

12 26 CHILDREN.

12 27 1. a. The court, insofar as is reasonable and in the best  
12 28 interest of the child, shall order the

~~—custody~~

— parenting

12 29 obligations award, including liberal visitation rights where  
12 30 appropriate, which will assure the child the opportunity for  
12 31 the maximum continuing physical and emotional contact with  
12 32 both parents after the parents have separated or dissolved the  
12 33 marriage, and which will encourage parents to share the rights  
12 34 and responsibilities of raising the child unless direct  
12 35 physical harm or significant emotional harm to the child,  
13 1 other children, or a parent is likely to result from such  
13 2 contact with one parent.

13 3 b. Notwithstanding paragraph "a", if the court finds that  
13 4 a history of domestic abuse exists, a rebuttable presumption  
13 5 against the awarding of joint

~~—custody~~

— parenting obligations

13 6 exists.

13 7 c. The court shall consider the denial by one parent of  
13 8 the child's opportunity for maximum continuing contact with  
13 9 the other parent, without just cause, a significant factor in  
13 10 determining the proper

~~—custody~~

— parenting obligations

13 11 arrangement. Just cause may include a determination by the  
13 12 court pursuant to subsection 3, paragraph "j", that a history  
13 13 of domestic abuse exists between the parents.

13 14 d. If a history of domestic abuse exists as determined by  
13 15 a court pursuant to subsection 3, paragraph "j", and if a  
13 16 parent who is a victim of such domestic abuse relocates or is  
13 17 absent from the home based upon the fear of or actual acts or  
13 18 threats of domestic abuse perpetrated by the other parent, the  
13 19 court shall not consider the relocation or absence of that  
13 20 parent as a factor against that parent in the awarding of  
13 21

~~—custody~~

— parenting obligations or visitation.

13 22 e. Unless otherwise ordered by the court in the

~~—custody~~

— parenting obligations decree, both parents shall have legal  
13 24 access to information concerning the child, including but not  
13 25 limited to medical, educational and law enforcement records.  
13 26 2. a. On the application of either parent, the court shall  
13 27 consider granting joint

~~—custody~~

— parenting obligations in cases

13 28 where the parents do not agree to joint

~~—custody~~

— parenting

13 29 obligations.

13 30 b. If the court does not grant joint

~~—custody~~

— parenting

13 31 obligations under this subsection, the court shall cite clear  
13 32 and convincing evidence, pursuant to the factors in subsection  
13 33 3, that joint

~~—custody is~~

— parenting obligations are

13 34 unreasonable and not in the best interest of the child to the

13 35 extent that the

~~legal custodial~~

- relationship between the child

14 1 and a parent should be severed.

14 2 c. A finding by the court that a history of domestic abuse

14 3 exists, as specified in subsection 3, paragraph "j", which is

14 4 not rebutted, shall outweigh consideration of any other factor

14 5 specified in subsection 3 in the determination of the awarding

14 6 of

~~custody~~

- parenting obligations under this subsection.

14 7 d. Before ruling upon the joint

~~custody~~

- parenting

14 8 obligations petition in these cases, unless the court

14 9 determines that a history of domestic abuse exists as

14 10 specified in subsection 3, paragraph "j", or unless the court

14 11 determines that direct physical harm or significant emotional

14 12 harm to the child, other children, or a parent is likely to

14 13 result, the court may require the parties to participate in

14 14

~~custody~~

- parenting obligations mediation to determine whether

14 15 joint

~~custody is~~

- parenting obligations are in the best

14 16 interest of the child. The court may require the child's

14 17 participation in the mediation insofar as the court determines

14 18 the child's participation is advisable.

14 19 e. The costs of

~~custody~~

- parenting obligations mediation

14 20 shall be paid in full or in part by the parties and taxed as

14 21 court costs.

14 22 3. In considering what

~~custody~~

- parenting obligations

14 23 arrangement under subsection 2 is in the best interest of the

14 24 minor child, the court shall consider the following factors:

14 25 a. Whether each parent would

~~be a suitable custodian for~~

- 14 26 suitably fulfill parenting obligations regarding the child.

14 27 b. Whether the psychological and emotional needs and

14 28 development of the child will suffer due to lack of active

14 29 contact with and attention from both parents.

14 30 c. Whether the parents can communicate with each other

14 31 regarding the child's needs.

14 32 d. Whether both parents have actively cared for the child

14 33 before and since the separation.

14 34 e. Whether each parent can support the other parent's

14 35 relationship with the child.

15 1 f. Whether the

~~custody~~

- parenting obligation arrangement is

15 2 in accord with the child's wishes or whether the child has

15 3 strong opposition, taking into consideration the child's age

15 4 and maturity.

15 5 g. Whether one or both of the parents agree or are opposed  
15 6 to joint

~~— custody.~~

~~— parenting obligations.~~

15 7 h. The geographic proximity of the parents.

15 8 i. Whether the safety of the child, other children, or the  
15 9 other parent will be jeopardized by the awarding of joint  
15 10

~~— custody.~~

~~— parenting obligations or by unsupervised or  
15 11 unrestricted visitation.~~

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

15 25 4. Subsection 3 shall not apply when parents agree to  
15 26 joint

~~— custody.~~

~~— parenting obligations.~~

15 27 5. Joint physical care may be in the best interest of the  
15 28 child, but an award of joint

~~— legal custody.~~

~~— parenting~~

15 29 obligations does not require joint physical care. When the  
15 30 court determines such action would be in the best interest of  
15 31 the child and would preserve the relationship between each  
15 32 parent and the child, joint physical care may be awarded to  
15 33 both

~~— joint custodial~~

~~— parents or physical care may be awarded  
15 34 to one~~

~~— joint custodial~~

~~— parent. If one~~

~~— joint custodial~~

~~— parent~~

15 35 is awarded physical care, the parent responsible for providing  
16 1 physical care shall support the other parent's relationship  
16 2 with the child. Physical care awarded to one parent does not  
16 3 affect the other parent's rights and responsibilities

~~— as a~~

~~— in~~

16 4 regard to an award of joint

~~— legal custodian of the child~~

~~—  
16 5 parenting obligations. Rights and responsibilities~~

~~— as~~

~~— of a~~

16 6 parent with joint

~~legal custodian of the child~~

~~parenting~~

16 7 obligations include, but are not limited to, equal  
16 8 participation in decisions affecting the child's legal status,  
16 9 medical care, education, extracurricular activities, and  
16 10 religious instruction.  
16 11 6. When a parent awarded

~~legal custody~~

~~parenting~~

16 12 obligations or physical care of a child cannot

~~act as~~

~~-~~

16 13

~~custodian or caretaker~~

~~comply with the award~~ because the

16 14 parent has died or has been judicially adjudged incompetent,  
16 15 the court shall award

~~legal custody~~

~~parenting obligations~~

16 16 including physical care of the child to the surviving parent  
16 17 unless the court finds that such an award is not in the  
16 18 child's best interest.  
16 19 7. If an application for modification of a decree or a  
16 20 petition for modification of an order is filed, based upon  
16 21 differences between the parents regarding the

~~custody~~

~~-~~

16 22 parenting obligations arrangement established under the decree  
16 23 or order, unless the court determines that a history of  
16 24 domestic abuse exists as specified in subsection 3, paragraph  
16 25 "j", or unless the court determines that direct physical harm  
16 26 or significant emotional harm to the child, other children, or  
16 27 a parent is likely to result, the court may require the  
16 28 parents to participate in mediation to attempt to resolve the  
16 29 differences between the parents.  
16 30 Sec. 26. DIRECTIONS TO CODE EDITOR. The Code editor is  
16 31 directed to review sections of the Code referring to "custody"  
16 32 for the purpose of amending such sections to reflect the  
16 33 terminology "parenting obligations" and to include such  
16 34 amendments in the substantive Code editor's bill to be  
16 35 introduced during the 1998 regular session.

17 1 Sec. 27. Sections 201 through 218 of this Act take effect  
17 2 July 1, 1999.

17 3

#### EXPLANATION

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

17 21 recovery unit. The bill also strikes provisions which  
17 22 required participation in conciliation efforts and makes  
17 23 conforming changes in the Code.

17 24 The bill also changes the terminology relating to custody  
17 25 of children by replacing the term "custody" with the term  
17 26 "parenting obligations" in chapter 598 of the Code. The bill  
17 27 also directs the Code editor to review sections of the Code  
17 28 using the word "custody" for the purposes of changing the term  
17 29 to reflect the terminology "parenting obligations", and to  
17 30 include any amendments in the substantive Code editor's bill  
17 31 to be introduced during the 1998 legislative session.

17 32 LSB 3473XL 77

17 33 pf/sc/14