

FEB 17 1999

JUDICIARY

WITHDRAWN 3/31/99 (P.1001)

HOUSE FILE

297

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

A BILL FOR

1 An Act relating to mediation services related to custody,
2 visitation, and support of a child.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. INTENT OF THE GENERAL ASSEMBLY. It is the
2 intent of the general assembly that when the custody or
3 visitation of a child is at issue before the court, the best
4 interest of the child should determine the outcome and the
5 best interest of the child is served through the opportunity
6 of maximum contact with both parents. It is also the intent
7 of the general assembly that custody or visitation disputes be
8 settled swiftly and include resolution of the issue of child
9 support in an equitable manner.

10 Sec. 2. Section 598.21, subsection 4, Code 1999, is
11 amended by adding the following new paragraph:

12 NEW PARAGRAPH. f. Notwithstanding paragraph "a", if a
13 parent is awarded joint physical care of a child, the court
14 shall deviate from the guidelines in a manner so that the
15 amount of child support provided by each parent reflects the
16 physical custody responsibility awarded the respective parent.

17 Sec. 3. Section 598.41, subsection 2, paragraphs d and e,
18 Code 1999, are amended by striking the paragraphs and
19 inserting in lieu thereof the following:

20 d. Except as provided in subparagraph (1), before ruling
21 upon the joint custody petition in these cases, if it appears
22 on the face of the petition or other application for an order
23 or modification of an order for the custody of a child that
24 custody or visitation is contested, or that any issue
25 pertinent to a custody or visitation determination, including
26 visitation rights, is unresolved, the matter may be set for
27 mediation of the contested issue prior to, concurrent with, or
28 subsequent to the setting of the matter for hearing. The
29 purpose of the mediation proceeding is to reduce acrimony
30 which may exist between the parties and to develop an
31 agreement that is supportive of the child's best interest.
32 The mediator shall use best efforts to effect a settlement of
33 the custody or visitation dispute, but shall have no coercive
34 authority.

35 (1) If the court determines that a history of domestic

1 abuse exists as specified in subsection 3, paragraph "j", or
2 if the court determines that direct physical harm or
3 significant emotional harm to the child, other children, or a
4 parent is likely to result, the parties shall not be required
5 to participate in or be referred to mediation.

6 (2) In order to participate in custody mediation, a
7 mediator must be appointed by the court. A mediator shall be
8 a member of the professional staff of the court, a mental
9 health services agency, a private mediation service, or other
10 person approved by the court having jurisdiction of the
11 matter. Persons providing mediation services who are not
12 otherwise professional staff of the court are not court
13 employees, but are subject to supervision of the court. The
14 court shall maintain a listing of approved mediators for this
15 purpose. The parties shall utilize the services of a mediator
16 approved and listed by the court, unless the parties stipulate
17 to a mediator not approved and listed by the court.

18 (3) A mediator who provides mediation services under this
19 subsection shall meet all of the following requirements, at a
20 minimum:

21 (a) Have knowledge of the court system and the procedures
22 used in contested custody matters.

23 (b) Have knowledge of other resources in the community to
24 which the parties to a contested child custody matter may be
25 referred for assistance.

26 (c) Have knowledge of child development, clinical issues
27 relating to children, the effects of marriage dissolution on
28 children, and child custody research.

29 (d) Have previously completed mediation training or have
30 experience in mediation deemed equivalent by the court.

31 (4) Mediation proceedings shall be conducted in private.
32 All records of a mediation proceeding shall be confidential
33 and shall not be available as evidence in an action for
34 marriage dissolution and related proceedings on any issue in
35 controversy in the dissolution. All verbal and written

1 information relating to the subject matter of the mediation
2 process and transmitted between the parties and the mediator
3 or other person present during any stage of the mediation
4 process, whether reflected in notes, memoranda, or other work
5 products in case files are confidential communications.
6 Mediators shall not be examined in any judicial or
7 administrative proceeding regarding confidential
8 communications and are not subject to judicial or
9 administrative process requiring the disclosure of
10 confidential communications.

11 (5) If the parties do not reach an agreement at the
12 conclusion of the mediation proceedings, the mediator may
13 recommend to the court that other actions be taken to assist
14 the parties to resolve the controversy before a hearing on the
15 issues. The mediator may recommend the use of neutral
16 visitation sites or that mutual restraining orders be issued
17 in appropriate cases, pending determination of the
18 controversy, to protect the well-being of any child involved
19 in the controversy.

20 (6) An agreement reached by the parties as a result of
21 mediation shall be discussed by the parties with their
22 attorneys, if any, and if approved the agreement may be
23 included in a dissolution decree or other stipulation
24 submitted to the court. An agreement reached by the parties
25 as a result of mediation shall not be presented to the court
26 and is not enforceable unless the parties and their attorneys,
27 if any, approve the agreement, consent to its presentation to
28 the court, and the court accepts the agreement.

29 (7) The costs of custody mediation shall be paid in full
30 or in part by the parties and taxed as court costs.

31 (8) The supreme court may prescribe rules to administer
32 this paragraph "d".

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EXPLANATION

34 This bill relates to child custody, visitation, and
35 support. The bill provides the intent of the general assembly

1 that the best interest of the child in awarding custody and
2 visitation is served by providing the opportunity for maximum
3 contact with both parents and that disputes regarding
4 visitation and custody should be resolved swiftly and should
5 include resolution of the issue of child support in an
6 equitable manner. The bill provides that if joint physical
7 custody is awarded, the court shall deviate from the child
8 support guidelines to reflect the physical custody
9 responsibility awarded each parent. The bill provides that,
10 prior to the awarding of joint custody by the court, the
11 matter may be set for mediation in instances in which there
12 are unresolved matters, including custody and visitation
13 rights. The bill specifies that mediation is to be provided
14 by a mediator approved by the court and listed by the court
15 for the purposes of use by the parties. The bill specifies
16 mediator qualifications, that mediation is to be conducted in
17 private, that records of the mediation are not to be available
18 as evidence in a dissolution proceeding, the conditions under
19 which a mediator may make recommendations to the court when
20 the parties are not in agreement at the conclusion of the
21 mediation proceedings, that a mediation agreement must be
22 discussed and approved by the parties and their respective
23 attorneys if it is to be used by the court, that rules may be
24 prescribed by the supreme court to carry out the bill, and
25 that mediation is not to be utilized if domestic abuse exists
26 or if the court determines that direct physical harm or
27 significant emotional harm to the child, other children, or a
28 parent is likely to result. Costs of mediation are to be
29 charged as court costs and paid by the parties.

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