

Boddicker, Ch
Raecker
Chapman

HSB 14

JUDICIARY

Succeeded By
SF/HF

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY CHAIRPERSON
LARSON)

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

A BILL FOR

1 An Act establishing the crime of unlawful interference with
2 visitation.

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

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1 ~~Section 1~~ NLE SECTION. 598.23B UNLAWFUL INTERFERENCE
2 WITH VISITATION.

3 1. If a party to a temporary order or final decree detains
4 or conceals a child with the intent to deprive another person
5 of that person's rights to visitation, the person detaining or
6 concealing the child commits unlawful interference with
7 visitation.

8 2. a. A law enforcement officer who has cause to believe
9 that a person has committed or is committing unlawful
10 interference with visitation shall issue a citation to the
11 person. The citation shall include the name and address of
12 the person, the nature of the offense, the time and place at
13 which the person is to appear in court, and the penalty for
14 nonappearance. Before the cited person is released, the
15 person shall sign the citation as a written promise to appear
16 in court at the time and place specified. A copy of the
17 citation shall be given to the person.

18 b. The law enforcement officer issuing the citation shall
19 file a complaint in the court in which the cited person is
20 required to appear, as soon as practicable, charging the
21 person with the crime of unlawful interference with
22 visitation.

23 3. Upon failure of the cited person to appear in court,
24 the court shall issue an arrest warrant for the person.

25 4. It is an affirmative defense to unlawful interference
26 with visitation that any of the following conditions exist:

27 a. A person committed the act to protect the child from
28 imminent physical harm, provided that the person had a
29 reasonable belief that the physical harm was imminent and that
30 the person's conduct in withholding visitation was a
31 reasonable response to the physical harm reasonably believed
32 to be imminent.

33 b. The act was committed with the mutual consent of all
34 parties having a right to custody and visitation of the child.

35 c. The act is otherwise authorized by law.

1 5. A person who commits unlawful interference with
2 visitation under this section commits the following violation:

3 a. For a first or second offense, the person commits a
4 scheduled violation under section 805.8, subsection 13.

5 b. For a third or subsequent offense, the person commits a
6 serious misdemeanor.

7 Sec. 2. Section 805.8, Code 1999, is amended by adding the
8 following new subsection:

9 NEW SUBSECTION. 13. UNLAWFUL INTERFERENCE WITH
10 VISITATION. For a first violation under section 598.23B, the
11 scheduled fine is one hundred dollars. For a second violation
12 under section 598.23B, the scheduled fine is two hundred
13 dollars.

14 Sec. 3. Section 805.10, Code 1999, is amended by adding
15 the following new subsection:

16 NEW SUBSECTION. 2A. When the violation charged is
17 unlawful interference with visitation under section 598.23B.

18 EXPLANATION

19 This bill establishes the crime of unlawful interference
20 with visitation, the penalty for which is a scheduled fine of
21 \$100 for a first offense, \$200 for a second offense; and a
22 serious misdemeanor for a third or subsequent offense, for
23 which the punishment is a fine of at least \$250, not to exceed
24 \$1,500, and in addition may include imprisonment not to exceed
25 one year. Unlawful interference with visitation means
26 detaining or concealing a child with the intent to deprive
27 another person of that person's rights to visitation. The
28 bill also requires an appearance by the defendant before the
29 court on a charge of unlawful interference with visitation.

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MAR 17 1999

Place On Calendar

4/6/99 Returned to Judiciary
2/15/00 Do Pass
3/21/00 Removed from Calendar

719

HOUSE FILE
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 14)

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

A BILL FOR

1 An Act relating to interference with visitation and custody, by
2 providing for mediation, by establishing the crime of
3 interference with custody and visitation, and providing
4 penalties.

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

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HF 719

1 Section 1. NEW SECTION. 598.23B MEDIATION --
2 INTERFERENCE WITH CUSTODY OR VISITATION.

3 1. A party to an order or decree may submit an
4 application, pro se, to the magistrate having jurisdiction
5 over the parties, to request mediation of an issue of
6 interference with custody or visitation as established in the
7 order or decree.

8 2. A copy of the application shall be served on the
9 respondent by certified mail or personal service. The
10 respondent shall have three days from the receipt of service
11 to respond, in writing, to the application, agreeing to
12 participate in mediation or demonstrating why the issue should
13 not be set for mediation.

14 3. Upon the lapse of the three-day period, the magistrate
15 shall determine whether to order mediation. The magistrate
16 shall order mediation if the magistrate determines that there
17 is a reasonable likelihood that the parties are presently
18 unable to resolve the differences cited by the parties
19 relating to custody or visitation, and the mediation is in the
20 best interest of the minor children involved. The magistrate
21 shall not order mediation if the respondent demonstrates
22 otherwise, or unless the magistrate determines that such
23 mediation is not in the best interest of the child or that
24 harm may result to any party or the child.

25 4. Mediation shall be provided by a mediator approved by
26 the court. Mediation under this section is subject to chapter
27 679C, unless otherwise provided under this section. Mediation
28 shall be held as soon as practicable after the entry of the
29 order under subsection 3. The mediation schedule shall be set
30 by the mediator. At any time from the initial application for
31 mediation, and only upon agreement of the parties, the
32 magistrate may appoint a guardian ad litem for the children to
33 represent the children's interests in mediation. If either
34 party fails to appear at a scheduled mediation without good
35 cause, the mediator shall report the nonappearance to the

1 court, and the court may enforce the order for mediation
2 through contempt.

3 5. Completion of the mediation process shall result in one
4 of the following:

5 a. If the parties enter into a mediation agreement, the
6 original mediation agreement shall be filed with the court.
7 If the agreement does not require modification of the custody
8 or visitation provisions of any existing decree or order, the
9 agreement shall include a provision that the parties are aware
10 that if either party subsequently interferes with a custody or
11 visitation provision of the decree or order, a law enforcement
12 officer shall enforce the provisions of the order or decree,
13 upon being shown the agreement and the order or decree. The
14 provision shall also note that the law enforcement officer
15 will not remove the child from the party who has actual
16 physical custody of the child at the time, unless the law
17 enforcement officer is shown the agreement and the order or
18 decree which clearly and convincingly verify that such party
19 is not entitled to the actual physical custody of the child,
20 and there are not other exigent circumstances that would give
21 the law enforcement officer reasonable suspicion to believe
22 that the child would be harmed or that the agreement and the
23 order or decree are not valid.

24 b. If the parties enter into a mediation agreement, which
25 requires modification of the custody or visitation provisions
26 of an existing order or decree, the agreement shall specify a
27 precise visitation schedule upon which the modified order or
28 decree shall be based, and the agreement shall be attached to
29 any petition or application for modification of the order or
30 decree. The modified order or decree shall also include a
31 provision that the parties are aware that if either party
32 subsequently interferes with a custody or visitation provision
33 of the decree or order, a law enforcement officer shall
34 enforce the provisions of the order or decree, upon being
35 shown the order or decree. The provision shall also note that

1 the law enforcement officer will not remove the child from the
2 party who has actual physical custody of the child at the
3 time, unless the law enforcement officer is shown the order or
4 decree which clearly and convincingly verifies that such party
5 is not entitled to the actual physical custody of the child,
6 and there are not other exigent circumstances that would give
7 the law enforcement officer reasonable suspicion to believe
8 that the child would be harmed or that the order or decree is
9 not valid.

10 c. If the parties do not enter into a mediation agreement,
11 the mediator shall file a report with the court so stating.
12 The report shall be entered in the case file of the parties
13 and shall be admissible in any subsequent civil or criminal
14 proceeding involving the custody or visitation of a child,
15 notwithstanding any law or any rule of the court to the
16 contrary. The parties shall also be instructed that if either
17 party subsequently interferes with a custody or visitation
18 provision of the decree or order, a law enforcement officer
19 shall enforce the provisions of the order or decree, upon
20 being shown the order or decree. The parties shall also be
21 instructed that the law enforcement officer will not remove
22 the child from the party who has actual physical custody of
23 the child at the time, unless the law enforcement officer is
24 shown the order or decree which clearly and convincingly
25 verifies that such party is not entitled to the actual
26 physical custody of the child, and there are not other exigent
27 circumstances that would give the law enforcement officer
28 reasonable suspicion to believe that the child would be harmed
29 or that the order or decree is not valid. The report filed
30 with the court under this paragraph shall note that the above
31 instructions were provided to the parties.

32 6. The costs of mediation shall be paid in full or in part
33 by the parties, as apportioned by the court, based upon the
34 financial affidavits of the parties.

35 7. Filing of an application for mediation under this

1 section shall not stay the custody or visitation provisions of
2 an existing decree or order, unless the court determines that
3 harm will result to a participant or child.

4 8. Filing of a contempt action shall stay the mediation
5 proceedings under this section.

6 9. a. If a person who was a party to mediation ordered
7 under this section, with the intent to deprive another person
8 of that person's rights to visitation or custody, subsequently
9 disobeys the visitation or custody provisions of the order or
10 decree, a law enforcement officer shall issue a citation to
11 the person. The citation shall include the name and address
12 of the person, the nature of the offense, the time and place
13 at which the person is to appear in court, and the penalty for
14 nonappearance. Before the cited person is released, the
15 person shall sign the citation as a written promise to appear
16 in court at the time and place specified. A copy of the
17 citation shall be given to the person.

18 b. The law enforcement officer issuing the citation shall
19 file a complaint in the court in which the cited person is
20 required to appear, as soon as practicable, charging the
21 person with the crime of unlawful interference with custody or
22 visitation.

23 c. Upon failure of the cited person to appear in court,
24 the court shall issue an arrest warrant for the person.

25 d. A person who commits unlawful interference with custody
26 or visitation under this section commits the following
27 violation:

28 (1) For a first or second offense, the person commits a
29 scheduled violation under section 805.8, subsection 13.

30 (2) For a third or subsequent offense, the person commits
31 a serious misdemeanor.

32 10. If the interference includes concealment of the child
33 or results in the child's whereabouts being unknown to a
34 parent, in violation of the court order granting visitation or
35 parental time, without that parent's consent, the provisions

1 of section 710.6 shall apply.

2 Sec. 2. Section 602.6405, Code 1999, is amended by adding
3 the following new subsection:

4 NEW SUBSECTION. 1A. Magistrates who are admitted to the
5 practice of law in this state, have jurisdiction to exercise
6 the powers specified for magistrates and to order mediation
7 pursuant to section 598.23B.

8 Sec. 3. Section 805.8, Code 1999, is amended by adding the
9 following new subsection:

10 NEW SUBSECTION. 13. UNLAWFUL INTERFERENCE WITH CUSTODY OR
11 VISITATION. For a first violation under section 598.23B, the
12 scheduled fine is one hundred dollars. For a second violation
13 under section 598.23B, the scheduled fine is two hundred
14 dollars.

15 Sec. 4. Section 805.10, Code 1999, is amended by adding
16 the following new subsection:

17 NEW SUBSECTION. 2A. When the violation charged is
18 unlawful interference with custody or visitation under section
19 598.23B.

20 EXPLANATION

21 This bill relates to interference with custody or
22 visitation.

23 The bill establishes a process for mediation of
24 interference with custody or visitation. The process may be
25 initiated, pro se, by any party to an order or decree, by
26 submitting an application to a magistrate. Following service
27 of a copy of the application on the respondent, the respondent
28 is to reply within three days, in writing, either agreeing to
29 participate in mediation or demonstrating why mediation should
30 not be ordered. Upon the lapse of the three days, the
31 magistrate is to determine whether to order mediation. The
32 magistrate shall order mediation if there is a reasonable
33 likelihood that the parties are presently unable to resolve
34 their differences and if mediation is in the best interest of
35 the child involved. The magistrate is not to order mediation

1 if the respondent demonstrates otherwise, or if the magistrate
2 determines that harm may come to a party or the child or if
3 mediation is not in the best interest of the child.

4 The bill requires that mediation be provided by a mediator
5 approved by the court, that the mediator is subject to
6 existing law related to mediators, and that the mediator is to
7 establish the mediation schedule for the parties. If the
8 parties agree, the court may appoint a guardian ad litem for
9 the child during the mediation process.

10 If a party fails to appear for scheduled mediation without
11 good cause, the mediator is required to report the
12 nonappearance to the court and the court may enforce the order
13 through contempt.

14 Under the bill, three results may follow from completion of
15 the mediation process:

16 1. If the parties enter a mediation agreement, the
17 mediation agreement is filed with the court. If the agreement
18 does not require a modification of the custody or visitation
19 provisions of the existing order or decree, the agreement is
20 to include a provision regarding the results of any subsequent
21 interference with custody or visitation.

22 2. If the parties enter into a mediation agreement, which
23 requires the modification of the existing order or decree, the
24 agreement is to include a specific visitation schedule upon
25 which the modified order or decree is to be based, and the
26 agreement is to be attached to any petition or application for
27 modification of the order or decree. The modified order or
28 decree is to include a provision regarding the results of any
29 subsequent interference with visitation or custody.

30 3. If the parties do not enter an agreement, the mediator
31 is to file a report with the court so stating, and the report
32 is to be entered in the case file and is admissible in any
33 subsequent civil or criminal proceeding involving the custody
34 or visitation of a child. Additionally, the parties are to be
35 instructed regarding the results of any subsequent

1 interference with custody or visitation, and the report filed
2 with the court is to include a note that the instructions were
3 provided to the parties.

4 Under the bill, costs of mediation are to be paid by the
5 parties as apportioned by the court and based upon the
6 financial affidavits of the parties.

7 Filing of an application for mediation does not stay the
8 current custody or visitation provisions, unless the court
9 determines that harm will result to a child or participant.
10 Filing of a contempt action stays the mediation proceedings.

11 The bill also establishes the crime of unlawful
12 interference with visitation or custody. If a party to
13 mediation ordered under the bill, with the intent to deprive
14 another person of that person's rights to visitation or
15 custody, subsequently disobeys the visitation or custody
16 provisions of the order or decree, law enforcement shall cite
17 the person with interference with visitation or custody. The
18 law enforcement officer is to file a complaint in court based
19 upon the citation, and if the cited person fails to appear, an
20 arrest warrant is issued for the person. If the person
21 commits interference with visitation or custody, the person is
22 subject to a scheduled violation for a first offense in the
23 amount of a \$100 fine; a scheduled violation for a second
24 offense in the amount of a \$200 fine; and for a third or
25 subsequent offense, a serious misdemeanor for which the
26 punishment is a fine of at least \$250, not to exceed \$1,500,
27 which in addition may include imprisonment not to exceed one
28 year.

29 The bill also grants jurisdiction to magistrates who are
30 admitted to the practice of law in Iowa to exercise the powers
31 to order mediation as provided in the bill.

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HOUSE FILE 719

H-1311

1 Amend the amendment, H-1303, to House File 719 as
2 follows:
3 1. Page 1, line 5, by striking the words "OR
4 VISITATION" and inserting the following: ",
5 VISITATION, OR PROPERTY DIVISION".
6 2. Page 1, lines 9 and 10, by striking the words
7 "or visitation" and inserting the following: ",
8 visitation, or property division".
9 3. Page 1, lines 15 and 16, by striking the words
10 "or visitation" and inserting the following: ",
11 visitation, or property division".
12 4. Page 1, line 20, by striking the words "or
13 visitation" and inserting the following: ",
14 visitation, or property division".
15 5. Page 1, line 22, by striking the words "or
16 visitation" and inserting the following: ",
17 visitation, or property division".
18 6. Page 1, lines 25 and 26, by striking the words
19 "or visitation" and inserting the following: ",
20 visitation, or property division".
21 7. Page 2, line 1, by striking the words "or
22 visitation" and inserting the following: ",
23 visitation, or property division".
24 8. Page 2, line 4, by striking the words "or
25 visitation" and inserting the following: ",
26 visitation, or property division".
27 9. Page 2, line 17, by striking the words "or
28 visitation" and inserting the following: ",
29 visitation, or property division".
30 10. Page 2, by striking lines 22 and 23, and
31 inserting the following:
32 "4. Page 4, by striking line 26, and inserting the
33 following: "visitation, or property division under
34 this subsection commits the following"."
35 11. Page 2, by striking lines 28 through 30, and
36 inserting the following:
37 "_____. Page 5, by striking lines 10 and 11, and
38 inserting the following:
39 "NEW SUBSECTION. 13. VIOLATION OF DECREES OR
40 ORDERS FOR CUSTODY, VISITATION, OR PROPERTY DIVISION.
41 For a first violation under section 598.23B, the"."
42 12. Page 2, by striking lines 31 through 33, and
43 inserting the following:
44 "_____. Page 5, by striking line 18, and inserting
45 the following: "violation of decrees or orders for
46 custody, visitation, or property division under
47 section"."
48 13. Page 2, by striking lines 34 through 36, and
49 inserting the following:
50 "_____. Title page, by striking line 1 and

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Page 2

1 inserting the following: "An Act relating to
2 violation of decrees or orders for custody,
3 visitation, or property division, by".
4 14. Page 2, by striking lines 40 through 42, and
5 inserting the following:
6 "____. Title page, by striking line 3, and
7 inserting the following: "violation of decrees or
8 orders for custody, visitation, or property division,
9 and providing".
10 15. By renumbering as necessary.

By KREIMAN of Davis

H-1311 FILED MARCH 30, 1999

HOUSE FILE 719

H-1310

1 Amend the amendment, H-1303, to House File 719 as
2 follows:
3 1. Page 1, line 5, by striking the words "OR
4 VISITATION" and inserting the following: ",
5 VISITATION, OR SUPPORT".
6 2. Page 1, lines 9 and 10, by striking the words
7 "or visitation" and inserting the following: ",
8 visitation, or support".
9 3. Page 1, lines 15 and 16, by striking the words
10 "or visitation" and inserting the following: ",
11 visitation, or support".
12 4. Page 1, line 20, by striking the words "or
13 visitation" and inserting the following: ",
14 visitation, or support".
15 5. Page 1, line 22, by striking the words "or
16 visitation" and inserting the following: ",
17 visitation, or support".
18 6. Page 1, lines 25 and 26, by striking the words
19 "or visitation" and inserting the following: ",
20 visitation, or support".
21 7. Page 2, line 1, by striking the words "or
22 visitation" and inserting the following: ",
23 visitation, or support".
24 8. Page 2, line 4, by striking the words "or
25 visitation" and inserting the following: ",
26 visitation, or support".
27 9. Page 2, line 17, by striking the words "or
28 visitation" and inserting the following: ",
29 visitation, or support".
30 10. Page 2, by striking lines 22 and 23, and
31 inserting the following:
32 "4. Page 4, by striking line 26, and inserting the
33 following: "visitation, or support under this
34 subsection commits the following"."
35 11. Page 2, by striking lines 28 through 30, and
36 inserting the following:
37 "____. Page 5, by striking lines 10 and 11, and
38 inserting the following:
39 "NEW SUBSECTION. 13. VIOLATION OF DECREES OR
40 ORDERS FOR CUSTODY, VISITATION, OR SUPPORT. For a
41 first violation under section 598.23B, the"."
42 12. Page 2, by striking lines 31 through 33, and
43 inserting the following:
44 "____. Page 5, by striking line 18, and inserting
45 the following: "violation of decrees or orders for
46 custody, visitation, or support under section"."
47 13. Page 2, by striking lines 34 through 36, and
48 inserting the following:
49 "____. Title page, by striking line 1 and
50 inserting the following: "An Act relating to

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Page 2

- 1 violation of decrees or orders for custody,
- 2 visitation, or support, by"."
- 3 14. Page 2, by striking lines 40 through 42, and
- 4 inserting the following:
- 5 "____. Title page, by striking line 3, and
- 6 inserting the following: "violation of decrees or
- 7 orders for custody, visitation, or support, and
- 8 providing"."
- 9 15. By renumbering as necessary.

By KREIMAN of Davis

H-1310 FILED MARCH 30, 1999

HOUSE FILE 719

H-1309

1 Amend the amendment, H-1303, to House File 719 as
2 follows:
3 1. Page 1, line 5, by striking the words "OR
4 VISITATION" and inserting the following: ",
5 VISITATION, OR MEDICAL INSURANCE".
6 2. Page 1, lines 9 and 10, by striking the words
7 "or visitation" and inserting the following: ",
8 visitation, or medical insurance".
9 3. Page 1, lines 15 and 16, by striking the words
10 "or visitation" and inserting the following: ",
11 visitation, or medical insurance".
12 4. Page 1, line 20, by striking the words "or
13 visitation" and inserting the following: ",
14 visitation, or medical insurance".
15 5. Page 1, line 22, by striking the words "or
16 visitation" and inserting the following: ",
17 visitation, or medical insurance".
18 6. Page 1, lines 25 and 26, by striking the words
19 "or visitation" and inserting the following: ",
20 visitation, or medical insurance".
21 7. Page 2, line 1, by striking the words "or
22 visitation" and inserting the following: ",
23 visitation, or medical insurance".
24 8. Page 2, line 4, by striking the words "or
25 visitation" and inserting the following: ",
26 visitation, or medical insurance".
27 9. Page 2, line 17, by striking the words "or
28 visitation" and inserting the following: ",
29 visitation, or medical insurance".
30 10. Page 2, by striking lines 22 and 23, and
31 inserting the following:
32 "4. Page 4, by striking line 26, and inserting the
33 following: "visitation, or medical insurance under
34 this subsection commits the following"."
35 11. Page 2, by striking lines 28 through 30, and
36 inserting the following:
37 "____. Page 5, by striking lines 10 and 11, and
38 inserting the following:
39 "NEW SUBSECTION. 13. VIOLATION OF DECREES OR
40 ORDERS FOR CUSTODY, VISITATION, OR MEDICAL INSURANCE.
41 For a first violation under section 598.23B, the"."
42 12. Page 2, by striking lines 31 through 33, and
43 inserting the following:
44 "____. Page 5, by striking line 18, and inserting
45 the following: "violation of decrees or orders for
46 custody, visitation, or medical insurance under
47 section"."
48 13. Page 2, by striking lines 34 through 36, and
49 inserting the following:
50 "____. Title page, by striking line 1 and

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H-1309

Page 2

1 inserting the following: "An Act relating to
2 violation of decrees or orders for custody,
3 visitation, or medical insurance, by".
4 14. Page 2, by striking lines 40 through 42, and
5 inserting the following:
6 "____. Title page, by striking line 3, and
7 inserting the following: "violation of decrees or
8 orders for custody, visitation, or medical insurance,
9 and providing".
10 15. By renumbering as necessary.

By KREIMAN of Davis

H-1309 FILED MARCH 30, 1999

HOUSE FILE 719

H-1303

1 Amend House File 719 as follows:

2 1. By striking page 1, line 1, through page 4,
3 line 17, and inserting the following:

4 "Section 1. NEW SECTION. 598.23B PRO SE CONTEMPT
5 PROCEEDING -- VIOLATION OF CUSTODY OR VISITATION.

6 1. A party to an order or decree may initiate a
7 contempt of court action, pursuant to chapter 665, pro
8 se, alleging violation of a valid court order or
9 decree by another party regarding custody or
10 visitation. The application submitted shall be
11 accompanied by an affidavit, signed by the plaintiff,
12 stating the details of the violation of the order or
13 decree.

14 2. Upon a finding that the respondent has violated
15 a valid court order or decree regarding custody or
16 visitation, the court shall cite and punish the person
17 for contempt. Additionally, the court shall issue an
18 order stating that if the respondent subsequently
19 violates the court order or decree regarding custody
20 or visitation, the respondent is subject to citation
21 for violation of the court order or decree relating to
22 custody or visitation as provided in this section.
23 The plaintiff shall retain a copy of the order issued,
24 and upon the occurrence of a subsequent violation of
25 the court order or decree regarding custody or
26 visitation, shall present the copy of the order to the
27 law enforcement officer to demonstrate the prior
28 contempt of court finding against the respondent.

29 3. The department of justice shall prescribe
30 standard application forms to be used by plaintiffs
31 initiating contempt proceedings pro se under this
32 section. The forms shall include a box, which may be
33 checked by a plaintiff, indicating that the plaintiff
34 wishes to proceed but is unable to pay the cost of
35 filing and service. The forms shall also include an
36 affidavit to be completed by the plaintiff who does
37 not have sufficient funds to pay the cost of filing
38 and service. If an application is filed and service
39 is made without payment of costs, the court shall
40 determine at the hearing if payment of costs would
41 prejudice the plaintiff's financial ability to
42 proceed. The standard forms shall be the exclusive
43 forms used by plaintiffs proceeding pro se under this
44 section. The department of justice shall distribute
45 the forms to the clerks of the district courts, and
46 the clerks of the district courts shall furnish the
47 required forms to persons proceeding pro se under this
48 section.

49 4. a. If a party to an order or decree who has
50 been cited for contempt for violation of a court order

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Page 2

1 or decree regarding custody or visitation subsequently
2 violates such a court order or decree, a law
3 enforcement officer shall issue a citation to the
4 person for violation of a custody or visitation order
5 or decree upon presentation by a party of a copy of
6 the order previously issued by the court regarding
7 such previous violation. The citation shall include
8 the name and address of the person, the nature of the
9 offense, the time and place at which the person is to
10 appear in court, and the penalty for failure to
11 appear. Before the cited person may be released, the
12 person shall sign the citation as a written promise to
13 appear in court at the time and place specified. A
14 copy of the citation shall be given to the person."

15 2. Page 4, by striking lines 21 and 22 and
16 inserting the following: "person with the crime of
17 violation of a custody or visitation decree or order."

18 3. Page 4, by striking line 25 and inserting the
19 following:

20 "d. A person who commits a violation of a decree
21 or order for custody".

22 4. Page 4, line 26, by striking the word
23 "section" and inserting the following: "subsection".

24 5. Page 4, line 32, by striking the word
25 "interference" and inserting the following:
26 "violation".

27 6. Page 5, by striking lines 2 through 7.

28 7. Page 5, line 10, by striking the words
29 "UNLAWFUL INTERFERENCE WITH" and inserting the
30 following: "VIOLATION OF DECREES OR ORDERS FOR".

31 8. Page 5, line 18, by striking the words
32 "unlawful interference with" and inserting the
33 following: "violation of decrees or orders for".

34 9. Title page, line 1, by striking the words
35 "interference with" and inserting the following:
36 "violation of decrees or orders for".

37 10. Title page, line 2, by striking the word
38 "mediation" and inserting the following: "pro se
39 contempt of court proceedings".

40 11. Title page, line 3, by striking the words
41 "interference with" and inserting the following:
42 "violation of decrees or orders for".

43 12. By renumbering as necessary.

By BODDICKER of Cedar

H-1303 FILED MARCH 30, 1999

HOUSE FILE 719

H-1122

1 Amend House File 719, as follows:

2 1. By striking everything after the enacting
3 clause and inserting the following:

4 "Section 1. NEW SECTION. 598.23B MEDIATION --
5 VISITATION AND CUSTODY DISPUTES.

6 1. A parent of a child may submit an application
7 to the magistrate having jurisdiction over the parties
8 to request that an issue of interference with custody
9 or visitation as established in an order or decree be
10 set for mediation.

11 2. A copy of the application shall be served on
12 the respondent by certified mail or personal service.
13 The respondent shall have three days from the receipt
14 of service to respond in writing to the application,
15 demonstrating the reason that the issue should not be
16 set for mediation.

17 3. Upon the lapse of the three-day period, the
18 magistrate shall determine whether to order mediation.
19 The magistrate shall order mediation if the magistrate
20 determines that there is a reasonable likelihood that
21 the parents are presently unable to resolve the
22 differences cited by the parties relating to custody
23 or visitation, and that mediation is in the best
24 interest of the minor children of the parties.
25 Mediation shall only be provided by a mediator
26 approved by the court. Mediation provided under this
27 section shall comply with chapter 679C, unless
28 otherwise provided under this section.

29 4. Mediation shall be held as soon as practicable
30 after the entry of the order under subsection 3. The
31 dates, times, and frequency of the mediation sessions
32 shall be set by the mediator. At any time from the
33 initial application for mediation, and only upon
34 agreement of the parties, the magistrate may appoint a
35 guardian ad litem for the children to represent the
36 children's interest in the mediation.

37 5. Following mediation, if the parties enter into
38 a mediation agreement, the original agreement shall be
39 filed with the court and may be admissible in any
40 subsequent civil or criminal proceeding involving the
41 custody or visitation of a child, notwithstanding any
42 confidentiality provisions established by law or rule
43 of the court to the contrary.

44 6. Following mediation, if the parties do not
45 enter into a mediation agreement, the mediator shall
46 only file a report with the court relating to the
47 cooperation of the parties in participating in
48 mediation. The report may be admissible in any
49 subsequent civil or criminal proceeding involving the
50 custody or visitation of a child, notwithstanding any

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1 confidentiality provisions established by law or rule
2 of the court to the contrary.

3 7. If either party fails to appear at a scheduled
4 mediation without good cause, the mediator shall
5 report the nonappearance to the court, and the court
6 may enforce the order for mediation through contempt.

7 8. If the mediator determines that the parties are
8 unable or unwilling to meaningfully participate in the
9 mediation process or that reasonable agreement is
10 unlikely, the mediator may suspend or terminate
11 mediation and report the action to the court.

12 9. The costs of mediation shall be paid in full or
13 in part by the parties, as apportioned by the court,
14 based upon the financial affidavits of the parties.

15 10. Filing of an application for mediation under
16 this section shall not stay the decree or order
17 regarding custody or visitation.

18 11. Filing of a contempt or modification action
19 involving the children of the parties in the district
20 shall stay the mediation proceedings under this
21 section.

22 Sec. 2. Section 602.6405, Code 1999, is amended
23 by adding the following new subsection:

24 NEW SUBSECTION. 1A. Magistrates who are admitted
25 to the practice of law in this state have jurisdiction
26 to exercise the powers specified for magistrates and
27 to order mediation pursuant to section 598.23B."

28 2. Title page, by striking lines 2 through 4, and
29 inserting the following: "providing a mediation
30 process for resolution of disputes."

By KREIMAN of Davis

H-1122 FILED MARCH 18, 1999

**HOUSE FILE 719
FISCAL NOTE**

The estimate for **House File 719** is hereby submitted as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 719 creates the crime of interference with visitation or custody and provides for penalties of scheduled fines for first and second offenses and a serious misdemeanor for third and subsequent offenses. The Bill also provides for the process of mediation of interference with visitation. The Court may order mediation for parties involved in interference with visitation unless the Court determines physical or emotional harm is likely to result to the child, other children, or a parent.

ASSUPMTIONS

1. Serious misdemeanors are punishable by confinement for no more than one year or a fine of at least \$250 but no more than \$1,500.
2. Charge, conviction, and sentencing patterns will not change over the projection period.
3. Prisoner length of stay, revocation rates, and other corrections policies and practices will not change over the projection period.
4. The law will become effective July 1, 1999. A lag effect of six months is assumed, from the law's effective date to the date of first entry into the correctional system.
5. The marginal cost of adding one offender in a community-based corrections residential facility is \$14 per day. Offenders will spend four months in a residential facility.
6. The marginal cost for one offender on probation or parole is \$1.53 per day. The cost for one year on probation is \$560.
7. The cost per county jail inmate (including overhead) is approximately \$50 to \$55 a day. The marginal cost per day to house an inmate in a county jail is \$14.
8. Data is not available to estimate the length of stay in a county jail to estimate the cost to counties. However, the maximum length of stay any one person can stay in jail is 365 days. The marginal cost to house one inmate in jail for a year would be \$5,000.
9. The marginal cost per day to house an inmate in prison is \$12.

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10. The Judicial Department projects there will be 570 cases of interference with visitation or custody.
11. The number of criminal violations versus the number of serious misdemeanors that will occur as a result of this Bill cannot be determined.
12. The average cost to process a case through the Courts is \$40 for criminal violations and \$160 for serious misdemeanors.

CORRECTIONAL IMPACT

The correctional impact of House File 719 is not expected to be significant.

FISCAL IMPACT

The fiscal impact of House File 719 is not expected to be significant.

SOURCES

Judicial Department
Department of Human Rights, Division of Criminal and Juvenile Justice Planning

(LSB 1727hv, CRS)

FILED APRIL 19, 1999

BY DENNIS PROUTY, FISCAL DIRECTOR