

JAN 29 2002
HUMAN RESOURCES

HOUSE FILE 2158
BY SHEY and KREIMAN

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

A BILL FOR

1 An Act relating to the consideration of founded child abuse in
2 the awarding of custody of a child.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2158

1 Section 1. Section 598.7A, Code Supplement 2001, is
2 amended to read as follows:

3 598.7A MEDIATION.

4 1. The district court may, on its own motion or on the
5 motion of any party, order the parties to participate in
6 mediation in any dissolution of marriage action or other
7 domestic relations action. Mediation performed under this
8 section shall comply with the provisions of chapter 679C. The
9 provisions of this section shall not apply if the action
10 involves a child support or medical support obligation
11 enforced by the child support recovery unit. The provisions
12 of this section shall not apply to actions which involve
13 domestic abuse pursuant to chapter 236 or actions which
14 involve founded child abuse pursuant to section 232.71D. The
15 provisions of this section shall not affect a judicial
16 district's or court's authority to order settlement
17 conferences pursuant to rules of civil procedure. The court
18 shall, on application of a party, grant a waiver from any
19 court-ordered mediation under this section if the party
20 demonstrates that a history of domestic abuse exists as
21 specified in section 598.41, subsection 3, paragraph "j", or
22 if the party demonstrates that a history of founded child
23 abuse exists as specified in section 598.41, subsection 3,
24 paragraph "k".

25 Sec. 2. Section 598.41, subsection 1, paragraphs b, c, and
26 d, Code 2001, are amended to read as follows:

27 b. Notwithstanding paragraph "a", if the court finds that
28 a history of domestic abuse exists or a history of founded
29 child abuse exists, a rebuttable presumption against the
30 awarding of joint custody exists.

31 c. The court shall consider the denial by one parent of
32 the child's opportunity for maximum continuing contact with
33 the other parent, without just cause, a significant factor in
34 determining the proper custody arrangement. Just cause may
35 include a determination by the court pursuant to subsection 3,

1 paragraph "j", that a history of domestic abuse exists between
2 the parents or a determination by the court pursuant to
3 subsection 3, paragraph "k", that a history of founded child
4 abuse exists.

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

16 Sec. 3. Section 598.41, subsection 2, paragraphs c and d,
17 Code 2001, are amended to read as follows:

18 c. A finding by the court that a history of domestic abuse
19 exists, as specified in subsection 3, paragraph "j", or a
20 finding by the court that a history of founded child abuse
21 exists, as specified in subsection 3, paragraph "k", which is
22 not rebutted, shall outweigh consideration of any other factor
23 specified in subsection 3 in the determination of the awarding
24 of custody under this subsection.

25 d. Before ruling upon the joint custody petition in these
26 cases, unless the court determines that a history of domestic
27 abuse exists as specified in subsection 3, paragraph "j", or
28 unless the court determines that a history of founded child
29 abuse exists as specified in subsection 3, paragraph "k", or
30 unless the court determines that direct physical harm or
31 significant emotional harm to the child, other children, or a
32 parent is likely to result, the court may require the parties
33 to participate in custody mediation to determine whether joint
34 custody is in the best interest of the child. The court may
35 require the child's participation in the mediation insofar as

1 the court determines the child's participation is advisable.

2 Sec. 4. Section 598.41, subsection 3, Code 2001, is
3 amended by adding the following new paragraph:

4 NEW PARAGRAPH. k. Whether a history of founded child
5 abuse pursuant to section 232.71D exists.

6 Sec. 5. Section 598.41, subsection 8, Code 2001, is
7 amended to read as follows:

8 8. If an application for modification of a decree or a
9 petition for modification of an order is filed, based upon
10 differences between the parents regarding the custody
11 arrangement established under the decree or order, unless the
12 court determines that a history of domestic abuse exists as
13 specified in subsection 3, paragraph "j", or unless the court
14 determines that a history of founded child abuse exists as
15 specified in subsection 3, paragraph "k", or unless the court
16 determines that direct physical harm or significant emotional
17 harm to the child, other children, or a parent is likely to
18 result, the court may require the parents to participate in
19 mediation to attempt to resolve the differences between the
20 parents.

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EXPLANATION

22 This bill provides that a history of founded child abuse,
23 as is currently the case with a history of domestic abuse, is
24 to be a consideration in the awarding of custody of a child.
25 The bill provides in addition to a history of domestic abuse,
26 if a history of founded child abuse exists, a rebuttable
27 presumption against the awarding of joint custody exists.

28 Current law provides that the court is to consider the
29 denial by one parent of the opportunity for maximum continuing
30 contact with the other parent, without just cause, a
31 significant factor in the awarding of custody. Under the
32 bill, "just cause" would include a determination by the court
33 that a history of founded child abuse exists.

34 The bill also provides that if a history of founded child
35 abuse exists, the court shall not consider the relocation or

1 absence of the parent who is not the perpetrator of the
2 founded child abuse as a factor against that parent in the
3 awarding of custody or visitation.

4 Under the bill, a finding by the court that a history of
5 founded child abuse exists, which is not rebutted, outweighs
6 consideration of any other factor specified to be considered
7 by the court in the determination of the awarding of custody
8 when the parents do not agree to joint custody.

9 The bill provides that before ruling upon the joint custody
10 petition in cases in which the parents do not agree to joint
11 custody, in addition to other contingences, unless the court
12 determines that a history of founded child abuse exists, the
13 court may require the parties to participate in custody
14 mediation to determine whether joint custody is in the best
15 interest of the child.

16 The bill requires that one of the factors that the court is
17 to consider when determining if the custody arrangement is in
18 the best interest of the child is whether a history of founded
19 child abuse exists.

20 The bill also provides that if an application for
21 modification of a decree or a petition for modification of an
22 order is filed, based upon differences between the parents
23 regarding the custody arrangement established under the decree
24 or order, the court may require the parents to participate in
25 mediation to attempt to resolve the differences between the
26 parents unless, in addition to existing considerations, the
27 court determines that a history of founded child abuse exists.

28 The bill also makes a conforming change relating to
29 mediation in domestic relations proceedings to provide for
30 consideration of a history of founded child abuse in the
31 decision to order the mediation.

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