

Senate File 315 - Introduced

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

A BILL FOR

1 An Act relating to joint physical care of children in dissolution
2 cases and establishing a rebuttable presumption that a request
3 for joint physical care is in the best interest of the child.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 2608XS 82
6 pf/cf/24

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1 1 Section 1. Section 598.41, subsection 5, paragraph a, Code
1 2 2007, is amended to read as follows:
1 3 a. If joint legal custody is awarded to both parents, the
1 4 court may award joint physical care to both joint custodial
1 5 parents upon the request of either parent during the
1 6 proceedings on the initial dissolution petition or during the
1 7 proceedings on a modification of the original custody order.
1 8 A rebuttable presumption exists that a request for joint
1 9 physical care by either parent is in the best interest of the
1 10 child, the burden of proof to rebut the presumption rests on
1 11 the party denying that joint physical care is in the best
1 12 interest of the child, and such party shall demonstrate that
1 13 joint physical care is not in the best interest of the child
1 14 by clear and convincing evidence. Prior to ruling on the
1 15 request for the award of joint physical care, the court may
1 16 require the parents to submit, either individually or jointly,
1 17 a proposed joint physical care parenting plan. A proposed
1 18 joint physical care parenting plan shall address how the
1 19 parents will make decisions affecting the child, how the
1 20 parents will provide a home for the child, how the child's
1 21 time will be divided between the parents and how each parent
1 22 will facilitate the child's time with the other parent,
1 23 arrangements in addition to court-ordered child support for
1 24 the child's expenses, how the parents will resolve major
1 25 changes or disagreements affecting the child including changes
1 26 that arise due to the child's age and developmental needs, and
1 27 any other issues the court may require. If the court finds by
1 28 clear and convincing evidence that joint physical care is not
1 29 in the best interest of the child and denies the request for
1 30 joint physical care, the determination shall be accompanied by
1 31 specific findings of fact and conclusions of law that the
1 32 awarding of joint physical care is not in the best interest of
1 33 the child. In determining the best interest of the child
1 34 relative to the denial of a request for joint physical care,
1 35 the court shall consider that the best interest of the child
2 1 includes the opportunity for maximum continuous physical and
2 2 emotional contact possible with both parents, unless direct
2 3 physical or significant emotional harm to the child may result
2 4 from this contact.

EXPLANATION

2 5 This bill provides that in awarding joint physical care to
2 6 parents under the dissolution of marriage chapter, joint
2 7 physical care may be awarded to both parents based upon a
2 8 request by either parent either during the proceedings on the
2 9 initial dissolution petition or during the proceedings on a
2 10 modification of the original custody order. The bill creates
2 11 a rebuttable presumption that a request for joint physical
2 12 care by either parent is in the best interest of the child,
2 13 places the burden of proof to rebut the presumption on the
2 14 party denying that joint physical care is in the best interest
2 15 of the child, and requires such party to demonstrate that
2 16 joint physical care is not in the best interest of the child
2 17

2 18 by clear and convincing evidence. The bill also requires that
2 19 if the court denies joint physical care, the court must base
2 20 the findings on clear and convincing evidence. In determining
2 21 the best interest of the child relative to the denial of a
2 22 request for joint physical care, the court is required to
2 23 consider that the best interest of the child includes the
2 24 opportunity for maximum continuous physical and emotional
2 25 contact possible with both parents, unless direct physical or
2 26 significant emotional harm to the child may result from this
2 27 contact.
2 28 LSB 2608XS 82
2 29 pf:rj/cf/24.1