

House File 71 - Introduced

HOUSE FILE 71

BY MOMMSEN

A BILL FOR

1 An Act relating to the preference for joint custody and joint
2 physical care of a child in awarding custody.

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

1 Section 1. Section 598.41, subsection 1, paragraph a, Code
2 2017, is amended to read as follows:

3 a. The court ~~may~~ shall provide for joint custody of the
4 child by the parties. The court, insofar as is reasonable and
5 in the best interest of the child, shall order the custody
6 award, including liberal visitation rights where appropriate,
7 which will assure the child the opportunity for the maximum
8 continuing physical and emotional contact with both parents
9 after the parents have separated or dissolved the marriage,
10 and which will encourage parents to share the rights and
11 responsibilities of raising the child unless direct physical
12 harm or significant emotional harm to the child, other
13 children, or a parent is likely to result from such contact
14 with one parent.

15 Sec. 2. Section 598.41, subsection 2, paragraph a, Code
16 2017, is amended to read as follows:

17 a. ~~On~~ Notwithstanding subsection 1, paragraph "a", upon
18 the application of either parent opposing joint custody, the
19 court shall consider granting joint custody in cases where the
20 parents do not agree to joint custody the factors specified in
21 subsection 3 to determine if joint custody is reasonable and in
22 the best interest of the child.

23 Sec. 3. Section 598.41, subsection 5, paragraph a, Code
24 2017, is amended to read as follows:

25 a. If joint legal custody is awarded to both parents,
26 the court ~~may~~ shall award joint physical care to both joint
27 custodial parents upon the request of either parent, unless
28 the court determines that joint physical care is not in the
29 best interest of the child. Prior to ~~ruling on the request~~
30 ~~for the award of~~ awarding joint physical care, the court
31 may require the parents to submit, either individually or
32 jointly, a proposed joint physical care parenting plan. A
33 proposed joint physical care parenting plan shall address how
34 the parents will make decisions affecting the child, how the
35 parents will provide a home for the child, how the child's

1 time will be divided between the parents and how each parent
2 will facilitate the child's time with the other parent,
3 arrangements in addition to court-ordered child support for the
4 child's expenses, how the parents will resolve major changes or
5 disagreements affecting the child including changes that arise
6 due to the child's age and developmental needs, and any other
7 issues the court may require. If the court denies the request
8 for joint physical care, the determination shall be accompanied
9 by specific findings of fact and conclusions of law that the
10 awarding of joint physical care is not in the best interest of
11 the child.

12 EXPLANATION

13 The inclusion of this explanation does not constitute agreement with
14 the explanation's substance by the members of the general assembly.

15 This bill directs that the court shall, rather than may as
16 under current law, award joint custody to both parties unless
17 direct physical harm or significant emotional harm to the
18 child, other children, or a parent is likely to result from
19 such contact with one parent. Notwithstanding the requirement
20 of awarding joint custody to both parents, upon application of
21 either parent opposing joint custody, the court shall consider
22 the factors specified for determining the best interest of the
23 child to determine if joint custody is reasonable and in the
24 best interest of the child.

25 The bill also provides that if joint custody is awarded,
26 joint physical care shall, rather than may as under current
27 law, be awarded to both parents unless the court determines
28 that joint physical care is not in the best interest of the
29 child.