

Senate File 2374 - Introduced

SENATE FILE 2374
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 3154)

A BILL FOR

1 An Act relating to the awarding of joint custody and joint
2 physical care.

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

1 Section 1. Section 598.7, subsection 1, Code 2018, is
2 amended to read as follows:

3 1. The district court may, on its own motion or on the
4 motion of any party, order the parties to participate in
5 mediation in any dissolution of marriage action or other
6 domestic relations action. Mediation performed under this
7 section shall comply with the provisions of [chapter 679C](#).
8 The provisions of [this section](#) shall not apply if the action
9 involves a child support or medical support obligation
10 enforced by the child support recovery unit. The provisions
11 of [this section](#) shall not apply to actions which involve elder
12 abuse pursuant to [chapter 235F](#) or domestic abuse pursuant
13 to [chapter 236](#). The provisions of [this section](#) shall not
14 affect a judicial district's or court's authority to order
15 settlement conferences pursuant to rules of civil procedure.
16 The court shall, on application of a party, grant a waiver
17 from any court-ordered mediation under [this section](#) if the
18 party demonstrates that a history of domestic abuse exists as
19 specified in [section 598.41, subsection 3, paragraph "j" "i"](#).

20 Sec. 2. Section 598.41, subsection 1, paragraphs a, c, and
21 d, Code 2018, are amended to read as follows:

22 a. The court may provide for joint legal custody of the
23 child by the parties. The court, insofar as is reasonable and
24 in the best interest of the child, shall order the custody
25 award, including liberal visitation rights where appropriate,
26 which will assure the child the opportunity for the maximum
27 continuing physical and emotional contact with both parents
28 after the parents have separated or dissolved the marriage,
29 and which will encourage parents to share the rights and
30 responsibilities of raising the child unless direct physical
31 harm or significant emotional harm to the child, other
32 children, or a parent is likely to result from such contact
33 with one parent.

34 c. The court shall consider the denial by one parent of
35 the child's opportunity for maximum continuing contact with

1 the other parent, without just cause, a significant factor in
2 determining the proper custody arrangement. Just cause may
3 include a determination by the court pursuant to subsection
4 3, paragraph "j" "i", that a history of domestic abuse exists
5 between the parents.

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

14 Sec. 3. Section 598.41, subsection 2, paragraphs c and d,
15 Code 2018, are amended to read as follows:

16 *c.* A finding by the court that a history of domestic abuse
17 exists, as specified in subsection 3, paragraph "j" "i", which
18 is not rebutted, shall outweigh consideration of any other
19 factor specified in subsection 3 in the determination of the
20 awarding of custody under this subsection.

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

31 Sec. 4. Section 598.41, subsection 3, Code 2018, is amended
32 to read as follows:

33 3. In considering what custody arrangement under subsection
34 2 is in the best interest of the minor child, the court shall
35 consider the following factors:

- 1 *a.* Whether each parent would be a suitable custodian for the
2 child.
- 3 *b.* Whether the psychological and emotional needs and
4 development of the child will suffer due to lack of active
5 contact with and attention from both parents.
- 6 *c.* Whether the parents can communicate with each other
7 regarding the child's needs.
- 8 *d.* Whether both parents have actively cared for the child
9 before and since the separation.
- 10 *e.* Whether each parent can support the other parent's
11 relationship with the child.
- 12 *f.* Whether the custody arrangement is in accord with the
13 child's wishes or whether the child has strong opposition,
14 taking into consideration the child's age and maturity.
- 15 ~~*g.* Whether one or both the parents agree or are opposed to
16 joint custody.~~
- 17 ~~*h.*~~ *g.* The geographic proximity of the parents.
- 18 ~~*i.*~~ *h.* Whether the safety of the child, other children, or
19 the other parent will be jeopardized by the awarding of joint
20 custody or by unsupervised or unrestricted visitation.
- 21 ~~*j.*~~ *i.* Whether a history of domestic abuse, as defined in
22 section 236.2, exists. In determining whether a history of
23 domestic abuse exists, the court's consideration shall include
24 but is not limited to commencement of an action pursuant to
25 section 236.3, the issuance of a protective order against the
26 parent or the issuance of a court order or consent agreement
27 pursuant to [section 236.5](#), the issuance of an emergency order
28 pursuant to [section 236.6](#), the holding of a parent in contempt
29 pursuant to [section 664A.7](#), the response of a peace officer to
30 the scene of alleged domestic abuse or the arrest of a parent
31 following response to a report of alleged domestic abuse, or
32 a conviction for domestic abuse assault pursuant to section
33 708.2A.
- 34 ~~*k.*~~ *j.* Whether a parent has allowed a person custody or
35 control of, or unsupervised access to a child after knowing

1 the person is required to register or is on the sex offender
2 registry as a sex offender under [chapter 692A](#).

3 Sec. 5. Section 598.41, subsection 5, paragraph a, Code
4 2018, is amended to read as follows:

5 ~~a. If The awarding of joint legal custody is awarded to both~~
6 ~~parents, the court may award creates a rebuttable presumption~~
7 ~~in favor of the awarding of joint physical care to both joint~~
8 ~~custodial parents upon the request of either parent. Prior to~~
9 ~~ruling on the request for the award of joint physical care,~~
10 ~~the. The court may shall require the parents to submit,~~
11 either individually or jointly, a proposed joint physical care
12 parenting plan. A proposed joint physical care parenting plan
13 shall address how the parents will make decisions affecting the
14 child, how the parents will provide a home for the child, how
15 the child's time will be divided between the parents and how
16 each parent will facilitate the child's time with the other
17 parent, arrangements in addition to court-ordered child support
18 for the child's expenses, how the parents will resolve major
19 changes or disagreements affecting the child including changes
20 that arise due to the child's age and developmental needs,
21 and any other issues the court may require. If the court
22 ~~denies the request for~~ does not award joint physical care,
23 ~~the determination shall be accompanied by specific findings~~
24 ~~of fact and conclusions of law~~ court shall cite clear and
25 convincing evidence that the awarding of joint physical care
26 is unreasonable and not in the best interest of the child, to
27 the extent that the joint physical care relationship between
28 the child and each parent should not be equal. A finding by the
29 court that a history of child abuse or neglect exists relative
30 to the child is sufficient to rebut the presumption in favor of
31 the awarding of joint physical care.

32 Sec. 6. Section 598.41, subsection 8, Code 2018, is amended
33 to read as follows:

34 8. If an application for modification of a decree or
35 a petition for modification of an order is filed, based

1 upon differences between the parents regarding the custody
2 arrangement established under the decree or order, unless the
3 court determines that a history of domestic abuse exists as
4 specified in subsection 3, paragraph ~~"j"~~ "i", or unless the
5 court determines that direct physical harm or significant
6 emotional harm to the child, other children, or a parent
7 is likely to result, the court may require the parents to
8 participate in mediation to attempt to resolve the differences
9 between the parents.

10

EXPLANATION

11

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

12

13

This bill relates to the awarding of custody of a child.

14

The bill amends the factors upon which the court determines
15 the custody arrangement that is in the best interest of the
16 child by eliminating the factor of whether one or both of the
17 parents agree or are opposed to joint custody.

18

The bill establishes a rebuttable presumption in favor of
19 the awarding of joint physical care if the court awards joint
20 legal custody to both parents, and requires the parents to
21 submit a joint physical care parenting plan. If the court does
22 not award joint physical care, the bill requires the court to
23 cite clear and convincing evidence that the awarding of joint
24 physical care is unreasonable and not in the best interest
25 of the child, to the extent that the joint physical care
26 relationship between the child and each parent should not be
27 equal. A finding by the court that a history of child abuse or
28 neglect exists relative to the child is sufficient to rebut the
29 presumption in favor of the awarding of joint physical care.

30

The bill makes conforming changes in the Code due to the
31 elimination of the factor of whether one or both of the parents
32 agree or are opposed to joint custody relative to determining
33 the best interest of the child.