

House File 195 - Reprinted

HOUSE FILE 195
BY COMMITTEE ON VETERANS
AFFAIRS

(SUCCESSOR TO HF 66)

(As Amended and Passed by the House March 1, 2011)

A BILL FOR

1 An Act relating to assignment of visitation or physical care
2 parenting time for children of military service members on
3 active duty and including effective date provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 598.41D, Code 2011, is amended to read
2 as follows:

3 **598.41D Assignment of visitation or physical care parenting**
4 **time — parent serving active duty — family member.**

5 1. Notwithstanding any provision to the contrary, a parent
6 who has been granted court-ordered visitation with the parent's
7 minor child may file an application for modification of a
8 decree or a petition for modification of an order regarding
9 child visitation, prior to or during the time the parent is
10 serving active duty in the military service of the United
11 States, to temporarily assign that parent's visitation ~~rights~~
12 to a family member of the minor child, as specified by the
13 parent. The application or petition shall be accompanied by an
14 affidavit from the family member indicating the family member's
15 knowledge of the application or petition and willingness to
16 exercise the parent's visitation ~~rights~~ during the parent's
17 absence. The application or petition shall also request
18 any change in the visitation schedule necessitated by the
19 assignment.

20 2. Notwithstanding any provision to the contrary, a
21 parent who has been granted court-ordered physical care or
22 joint physical care of the parent's minor child may file an
23 application for modification of a decree or a petition for
24 modification of an order regarding child custody, prior to
25 or during the time the parent is serving active duty in the
26 military service of the United States, to temporarily assign
27 the parent's physical care parenting time to a family member of
28 the minor child, as specified by the parent. The application
29 or petition shall be accompanied by an affidavit from the
30 family member indicating the family member's knowledge of
31 the application or petition and willingness to exercise the
32 parent's physical care parenting time during the parent's
33 absence. The application or petition shall also request
34 any change in the physical care parenting time schedule
35 necessitated by the assignment.

1 ~~2.~~ 3. a. If the active duty of a parent affects the
2 parent's ability or anticipated ability to appear at a
3 regularly scheduled hearing, the court shall provide for an
4 expedited hearing in matters instituted under this section.

5 b. If the active duty or anticipated active duty of a parent
6 prevents the parent from appearing in person at a hearing, the
7 court shall provide, upon reasonable advance notice, for the
8 parent to present testimony and evidence by electronic means
9 in matters instituted under this section. For the purposes of
10 this paragraph, "*electronic means*" includes communication by
11 telephone, video teleconference, or the internet.

12 ~~3.~~ 4. a. The court may grant the parent's request for
13 temporary assignment of visitation or physical care parenting
14 time and any change in the visitation or physical care
15 parenting time schedule requested if the court finds that such
16 assignment of visitation or physical care parenting time is in
17 the best interest of the child.

18 b. In determining the best interest of the child, the court
19 shall ensure all of the following:

20 (1) That the specified family member is not a sex offender
21 as defined in section 692A.101.

22 (2) That the specified family member does not have a history
23 of domestic abuse, as defined in section 236.2. In determining
24 whether a history of domestic abuse exists, the court's
25 consideration shall include but is not limited to commencement
26 of an action pursuant to section 236.3, the issuance of a
27 protective order against the individual or the issuance of a
28 court order or consent agreement pursuant to section 236.5,
29 the issuance of an emergency order pursuant to section 236.6,
30 the holding of an individual in contempt pursuant to section
31 664A.7, the response of a peace officer to the scene of
32 alleged domestic abuse or the arrest of an individual following
33 response to a report of alleged domestic abuse, or a conviction
34 for domestic abuse assault pursuant to section 708.2A.

35 (3) That the specified family member does not have a record

1 of founded child or dependent adult abuse.

2 (4) That the specified family member has an established
3 relationship with the child and assigning visitation or
4 physical care parenting time to the specified family member
5 will provide the child the opportunity to maintain an ongoing
6 family relationship that is important to the child.

7 (5) That the specified family member ~~is able~~ demonstrates
8 an ability to personally and financially support the child
9 and will support the child's relationship with both of the
10 child's parents during the assigned visitation or physical care
11 parenting time.

12 ~~4.~~ 5. An order granting assignment of visitation ~~rights~~
13 or physical care parenting time under this section does not
14 create separate rights to visitation or physical care parenting
15 time for a person other than the parent. An order granting
16 assignment of visitation or physical care parenting time under
17 this section does not grant any custodial or parental rights to
18 any person who is not the parent of the child.

19 6. An order granted under this section may temporarily
20 assign visitation or physical care parenting time that is equal
21 to or less than the visitation or physical care parenting
22 time awarded to the parent whose visitation or physical care
23 parenting time is assigned.

24 ~~5.~~ 7. The parent whose visitation ~~rights are~~ or physical
25 care parenting time is temporarily assigned shall provide a
26 copy of the order granting assignment of visitation or physical
27 care parenting time to the school and school district of the
28 child to whom the order applies.

29 ~~6.~~ 8. An order granting temporary assignment of visitation
30 ~~rights~~ or physical care parenting time pursuant to this section
31 shall terminate upon notification of the court by the parent
32 or automatically upon the parent's completion of active duty,
33 whichever occurs first.

34 ~~7.~~ 9. After a parent completes active duty, if an
35 application for modification of a decree or a petition for

1 modification of an order is filed, the parent's absence due
2 to active duty or the assignment of visitation ~~rights~~ or
3 physical care parenting time does not constitute a substantial
4 change in circumstances, and the court shall not consider a
5 parent's absence due to that active duty or the assignment of
6 visitation ~~rights~~ or physical care parenting time in making a
7 determination regarding the best interest of the child relative
8 to such an application or petition filed after a parent
9 completes active duty.

10 ~~8.~~ 10. As used in this section, "*active duty*" means active
11 military duty pursuant to orders issued under Tit. X of the
12 United States Code. However, this section shall not apply to
13 active guard and reserve duty or similar full-time military
14 duty performed by a parent when the child remains in actual
15 custody of the parent.

16 11. As used in this section, "*parenting time*" means actual
17 time spent with the child as specified in a decree or order,
18 but does not include any other element of legal custody,
19 physical care, or joint physical care.

20 Sec. 2. EFFECTIVE UPON ENACTMENT. This Act, being deemed of
21 immediate importance, takes effect upon enactment.