SENATE FILE 571
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SF 11)

(As Amended and Passed by the Senate March 10, 2020)

_____ and [= New Language by the Senate

A BILL FOR

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

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

Section 1. Section 598.7, subsection 1, Code 2020, is amended to read as follows:

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

Sec. 2. Section 598.41, subsection 1, paragraphs a, c, and d, Code 2020, are amended to read as follows:

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

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

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

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

Sec. 3. Section 598.41, subsection 2, paragraphs c and d, Code 2020, are amended to read as follows:

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

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

Sec. 4. Section 598.41, subsection 3, Code 2020, is amended to read as follows:

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

a. Whether each parent would be a suitable custodian for the child.

b. Whether the psychological and emotional needs and development of the child will suffer due to lack of active contact with and attention from both parents.

c. Whether the parents can communicate with each other regarding the child's needs.

d. Whether both parents have actively cared for the child before and since the separation.

e. Whether each parent can support the other parent's relationship with the child.

f. Whether the custody arrangement is in accord with the child's wishes or whether the child has strong opposition, taking into consideration the child's age and maturity.

~~*g. Whether one or both of the parents agree or are opposed to joint custody.*~~

~~*h.*~~ *g.* The geographic proximity of the parents.

~~*i.*~~ *h.* Whether the safety of the child, other children, or the other parent will be jeopardized by the awarding of joint custody or by unsupervised or unrestricted visitation.

~~*j.*~~ *i.* Whether a history of domestic abuse, as defined in section 236.2, exists. In determining whether a history of domestic abuse exists, the court's consideration shall include but is not limited to commencement of an action pursuant to section 236.3, the issuance of a protective order against the parent or the issuance of a court order or consent agreement pursuant to section 236.5, the issuance of an emergency order pursuant to section 236.6, the holding of a parent in contempt pursuant to section 664A.7, the response of a peace officer to the scene of alleged domestic abuse or the arrest of a parent following response to a report of alleged domestic abuse, or a conviction for domestic abuse assault pursuant to section 708.2A.

~~*k.*~~ *j.* Whether a parent has allowed a person custody or control of, or unsupervised access to a child after knowing

the person is required to register or is on the sex offender registry as a sex offender under chapter 692A.

Sec. 5. Section 598.41, subsection 5, paragraph a, Code 2020, is amended to read as follows:

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

Sec. 6. Section 598.41, subsection 8, Code 2020, is amended to read as follows:

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

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

Sec. 7. Section 633.560A, subsection 1, Code 2020, is amended to read as follows:

1. The district court may, on its own motion or on the motion of any party, order the parties to participate in mediation in any guardianship or conservatorship action. Mediation performed under this section shall comply with the provisions of chapter 679C. The court shall, upon application of a party, grant a waiver from any court-ordered mediation under this section if the party demonstrates that a history of domestic abuse exists similarly as considered in section 598.41, subsection 3, paragraph ~~"j"~~ "i". The court may, upon application of a party, grant a waiver from any court-ordered mediation if the action involves elder abuse pursuant to chapter 235F.