

FEB 19 2001
JUDICIARY

HOUSE FILE 302
BY BODDICKER

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

A BILL FOR

1 An Act relating to the award of joint physical care of a child.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 302

1 Section 1. Section 598.41, subsection 3, paragraph d, Code
2 2001, is amended to read as follows:

3 d. Whether The extent to which both parents have actively
4 cared for the child before and since the separation and which
5 custody arrangement would best preserve the relationship,
6 which existed prior to the separation, between each parent and
7 the child.

8 Sec. 2. Section 598.41, subsection 5, Code 2001, is
9 amended to read as follows:

10 5. a. Joint physical care may be in the best interest of
11 the child, but joint legal custody does not require joint
12 physical care.

13 b. On the application of either parent, the court shall
14 consider granting joint physical care in cases where the
15 parents do not agree to joint physical care.

16 c. When the court determines such action would be in the
17 best interest of the child and would preserve the relationship
18 between each parent and the child, joint physical care may be
19 awarded to both joint custodial parents or physical care may
20 be awarded to one joint custodial parent. In determining
21 which physical care arrangement is in the best interest of the
22 minor child, the court shall consider the factors in
23 subsection 3 and shall also consider which physical care
24 arrangement would best preserve the relationship, which
25 existed prior to the separation between each parent and the
26 child.

27 d. If the court does not award joint physical care, the
28 court shall cite clear and convincing evidence, pursuant to
29 the factors in subsection 3 and in paragraph "c" of this
30 subsection, that joint physical care is unreasonable and not
31 in the best interest of the child.

32 e. If one joint custodial parent is awarded physical care,
33 the parent responsible for providing physical care shall
34 support the other parent's relationship with the child.
35 Physical care awarded to one parent does not affect the other

1 parent's rights and responsibilities as a joint legal
2 custodian of the child. Rights and responsibilities as joint
3 legal custodian of the child include, but are not limited to,
4 equal participation in decisions affecting the child's legal
5 status, medical care, education, extracurricular activities,
6 and religious instruction.

7 f. This section shall not apply to the award of physical
8 care if the parents agree to joint physical care and if the
9 court determines through inquiry that the agreement is made
10 voluntarily and intelligently.

11 EXPLANATION

12 This bill relates to the awarding of joint physical care of
13 a child. The bill provides that on application of either
14 parent, the court is to consider the awarding of joint
15 physical care in cases where the parents do not agree to joint
16 physical care. The bill directs the court to consider the
17 factors currently used by the court in the awarding of legal
18 custody and, in addition, to consider which physical care
19 arrangement would best preserve the relationship, which
20 existed prior to the separation, between each parent and the
21 child. The bill provides that if the court does not award
22 joint physical care, the court is to cite clear and convincing
23 evidence, based on the factors used in its determination, that
24 joint physical care is unreasonable and not in the best
25 interest of the child. The provisions of the bill do not
26 apply if the parents agree to joint physical care and if the
27 court determines through inquiry that the agreement is made
28 voluntarily and intelligently.

29 The bill also amends the subsection relating to the factors
30 to be considered in an award of legal custody to provide that
31 the court is to consider not only the extent to which both
32 parents have actively cared for the child before, during, and
33 since the separation, but also the court is to consider which
34 custody arrangement would best preserve the relationship which
35 existed prior to the separation between each parent and the

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