

MAR 21 2001
Place On Calendar

S-3/26/01 Judiciary
S-3/26/02 Amend/Do Pass
W/SS158

S-3/21/02 UNFINISHED BUSINESS CALENDAR

HOUSE FILE 678
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HF 482)

Passed House, ^(P. 872) Date 3-26-01
Vote: Ayes 82 Nays 16

Passed Senate, ^(P. 831) Date 3-27-02
Vote: Ayes 46 Nays 0

Approved VETED 5/9/02

^(P. 1202) Rescinded 4-8-02
Vote 79-15

^(P. 1118) 4-11-02
Vote 27-22

A BILL FOR

1 An Act relating to child custody and visitation including the
2 requirement of mediation when a custody arrangement is
3 disputed.

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

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HOUSE FILE 678

S-5158

1 Amend House File 678, as passed by the House, as
2 follows:

3 1. Page 1, line 1, by inserting after the word
4 "Code" the following: "Supplement".

By COMMITTEE ON JUDICIARY

O. GENE MADDOX, Chairperson

S-5158 FILED MARCH 13, 2002

Adopted
3-27-02 ^(P. 831)

HF 678

RACMBJAO 220

1 Section 1. Section 598.7A, Code 2001, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 6. Notwithstanding the provisions of this
4 section providing discretion to the court in ordering
5 mediation, unless the court determines that a history of
6 domestic abuse exists as specified in section 598.41,
7 subsection 3, paragraph "j", or unless the court determines
8 that direct physical harm or significant emotional harm to the
9 child, other children, or a parent is likely to result, the
10 court shall require the parties to participate in mediation in
11 any dissolution of marriage action or other domestic relations
12 action which involves custody of a child. The participation
13 in mediation required under this subsection shall include
14 receiving assistance in the completion of a parenting
15 agreement between the parties that specifies the details of
16 visitation.

17 Sec. 2. Section 598.41, subsection 2, paragraph d, Code
18 2001, is amended to read as follows:

19 d. Before ruling upon the joint custody petition in these
20 cases, unless the court determines that a history of domestic
21 abuse exists as specified in subsection 3, paragraph "j", or
22 unless the court determines that direct physical harm or
23 significant emotional harm to the child, other children, or a
24 parent is likely to result, the court may shall require the
25 parties to participate in custody mediation to determine
26 whether joint custody is in the best interest of the child.
27 The participation in mediation required under this paragraph
28 shall include receiving assistance in the completion of a
29 parenting agreement between the parties that specifies the
30 details of visitation. The court may require the child's
31 participation in the mediation insofar as the court determines
32 the child's participation is advisable.

33 Sec. 3. Section 598.41, subsection 8, Code 2001, is
34 amended to read as follows:

35 8. If an application for modification of a decree or a

1 petition for modification of an order is filed, based upon
2 differences between the parents regarding the custody
3 arrangement established under the decree or order, unless the
4 court determines that a history of domestic abuse exists as
5 specified in subsection 3, paragraph "j", or unless the court
6 determines that direct physical harm or significant emotional
7 harm to the child, other children, or a parent is likely to
8 result, the court may shall require the parents to participate
9 in mediation to attempt to resolve the differences between the
10 parents. The participation in mediation required under this
11 subsection shall include receiving assistance in the
12 modification of a parenting agreement between the parties, if
13 applicable, that specifies the details of visitation.

14 Sec. 4. Section 598.41, Code 2001, is amended by adding
15 the following new subsections:

16 NEW SUBSECTION. 9. The supreme court shall prescribe a
17 model parenting agreement form to be used in establishing the
18 visitation provisions of a temporary or final custody award or
19 in modifying the visitation provisions of a temporary or final
20 custody award. The court shall also prescribe rules for
21 enforcement of parenting agreements.

22 NEW SUBSECTION. 10. The supreme court shall prescribe
23 standard forms to be used by a party seeking enforcement of a
24 parenting agreement by proceeding pro se. The form shall be
25 accompanied by information necessary to assist the party in
26 proceeding pro se including but not limited to information
27 regarding completion of the form, filing a petition or other
28 necessary pleadings, presenting evidence to the court, and
29 enforcing the orders of the court relating to the parenting
30 agreement.

31 EXPLANATION

32 This bill provides for mandatory participation in mediation
33 in proceedings relating to custody of a child. The bill
34 requires mediation in dissolution of marriage and other
35 domestic relations actions which involve custody of a child.

1 The bill also provides that in the determination of a custody
2 arrangement, whether initially or at the time of modification
3 of a decree or order, if the parents do not agree, the court
4 is required to order the parents to participate in mediation
5 to resolve their differences. The requirement does not apply
6 if the court determines that a history of domestic abuse
7 exists or if the court determines that direct physical harm or
8 significant emotional harm to the child, other children, or a
9 parent is likely to result.

10 The bill also provides that mediation is to include
11 assistance with completion or modification of a parenting
12 agreement, as applicable. The bill directs the supreme court
13 to prescribe a model parenting agreement form and to prescribe
14 rules for enforcement of a parenting agreement. The bill also
15 directs the supreme court to prescribe standard forms for
16 parties proceeding pro se in parenting agreement enforcement
17 actions and to provide information necessary to assist the
18 party in proceeding pro se.

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HOUSE FILE 678

H-1326

- 1 Amend House File 678 as follows:
- 2 1. Page 1, by inserting after line 16, the
- 3 following:
- 4 "Sec. ____ . Section 598.17, Code 2001, is amended
- 5 by adding the following new unnumbered paragraph:
- 6 NEW UNNUMBERED PARAGRAPH. A decree dissolving the
- 7 marriage shall include a finding that states the name
- 8 and age of each minor child by date of birth whose
- 9 welfare may be affected by the dissolution. The
- 10 decree shall also include a finding that states
- 11 whether the wife is pregnant."
- 12 2. Title page, line 1, by inserting after the
- 13 word "to" the following: "parents and children
- 14 including provisions relating to".
- 15 3. By renumbering as necessary.

Not German 3/26/01 (p. 872)

By KREIMAN of Davis
RICHARDSON of Warren

H-1326 FILED MARCH 22, 2001

HOUSE FILE 678

S-5246

1 Amend House File 678, as passed by the House, as
2 follows:

3 1. Page 1, by inserting before line 1, the
4 following:

5 "Section 1. Section 598.7A, subsection 4,
6 paragraph e, Code Supplement 2001, is amended to read
7 as follows:

8 e. The costs of mediation or a settlement
9 conference shall be borne by the parties, as agreed to
10 by the parties, or as ordered by the court, and may be
11 taxed as court costs. Mediation shall be provided on
12 a sliding fee scale for parties who are determined to
13 be indigent pursuant to section 815.9."

14 2. Page 1, by striking lines 10 through 16, and
15 inserting the following: "court shall require the
16 parties to participate in mediation or a settlement
17 conference in any dissolution of marriage action or
18 other domestic relations action which involves custody
19 of a child, unless the parties have agreed upon
20 custody and visitation prior to a court hearing or
21 trial. The participation in mediation or a settlement
22 conference under this subsection shall include
23 receiving assistance in the completion of a parenting
24 agreement between the parties that specifies the
25 details of visitation."

26 3. Page 1, line 25, by inserting after the word
27 "mediation" the following: "or a settlement
28 conference".

29 4. Page 1, line 27, by inserting after the word
30 "mediation" the following: "or a settlement
31 conference".

32 5. Page 1, line 31, by inserting after the word
33 "mediation" the following: "or settlement conference".

34 6. Page 2, line 9, by inserting after the word
35 "mediation" the following: "or a settlement
36 conference".

37 7. Page 2, line 10, by inserting after the word
38 "mediation" the following: "or a settlement
39 conference".

40 8. Page 2, by inserting after line 30, the
41 following:

42 "Sec. ____ . EFFECTIVE DATE. The section of this
43 Act enacting section 598.7A, subsection 6, takes
44 effect July 1, 2003."

45 9. Title page, line 2, by inserting after the
46 word "of" the following: "a settlement conference
47 or".

48 10. Title page, line 3, by inserting after the
49 word "disputed" the following: ", and providing an
50 effective date".

By MAGGIE TINSMAN

S-5246 FILED MARCH 25, 2002

*Adopted 3-27-02
(p. 831)*

**HOUSE FILE 678
FISCAL NOTE**

A fiscal note for **House File 678** is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 678 requires mediation in dissolution of marriage and other domestic relations actions which involve custody of a child. House File 678 creates two new subsections under Section 598.41, Code of Iowa. Subsection 9 states that the Supreme Court shall prescribe a modeling parenting agreement form to be used in establishing the visitation provisions. The Court shall also prescribe rules for enforcement of parenting agreements. Subsection 10 states that the Supreme Court shall prescribe standard forms to be used by a party seeking enforcement of a parenting agreement by proceeding pro se.

ASSUMPTIONS

1. The Supreme Court will establish a committee to develop and draft the model parenting agreement form, the manual for pro se litigants, and the rules for enforcing parenting agreements. Once the form is completed, it would be reviewed by the Court and its staff for final approval.
2. House File 678 requires those participating in mediation receive assistance in the completion of the parenting agreement or modification of parenting agreements.
3. The study would be conducted by a 15-member committee to create the model parenting agreement. The study would require ten days at a cost of \$1,000 per day.
4. Attorney review of the project would cost approximately \$448. The Court's rules subcommittee would take approximately one hour to review the documents and there are three judges on that panel at a cost of \$183. The whole Court would review the documents for final approval at a cost of \$492.
5. Clerk of Court offices must assist parents in filling out the dissolution documents. An additional hour of processing time is anticipated for each case. The cost per hour for the Clerk of Court's Office to assist is \$14.22.
6. There are approximately 10,000 dissolutions per year in the State. It is unknown how many of these cases involve child custody disputes or parents who intend to proceed pro se.

FISCAL IMPACT

The one-time General Fund cost to develop and review the parenting agreement documents is approximately \$11,000.

The cost for the Clerk of Court offices to assist in completing the parenting agreement forms cannot be determined due to insufficient information. However, if all 10,000 dissolution cases required assistance in completing the parenting agreement, the General Fund cost would be approximately \$142,000 annually.

PAGE 2 , FISCAL NOTE, HOUSE FILE 678

-2-

SOURCE

Judicial Branch

(LSB 3046hv, JDD)

FILED MARCH 26, 2001

BY DENNIS PROUTY, FISCAL DIRECTOR

SENATE AMENDMENT TO HOUSE FILE 678

H-8464

- 1 Amend House File 678, as passed by the House, as
2 follows:
- 3 1. Page 1, by inserting before line 1, the
4 following:
5 "Section 1. Section 598.7A, subsection 4,
6 paragraph e, Code Supplement 2001, is amended to read
7 as follows:
8 e. The costs of mediation or a settlement
9 conference shall be borne by the parties, as agreed to
10 by the parties, or as ordered by the court, and may be
11 taxed as court costs. Mediation shall be provided on
12 a sliding fee scale for parties who are determined to
13 be indigent pursuant to section 815.9."
14 2. Page 1, line 1, by inserting after the word
15 "Code" the following: "Supplement".
16 3. Page 1, by striking lines 10 through 16, and
17 inserting the following: "court shall require the
18 parties to participate in mediation or a settlement
19 conference in any dissolution of marriage action or
20 other domestic relations action which involves custody
21 of a child, unless the parties have agreed upon
22 custody and visitation prior to a court hearing or
23 trial. The participation in mediation or a settlement
24 conference under this subsection shall include
25 receiving assistance in the completion of a parenting
26 agreement between the parties that specifies the
27 details of visitation."
28 4. Page 1, line 25, by inserting after the word
29 "mediation" the following: "or a settlement
30 conference".
31 5. Page 1, line 27, by inserting after the word
32 "mediation" the following: "or a settlement
33 conference".
34 6. Page 1, line 31, by inserting after the word
35 "mediation" the following: "or settlement conference".
36 7. Page 2, line 9, by inserting after the word
37 "mediation" the following: "or a settlement
38 conference".
39 8. Page 2, line 10, by inserting after the word
40 "mediation" the following: "or a settlement
41 conference".
42 9. Page 2, by inserting after line 30, the
43 following:
44 "Sec. ____ . EFFECTIVE DATE. The section of this
45 Act enacting section 598.7A, subsection 6, takes
46 effect July 1, 2003."
47 10. Title page, line 2, by inserting after the
48 word "of" the following: "a settlement conference
49 or".
50 11. Title page, line 3, by inserting after the

H-8464

H-8464

- Page 2
- 1 word "disputed" the following: ", and providing an
2 effective date".
3 12. By renumbering, relettering, or redesignating
4 and correcting internal references as necessary.

Filed March 27, 2002

RECEIVED FROM THE SENATE

House Concurred
H-8-02
(P. 1201)

HOUSE FILE 678

H-8488

1 Amend the Senate amendment, H-8464, to House File
2 678, as passed by the House, as follows:
3 1. Page 1, by inserting after line 35, the
4 following:
5 "____. Page 1, by inserting after line 32, the
6 following:
7 "Sec. ____ Section 598.41, subsection 5, Code
8 2001, is amended to read as follows:
9 5. a. Joint physical care may be in the best
10 interest of the child, but joint legal custody does
11 not require joint physical care.
12 b. On the application of either parent, the court
13 shall consider granting joint physical care in cases
14 where the parents do not agree to joint physical care.
15 c. When the court determines such action would be
16 in the best interest of the child and would preserve
17 the relationship between each parent and the child,
18 joint physical care may be awarded to both joint
19 custodial parents or physical care may be awarded to
20 one joint custodial parent.
21 d. If one joint custodial parent is awarded
22 physical care, the parent responsible for providing
23 physical care shall support the other parent's
24 relationship with the child. Physical care awarded to
25 one parent does not affect the other parent's rights
26 and responsibilities as a joint legal custodian of the
27 child. Rights and responsibilities as joint legal
28 custodian of the child include, but are not limited
29 to, equal participation in decisions affecting the
30 child's legal status, medical care, education,
31 extracurricular activities, and religious
32 instruction.""
33 2. By renumbering as necessary.

By BODDICKER of Cedar

H-8488 FILED APRIL 2, 2002

adopted
4-8-02
(P. 1201)

HOUSE FILE 678

H-8515

1 Amend the Senate amendment, H-8464, to House File
2 678, as passed by the House, as follows:
3 1. Page 1, by inserting after line 41, the
4 following:
5 "____". Page 2, line 15, by striking the word
6 "subsections" and inserting the following:
7 "subsection".
8 _____. Page 2, by striking lines 22 through 30."
9 2. Page 1, by striking lines 44 through 46, and
10 inserting the following:
11 "Sec. _____. EFFECTIVE DATE. This Act takes effect
12 July 1, 2003."

By KREIMAN of Davis

H-8515 FILED APRIL 3, 2002

adopted

4-4-02

(P.1183)

HOUSE FILE 678

H-8522

1 Amend the Senate amendment, H-8464, to House File
2 678, as passed by the House, as follows:
3 1. Page 1, by striking lines 3 through 13.

By BODDICKER of Cedar
KREIMAN of Davis

H-8522 FILED APRIL 3, 2002

adopted

4-4-02

(P.1182)

HOUSE FILE 678

H-8540

1 Amend the amendment, H-8488, to the Senate
2 amendment, H-8464, to House File 678, as passed by the
3 House, as follows:
4 1. Page 1, lines 13 and 14, by striking the words
5 "in cases where the parents do not agree to joint
6 physical care".

By BODDICKER of Cedar

H-8540 FILED APRIL 8, 2002

adopted

4-8-02

(P.1201)

**HOUSE AMENDMENT TO SENATE AMENDMENT TO
HOUSE FILE 678**

S-5408

1 Amend the Senate amendment, H-8464, to House File
2 678, as passed by the House, as follows:
3 1. Page 1, by striking lines 3 through 13.
4 2. Page 1, by inserting after line 35, the
5 following:
6 "____. Page 1, by inserting after line 32, the
7 following:
8 "Sec. _____. Section 598.41, subsection 5, Code
9 2001, is amended to read as follows:
10 5. a. Joint physical care may be in the best
11 interest of the child, but joint legal custody does
12 not require joint physical care.
13 b. On the application of either parent, the court
14 shall consider granting joint physical care.
15 c. When the court determines such action would be
16 in the best interest of the child and would preserve
17 the relationship between each parent and the child,
18 joint physical care may be awarded to both joint
19 custodial parents or physical care may be awarded to
20 one joint custodial parent.
21 d. If one joint custodial parent is awarded
22 physical care, the parent responsible for providing
23 physical care shall support the other parent's
24 relationship with the child. Physical care awarded to
25 one parent does not affect the other parent's rights
26 and responsibilities as a joint legal custodian of the
27 child. Rights and responsibilities as joint legal
28 custodian of the child include, but are not limited
29 to, equal participation in decisions affecting the
30 child's legal status, medical care, education,
31 extracurricular activities, and religious
32 instruction.""
33 3. Page 1, by inserting after line 41, the
34 following:
35 "____. Page 2, line 15, by striking the word
36 "subsections" and inserting the following:
37 "subsection".
38 _____. Page 2, by striking lines 22 through 30."
39 4. Page 1, by striking lines 44 through 46, and
40 inserting the following:
41 "Sec. _____. EFFECTIVE DATE. This Act takes effect
42 July 1, 2003."
43 5. By renumbering, relettering, or redesignating
44 and correcting internal references as necessary.

RECEIVED FROM THE HOUSE

S-5408 FILED APRIL 8, 2002

Senate Concurred

4-11-02

P. 1117



THOMAS J. VILSACK
GOVERNOR

OFFICE OF THE GOVERNOR

SALLY J. PEDERSON
LT. GOVERNOR

May 9, 2002

RECEIVED

MAY 13 2002

LEGISLATIVE SERVICE
BUREAU

The Honorable Chester Culver
Secretary of State
State Capitol Building
LOCAL

Dear Mr. Secretary:

I hereby transmit House File 678, an Act, that requires parties in any dissolution of marriage or other domestic relations action, which involves custody of a child, to participate in mediation or a settlement conference, unless the court determines that a history of domestic abuse exists, or unless the court determines that direct physical harm or significant emotional harm to the child, or other children, or a parent is likely to result. House File 678 would define 'participation in mediation or a settlement conference' to include the receipt of assistance in the completion of a parenting agreement between the parties that specifies the details of visitation. This Act would amend Iowa Code §598.7A, which currently requires a court to determine on its own motion, or upon the application of either party to a domestic relations proceeding, whether the parties to the proceeding shall participate in mediation to attempt to resolve differences, without court intervention.

Courts in the fifth, sixth and seventh judicial districts in Iowa have increasingly utilized mediation as a tool to facilitate voluntary settlements in domestic relations actions involving child custody issues. Mediation in these districts have allowed a number of parties to create equitable dissolution decrees, avoid the trauma of litigation, and reduce the hostility that is often associated with marital dissolution or other domestic relations actions involving child custody issues. Under Iowa Code §598.7A, courts in these districts have developed effective mediation programs that reflect the needs of their communities, and provide resources to support program implementation.

Representatives of the judicial branch have expressed some reservations with House File 678. The mandatory mediation programs that exist in Iowa rely on administrative services for coordination and oversight. The judicial branch should be confident that the programs can be adequately funded before a programmatic requirement is imposed. Parties responsible for implementing the mandatory mediation program should also be confident that a pool of qualified mediators will be easily accessible to parties living in all locations across the state in order to ensure that costs associated with mediation remain consistent statewide.



Page 2

Given the concerns expressed by the judicial branch, and other parties responsible for the bill's implementation, I must conclude that House File 678 has not received the full support of those most integral to the bill's success. Neither the courts nor this office are opposed to the concept of mediation. It has clearly proven to serve as a useful tool in promoting settlement in domestic relations cases. However, in light of the budget challenges that are currently facing Iowa courts, I cannot support this bill until the concerns identified above: namely; administrative costs and the accessibility of qualified mediators throughout the state, have been adequately addressed.

For the reasons stated above, I hereby respectfully disapprove House File 678.

Sincerely,



Thomas J. Vilsack
Governor

TJV:jmc

cc: Secretary of the Senate
Chief Clerk of the House

HOUSE FILE 678

AN ACT

RELATING TO CHILD CUSTODY AND VISITATION INCLUDING THE REQUIRE-
MENT OF A SETTLEMENT CONFERENCE OR MEDIATION WHEN A CUSTODY
ARRANGEMENT IS DISPUTED, AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 598.7A, Code Supplement 2001, is amended by adding the following new subsection:

NEW SUBSECTION. 6. Notwithstanding the provisions of this section providing discretion to the court in ordering mediation, unless the court determines that a history of domestic abuse exists as specified in section 598.41, subsection 3, paragraph "j", 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 shall require the parties to participate in mediation or a settlement conference in any dissolution of marriage action or other domestic relations action which involves custody of a

child, unless the parties have agreed upon custody and visitation prior to a court hearing or trial. The participation in mediation or a settlement conference under this subsection shall include receiving assistance in the completion of a parenting agreement between the parties that specifies the details of visitation.

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

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", 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 shall require the parties to participate in custody mediation or a settlement conference to determine whether joint custody is in the best interest of the child. The participation in mediation or a settlement conference required under this paragraph shall include receiving assistance in the completion of a parenting agreement between the parties that specifies the details of visitation. The court may require the child's participation in the mediation or settlement conference insofar as the court determines the child's participation is advisable.

Sec. 3. Section 598.41, subsection 5, Code 2001, is amended to read as follows:

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

b. On the application of either parent, the court shall consider granting joint physical care.

c. When the court determines such action would be in the best interest of the child and would preserve the relationship between each parent and the child, joint physical care may be awarded to both joint custodial parents or physical care may be awarded to one joint custodial parent.

d. If one joint custodial parent is awarded physical care, the parent responsible for providing physical care shall support the other parent's relationship with the child. Physical care awarded to one parent does not affect the other parent's rights and responsibilities as a joint legal custodian of the child. Rights and responsibilities as joint legal custodian of the child include, but are not limited to, equal participation in decisions affecting the child's legal status, medical care, education, extracurricular activities, and religious instruction.

Sec. 4. Section 598.41, subsection 8, Code 2001, 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", 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 shall require the parents to participate in mediation or a settlement conference to attempt to resolve the differences between the parents. The participation in mediation or a settlement conference required under this subsection shall include receiving assistance in the modification of a parenting agreement between the parties, if applicable, that specifies the details of visitation.

Sec. 5. Section 598.41, Code 2001, is amended by adding the following new subsection:

NEW SUBSECTION. 9. The supreme court shall prescribe a model parenting agreement form to be used in establishing the visitation provisions of a temporary or final custody award or in modifying the visitation provisions of a temporary or final custody award. The court shall also prescribe rules for enforcement of parenting agreements.

Sec. 6. EFFECTIVE DATE. This Act takes effect July 1, 2003.

BRENT SIEGRIST
Speaker of the House

MARY E. KRAMER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 678, Seventy-ninth General Assembly.

MARGARET THOMSON
Chief Clerk of the House

Vetoed
Approved 5/9, 2002

THOMAS J. VILSACK
Governor