

MAR 6 2006
Place On Calendar

HOUSE FILE 2658
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 606)

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

A BILL FOR

1 An Act relating to joint physical care of children in dissolution
2 cases.

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

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HF 2658

1 Section 1. Section 598.41, subsection 5, paragraph a, Code
2 Supplement 2005, is amended to read as follows:
3 a. If joint legal custody is awarded to both parents, the
4 court may award joint physical care to both joint custodial
5 parents upon the request of either parent during the
6 proceedings on the initial dissolution petition or during the
7 proceedings on a modification of the original custody order.
8 A rebuttable presumption exists that a request for joint
9 physical care by either parent is in the best interest of the
10 child and the burden of proof to rebut the presumption rests
11 on the party denying that joint physical care is in the best
12 interest of the child. Prior to ruling on the request for the
13 award of joint physical care, the court may require the
14 parents to submit, either individually or jointly, a proposed
15 joint physical care parenting plan. A proposed joint physical
16 care parenting plan shall address how the parents will make
17 decisions affecting the child, how the parents will provide a
18 home for the child, how the child's time will be divided
19 between the parents and how each parent will facilitate the
20 child's time with the other parent, arrangements in addition
21 to court-ordered child support for the child's expenses, how
22 the parents will resolve major changes or disagreements
23 affecting the child including changes that arise due to the
24 child's age and developmental needs, and any other issues the
25 court may require. If the court denies the request for joint
26 physical care, the determination shall be accompanied by
27 specific findings of fact and conclusions of law that the
28 awarding of joint physical care is not in the best interest of
29 the child. In determining the best interest of the child
30 relative to the denial of a request for joint physical care,
31 the court shall consider that the best interest of the child
32 includes the opportunity for maximum continuous physical and
33 emotional contact possible with both parents, unless direct
34 physical or significant emotional harm to the child may result
35 from this contact.

EXPLANATION

1
2 This bill provides that in awarding joint physical care to
3 parents under the dissolution of marriage chapter, joint
4 physical care may be awarded to both parents based upon a
5 request by either parent either during the proceedings on the
6 initial dissolution petition or during the proceedings on a
7 modification of the original custody order. The bill creates
8 a rebuttable presumption that a request for joint physical
9 care by either parent is in the best interest of the child and
10 places the burden of proof to rebut the presumption on the
11 party denying that joint physical care is in the best interest
12 of the child. In determining the best interest of the child
13 relative to the denial of a request for joint physical care,
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HOUSE FILE 2658

H-8341

1 Amend House File 2658 as follows:
2 1. Page 1, by striking lines 8 through 12, and
3 inserting the following: "Relative to the request for
4 joint physical care, the court shall consider the
5 specific circumstances of the parties before the court
6 including the living situation of each parent, the
7 ability of each parent to meet the needs of the child
8 including the psychological needs of the child, the
9 history of each parent in offering or providing
10 financial support to the child, any criminal record or
11 history of domestic or child abuse involving either
12 parent, and any other factor deemed relevant by the
13 court. Prior to ruling on the request for the".

By FORD of Polk

H-8341 FILED MARCH 21, 2006

HOUSE FILE 2658

H-8353

1 Amend House File 2658 as follows:
2 1. Page 1, by striking lines 8 through 12 and
3 inserting the following: "Prior to ruling on the
4 request for the".

By CARROLL of Poweshiek

H-8353 FILED MARCH 22, 2006

Fiscal Services Division
Legislative Services Agency
Fiscal Note

HF 2658 - Child Custody (LSB 6133 HV)

Analyst: Jennifer Acton (Phone: [515] 281-7846) (jennifer.acton@legis.state.ia.us)

Fiscal Note Version - New

Description

House File 2658 creates a rebuttable presumption that a request for joint physical care by either parent is in the best interest of the child and places the burden of proof to rebut the presumption on the party denying that joint physical care is in the best interest of the child.

Background

During the 2004 Legislative Session, HF 22 (Joint Physical Care Act) required the Judicial Branch to award joint legal custody of a child to both parents as well as joint physical care to both parents, unless there was clear and convincing evidence that joint physical care was not in the best interest of the child.

Assumptions

1. In FY 2005, there were 8,363 dissolutions of marriage involving child custody issues. Of these cases, approximately 2,000 resulted in a hearing.
2. A portion of the 2,000 hearings were "prove up hearings", where one of the parties was required to answer additional questions from the judge when finalizing a dissolution.
3. Approximately 65.0% or 1,300 cases were custody disputes involving the issue of joint physical care.
4. Hearings would be prolonged to rebut the presumption and could add up to four additional hours of court time (\$122/hour) per case in which parties disagree on joint physical care.

Fiscal Impact

Under these assumptions the fiscal impact of HF 2658 would be an estimated \$634,000 in increased court costs for the Judicial Branch.

Source

Judicial Branch

/s/ Holly M. Lyons

March 8, 2006

The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.

Anderson-ch
Kaufmann
Smith

HSB 606

JUDICIARY

Sub added By

HOUSE FILE

02658

BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON PAULSEN)

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Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

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