

# Bill Points and Q&A Points Regarding 598.41 Reform Bill

## Bill Points

1. Maximizing the time that each parent spends with the child (Shared Parenting/Equal Time/Etc.)
  - a. Prior to divorce, a child has 100% (or “equal”) access to each parent, but after divorce, the child no longer has the opportunity to spend any time with both parents together, but the child can (and should) still have equal access to his/her parents.
  - b. The court is forcing the children to give up a relationship with one parent when the court does not award “equal” time. The justification often used is “the children need stability and one place to call home.” This is based on unproven studies from decades ago that have since been debunked. Dozens of studies as recent as 2016 have consistently shown that equal (or nearly equal) time with each parent IS in the best interest of children. Children love and need BOTH parents not just one. Imagine how confusing and harmful it would be to a young child and see both parents all of the time and all of a sudden rarely seeing one of them. How many mental health resources are being used for children with anxiety caused by separation from a loving, involved parent?
  - c. By maximizing the time with both parents, the child not only has the opportunity to bond with both parents, but parenting responsibilities are equalized. Under current law, responsibility falls heavily on one parent, potentially preventing that parent from employment opportunities and the ability to become financially stable and self-sufficient, all of which are important to a child’s well-being.
2. “Best Interest” Presumption
  - a. Under current law, the courts overwhelmingly pick one parent as the winner “presuming” that this is best, despite all the research to the contrary. We are presuming in every relationship, one parent is “better”.
  - b. Often, because of how the courts work (picking a winner), instead of looking at what is best, the court is selecting a parenting style it likes best (\*see note #1), despite the fact that there has never been a statutory determination of “best” parenting style, or “best interest”. Often the court is also basing this on a few snippets of information presented by lawyers—untrained in mental health of children, and in a court that is designed to have a “winner” and a “loser”. (If someone sues someone else, there is a winner and a loser).
3. Standards of Proof (Preponderance of the Evidence vs. Clear and Convincing).
  - a. The “best interest of the child” is used as an excuse to ignore the rights of the child and the parents. The U.S. Supreme Court has made it clear that parenting rights are a “fundamental

right” (see note #2). For the government to interfere with a “fundamental right,” the standard of review is very high— “Strict scrutiny.” Yet in child custody trials the law allows judges to do just the opposite—applying the least standard – “preponderance” and again, the justification for this is “the best interest of the children”, even though there is no definition of “the best interest” in Iowa code other than a very vague and brief mention. It has been defined in case law by attorneys and judges who have no mental health training on what truly IS in the children's “best interest.”

- b. Using “Clear and Convincing evidence” as is used to decide “legal custody”, raises the bar on what it takes to deny a child the right to access both parents instead of allowing parents to “mudslng” in the courtroom in hopes that they can destroy the other parent and “win” the case.
  - c. When dealing with property, the law requires “clear and convincing evidence” But when dealing with the basic “fundamental right”(parenting a child), the law only requires a “preponderance.” Is money viewed as more important than the relationship between a child and a parent? It takes little evidence (in actuality, “mere allegation” is often enough.) to separate a child from a parent.
4. Why is there is a rebuttable presumption of child support in every case (see b. below) according to federal law, yet there is not a rebuttable presumption of physical care by the state?
- a. If a parent voluntarily walks away from their family or is a danger to their family, they can still be made to financially support their family, but a willing and capable parent should not be forced out of their family merely to establish child support.
  - b. The current law allows that **STATE GUIDELINES FOR CHILD SUPPORT AWARDS (social security title IV) Sec. 467. [42 U.S.C. 667]**
    - i. Each State, as a condition for having its State plan approved under this part, must establish guidelines for child support award amounts within the State. The guidelines may be established by law or by judicial or administrative action, and shall be reviewed at least once every 4 years to ensure that their application results in the determination of appropriate child support award amounts.
    - ii. The guidelines established pursuant to subsection (a) shall be made available to all judges and other officials who have the power to determine child support awards within such State.
    - iii. There shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the

application of such guidelines is the correct amount of child support to be awarded. A written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined under criteria established by the State, shall be sufficient to rebut the presumption in that case.

iv. The Secretary shall furnish technical assistance to the States for establishing the guidelines, and each State shall furnish the Secretary with copies of its guidelines.

5. Legal definitions. There are multiple (and confusing, and possibly misleading \*see note #3) definitions within Iowa code 598. For example: “joint custody”, “joint legal custody”, “legal custody”, and “custody” are ALL different and interchangeable terms referring strictly to what most people would consider “legal custody.”
- a. Term “legal custody” gives no right to actually SEE or PARENT your children, only to make decisions such as which school the kids attend.
    - i. Limited decision-making ability when a “legal” custodial parent only sees their child two weekends a month, and maybe four evenings.
  - b. The only definition that deals with what most people would consider “joint custody” is a term called “physical care.”
    - i. Physical care is decided AFTER “legal custody” is determined.
    - ii. Even after a parent has met all the qualifications under Iowa code 598.41 to be awarded “joint legal custody” (which includes safeguards for domestic abuse and neglect), they can be denied equal time merely because the other parent doesn’t want it and “wins” the case.
  - c. 598.1 Definitions 3. "Joint custody" or "joint legal custody" means an award of legal custody of a minor child to both parents jointly under which both parents have legal custodial rights and responsibilities toward the child and under which neither parent has legal custodial rights superior to those of the other parent. Rights and responsibilities of joint legal custody include, but are not limited to, equal participation in decisions affecting the child's legal status, medical care, education, extracurricular activities, and religious instruction.
  - d. "Joint physical care" means an award of physical care of a minor child to both joint legal custodial parents under which both parents have rights and responsibilities toward the child including, but not limited to, shared parenting time with the child, maintaining homes for the child, providing routine care for the child and under which neither parent has physical care rights superior to those of the other parent.

- e. "Legal custody" or "custody" means an award of the rights of legal custody of a minor child to a parent under which a parent has legal custodial rights and responsibilities toward the child. Rights and responsibilities of legal custody include, but are not limited to, decision making affecting the child's legal status, medical care, education, extracurricular activities, and religious instruction.

Notes:

1. Every human being has some form of personal bias and no two will ever completely agree on every aspect of what makes a "better parent;" so it is an impossible standard and completely subject to the particular judge in that particular case. A case that was won by one parent, could have been won by the other parent had the case been heard on the next day by a different judge. (As we have explained, the Due Process Clause does not permit a State to infringe on the fundamental right of parents to make child rearing decisions simply because a state judge believes a "better" decision could be made.)
  - i. \*Troxel v. Granville 530 U.S. 57
2. The right to parent one's children "is perhaps the oldest of the fundamental liberty interests," Troxel v. Granville, 530 U.S. 57
3. The public can be confused by the multiple terms and assume that "custody" means you have the children, so even though the vast majority of parents have "shared custody", very few have "joint physical care", yet people not directly affected by child custody assume good parents have equal access to their children and only abusive or neglectful parents are denied when actually nothing could be further from the truth.

**" Q&A "**

1. "This bill takes the focus away from what's best for the children and turns it into what's best for the parents".

Answer: This law takes into account the latest scientific studies on what's best for children of separated parents. Why would anyone think limiting the time a child spends with one parent is a good idea and in their "best interest" unless that parent is proven to be bad for them?
2. "This bill doesn't protect victims of domestic violence."

Answer: Actually, every protection that is currently in Iowa law remains intact. In fact, it's a requirement that a judge consider before even awarding "legal custody" which is REQUIRED before joint physical care is even an option. You can't get "physical care" without "legal custody".

3. "Judges need to have discretion in order to protect children and look out for their best interest".

Answer: Judges still have full discretion in deciding "legal custody" as they always have. One would assume a judge would not award legal custody to an abuser and if a parent is not neglectful or an abuser, what need does the state have in denying parents and children access to each other?

4. "This forces parents who don't want to be a parent, into parenting roles."

Answer: A parent has to request Joint physical care. If they don't request it, it does not get awarded.

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