

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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1. As you know, current law requires the court to consider evidence of child or spousal abuse as a factor in determining both legal custody and physical placement. Therefore, there is some overlap between current law and this bill. Since current law allows a court to order sole legal custody if the court finds that the parties will not be able to cooperate in future decision making, and evidence of child or spousal abuse creates a rebuttable presumption that the parties will not be able to cooperate, this bill is consistent with and reinforces current law. As drafted, however, the presumption in this bill takes precedence over all other "rules" related to custody determinations, including the presumption in current law that joint custody is in the child's best interest. In other words, if the court finds a pattern or serious incident of abuse, the court must order sole custody with the other party if the presumption is not rebutted.
2. The presumption in this bill applies only to custody. It does not change a physical placement determination except for specifically listing what the court may require the abusive parent to do in order to provide protections for the child and other spouse. Although current law does not specify what the court may require the abusive parent to do, courts can and do impose requirements on abusive parents. Providing specific authorization is helpful, though. Under current law, the court may deny physical placement to a parent only if the physical placement would endanger the child's physical, mental, or emotional health. The bill does not change this. Undoubtedly, certain patterns or serious incidents of abuse would lead a court to decide that physical placement with the abuser would endanger the child's physical, mental, or emotional health.
3. Do you want anything different for the initial applicability?

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