

Temporary Custody Orders Pending a Modification: From *Grantham* to Granting Them

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ABSTRACT: There is a longstanding policy in Iowa that once child custody has been determined, it should rarely be upset and only for the most important reasons. Because of this policy, parents seeking modifications of their custody arrangements were not entitled to temporary custody orders while their modification was pending. That was until 2005, when the Supreme Court of Iowa recognized the courts’ authority to issue temporary custody orders in the landmark case of In re Marriage of Grantham. In that case, the court held the father’s military deployment necessitated temporary orders because he was physically absent from his parental role. However, the standard for when such orders are appropriate in the wake of Grantham is unclear, and that unclarity has limited when parties can obtain temporary custody orders. This Note argues that societal changes since Grantham require an updated standard reflecting these changes, such as an increased focus on the child’s mental health and shorter waiting times for the court to decide the modification. Further, the Iowa Legislature should follow other states’ lead and enact a statutory provision giving courts broader authority to enter temporary custody orders while a modification is pending. The proposed statutory provision would remedy the issues with the Grantham standard while maintaining Iowa’s policy of only changing the child’s custody in rare circumstances.

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INTRODUCTION

Before 2005, Iowa parents seeking modifications of their custody or divorce decrees were not entitled to temporary custody orders for any reason.¹ Upholding this notion was Iowa’s longstanding policy that the child’s custody arrangement should only be upset “for the most cogent reasons.”² However, in 2005, the Supreme Court of Iowa’s position on temporary custody orders changed. The court held in *In re Marriage of Grantham* (“*Grantham*”), for the first time, that the court may enter temporary orders pending trial in a modification case.³ However, the discussion in *Grantham* is limited, and the

1. See *In re Marriage of Grantham*, No. 03-2100, 2004 WL 2579567, at *7 (Iowa Ct. App. Nov. 15, 2004) (unpublished table decision) (explaining “temporary custody orders are not statutorily authorized on petitions for modification”). But see *In re Melsha*, No. 07-0376, 2007 WL 4322235, at *2 (Iowa Ct. App. Dec. 12, 2007) (unpublished table decision) (permitting temporary custody orders in habeas corpus cases).

2. *In re Marriage of Melton*, 256 N.W.2d 200, 205 (Iowa 1977) (citing *Schoonover v. Schoonover*, 228 N.W.2d 31, 34 (Iowa 1975); *Stouwie v. Stouwie*, 222 N.W.2d 435, 438 (Iowa 1974); *In re Marriage of Bowen*, 219 N.W.2d 683, 687 (Iowa 1974)).

3. *In re Marriage of Grantham*, 698 N.W.2d 140, 145-46 (Iowa 2005).

standard set forth is vague. *Grantham* fails to provide judges with a concrete standard with which to judge a case, and the standard given unnecessarily restricts when parents can temporarily modify their custody arrangements. In effect, it is nearly impossible to temporarily modify custody pending a modification in Iowa.⁴ Other states have addressed temporary custody orders pending a modification through legislation or court rules, but the Iowa Legislature and Iowa Supreme Court have remained silent,⁵ maintaining the *Grantham* standard without any clarifications or adjustments.⁶

Since *Grantham*, as of the time of this writing, some counties in Iowa have experienced a delay in the time it takes for modification actions to be decided,⁷ and there has recently been a nationwide movement—Iowa included—focusing on children’s mental health.⁸ In 2018, Iowa passed several laws aiming to make mental health care more available to children, but these efforts have been constrained by more recent legislation.⁹ Further, children’s mental health has worsened since the global COVID-19 pandemic.¹⁰ Considering the importance of children’s mental health and its often invisible nature,¹¹ the Iowa Legislature must enact legislation allowing the entry of temporary custody orders in more situations than currently allowed. Judges must give special consideration to how the current custodial arrangement affects the child’s mental health while giving strong weight to the child’s preference.

This Note argues that Iowa’s current standard to temporarily modify custody pending a permanent modification decree does not adequately serve the child’s best interest because it fails to consider the child’s mental health and emotional well-being. In Part I, this Note explores the current standard for temporary custody orders, how that standard came to be, and how Iowa

4. See discussion *infra* Section II.A.

5. But see *Iowa Supreme Court Attorney Disciplinary Board v. Baldwin*, 857 N.W.2d 195, 205–06 (Iowa 2014), in which an attorney was not disciplined for moving for temporary orders because *Grantham* could be read to support his client’s request.

6. This Note focuses only on circumstances outside of parental deployment. As discussed *infra*, the Iowa Legislature enacted Iowa Code section 598C in 2016 addressing temporary custody orders while a parent is deployed. IOWA CODE § 598C (2024). However, *Grantham* remains the standard for all other requests for temporary orders.

7. See discussion *infra* Section II.A.

8. See discussion *infra* Section II.B.

9. Compare H.R. File 690, 88th Gen. Assemb., Reg. Sess. (Iowa 2019) (creating a coordinated children’s mental health system), with S. File 496, 90th Gen. Assemb., Reg. Sess. (Iowa 2023) (limiting children’s access to mental health treatment in schools).

10. See Chia-Yi Hou, *Parents Worry About Growing Post-Pandemic Youth Mental Health Crisis*, HILL: CHANGING AM. (Jan. 25, 2023), <https://thehill.com/changing-america/well-being/mental-health/3828861-parents-worry-about-growing-post-pandemic-youth-mental-health-crisis> [https://perma.cc/7BEQ-4VNK].

11. See Jennifer Steiner, *Mental Illness Is Invisible Illness*, BEYOND BODY HEALTH PSYCH. SERVS., LLC, <https://www.beyondthebodypsych.com/blog/mental-illness-is-invisible-illness> [https://perma.cc/4673-QFHS] (“[P]eople who experience depression, anxiety, bipolar disorder, schizophrenia, and other mental health conditions do not visibly look as though they are sick or are suffering”); SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., U.S. DEP’T OF HEALTH & HUM. SERVS., TRAUMA-INFORMED CARE IN BEHAVIORAL HEALTH SERVICES: TIP 57, at 61–64 (2014) (providing long-term effects of and responses to trauma).

courts have decided temporary modification issues since *Grantham*. Part II explains why Iowa needs to update its standard for temporary custody orders. These considerations include longer wait times for final modifications, the Iowa Legislature's recent movement to focus on children's mental health, and the children's mental health crisis post-pandemic. Part III examines other states' statutory or judicial approaches to temporary custody orders and proposes a similar provision that Iowa should adopt, giving the courts the express authority to enter temporary custody orders to better support the child's best interest and mental health. Finally, this Note concludes by explaining how the proposed legislation would alleviate the challenges judges face when dealing with applications¹² for temporary custody while still aligning with Iowa's policy to disrupt the child's life as little as possible.

I. TEMPORARY ORDERS PENDING CUSTODY MODIFICATION: THE CURRENT STANDARD

In order to understand why Iowa should adopt a statute authorizing temporary custody orders pending disposition of a modification action, this Part explores the current standard in Iowa for temporary modification orders, how courts have handled temporary modification orders since the standard's announcement, and introduces other states' approaches. The first Section examines the legal standard set forth in *Grantham* and scrutinizes the case's possible interpretations. The next Section walks through the case law addressing temporary custody orders in the wake of *Grantham* to show how, if at all, the standard has evolved. Finally, the last Section briefly looks at how other states approach temporary custody orders pending a modification.

A. THE STANDARD: *IN RE* MARRIAGE OF GRANTHAM

Under Iowa law, courts can permanently modify custody upon the showing of a material and substantial change in circumstances and an ability to better minister to the child's wellbeing.¹³ However, there is generally no statutory authority allowing judges to enter temporary orders while a modification action is pending.¹⁴ This lack of authority is based on the rationale that changes in custody can disrupt a child's life by affecting important matters such as where the child goes to school.¹⁵ For that reason, the Iowa courts have

12. This Note will treat "motions" and "applications" for temporary orders as synonymous.

13. See IOWA CODE § 598.21C (2024) (describing what the court should consider regarding a substantial change); *In re Marriage of Frederici*, 338 N.W.2d 156, 158 (Iowa 1983) (including the "ability to minister more effectively to the children's well-being" in the modification analysis).

14. See *In re Marriage of Grantham*, 698 N.W.2d 140, 145 (Iowa 2005) (stating that filing for modification of custody does not come with an absolute right to temporary orders); *In re Marriage of Curtis*, No. 06-1392, 2007 WL 1201758, at *2 (Iowa Ct. App. Apr. 25, 2007) (unpublished table decision) (finding the district court correctly found that the statute does not provide for temporary modification orders); *Lacroix v. Verdoorn*, No. 14-0619, 2016 WL 4384429, at *1 (Iowa Ct. App. Aug. 17, 2016) (unpublished table decision) (noting the absence of authority to enter temporary orders except in emergency situations). However, there is statutory authority to enter temporary orders when a parent is deployed. See IOWA CODE § 598C.301 (2024).

15. See *In re Marriage of Downing*, 432 N.W.2d 692, 693 (Iowa Ct. App. 1988).

announced the “settled principle that once custody is fixed it should seldom be disturbed and only then for the most cogent reasons.”¹⁶

[T]he filing of the petition to modify the child custody provisions of a dissolution decree does not carry with it a right for the determination of temporary custody pendente lite. Modification proceedings differ from original actions in this regard because, in original actions for dissolution, the parties start out with equal rights to child custody, and their separation creates a need for temporary orders until permanent orders are entered at the conclusion of the litigation. . . . [O]nce child custody has been finally settled in a dissolution decree, the provisions of the decree should continue in force until such time as the decree is modified. No need exists for temporary orders in the interim.¹⁷

Before the Supreme Court of Iowa’s *Grantham* decision in 2005, parties were not entitled to temporary custody orders pending modification under many circumstances.¹⁸

In *Grantham*, the Supreme Court of Iowa first announced the authority of the courts to enter temporary orders pending a custody modification.¹⁹ Prior to the temporary custody issue in *Grantham*, the parties’ dissolution decree awarded the father primary physical care of the parties’ two minor children.²⁰ The father, Michael Grantham, was in the Iowa National Guard, and two years after their dissolution was entered, he was called for active duty.²¹ He made arrangements for the children’s grandmother to care for them while he was away. However, Tammara Grantham, the children’s mother, objected to this arrangement and tried to reach an agreement with Michael allowing her to have care of the children.²² Michael refused, and Tammara filed a petition seeking permanent modification of the care

16. *In re Marriage of Melton*, 256 N.W.2d 200, 205 (Iowa 1977) (citing *Schoonover v. Schoonover*, 228 N.W.2d 31, 34 (Iowa 1975); *Stouwie v. Stouwie*, 222 N.W.2d 435, 438 (Iowa 1974); *In re Marriage of Bowen*, 219 N.W.2d 683, 687 (Iowa 1974)).

17. *In re Marriage of Grantham*, 698 N.W.2d at 145–46.

18. See IOWA CODE §§ 598.10–.11 (2024) (allowing for temporary orders for initial decrees); *In re Marriage of Grantham*, 2004 WL 2579567, at *7 (Iowa Ct. App. Nov. 15, 2004) (unpublished table decision) (explaining that the statutory provision only applies to original filings, and “temporary custody orders are not statutorily authorized on petitions for modification”). Temporary custody orders were also issued in habeas corpus actions. See, e.g., *In re Melsha*, No. 07-0376, 2007 WL 4322235, at *2 (Iowa Ct. App. Dec. 12, 2007) (unpublished table decision) (concluding temporary custody orders fall within the general habeas corpus authority of the court).

While there is no statutory authority for temporarily modifying custody pending a permanent modification, there is authority to modify child support. See IOWA CODE § 598.21C(4) (2024) (“While an application for modification of a child support or child custody order is pending, the court may, on its own motion or upon application by either party, enter a temporary order modifying an order of child support.”).

19. *In re Marriage of Grantham*, 698 N.W.2d at 146.

20. *Id.* at 142.

21. *Id.*

22. *Id.*

arrangement²³ and temporary custody of the children *pendente lite*.²⁴ If her petition was successful, the children would primarily reside with her in Michael's absence instead of with their paternal grandmother.²⁵ The district court entered temporary orders placing care of the children with Tammara.²⁶ Michael appealed the decision.²⁷ The appellate court held that there was no statutory basis for the district court to enter temporary orders pending the modification.²⁸ Instead, the appellate court held that the district court should have granted a stay and implemented the original parenting plan Michael had put in place until the final hearing.²⁹

The Supreme Court of Iowa reversed the decision of the appellate court, ruling that temporary orders were appropriate.³⁰ The court held that "Michael's absence from the parental role . . . necessitated that a temporary reassignment of custodial responsibilities be made without delay."³¹ The court even foreshadowed the idea that temporary custody orders should be allowed even if the case is a modification, rather than an initial determination. "The fact that the request for temporary custody was filed simultaneously with a petition to modify the primary care provisions of the decree on a permanent basis did not diminish that necessity."³²

Although the court reached a desirable conclusion in *Grantham*, the precedent established is not clear on how judges should evaluate temporary modification claims in future cases or what parties need to establish to receive this type of relief. Without more guidance from the court or statutory intervention, there are several possible interpretations of the case that do not adequately resolve common issues.

1. The "Physical Absence" Interpretation

The stricter interpretation of *Grantham* is that a parent must be physically absent from their parental role for the court to enter temporary orders. This interpretation focuses only on the parent's presence and ignores other types of situations where a modification may be warranted during the pendency of

23. The mother in *Grantham* sought a permanent modification, which would have given her primary care of the children even after the father had returned from deployment.

24. *Pendente lite* means while the litigation is pending. *Pendente lite*, BLACK'S LAW DICTIONARY (10th ed. 2014).

25. *In re Marriage of Grantham*, 698 N.W.2d at 143.

26. *Id.*

27. *In re Marriage of Grantham*, 2004 WL 2579567, at *3 (Iowa Ct. App. Nov. 15, 2004) (unpublished table decision).

28. *Id.* at *7-8.

29. *Id.*

30. *In re Marriage of Grantham*, 698 N.W.2d at 146.

31. *Id.*

32. *Id.*

a modification action.³³ A court utilizing this interpretation would deny relief to parents and children in two common scenarios.

First, if a parent is providing minimal care—such as failing to take the children to their scheduled activities, leaving the children alone at night, having children consistently prepare their own meals, placing one child in a parental role to take care of other children—but is present during their parenting time, courts are unlikely to grant a temporary modification because that parent is physically present.³⁴ However, courts may interfere in limited situations where a parent providing minimal care places the child in imminent harm or danger or threatens to do so.³⁵ But residing with a parent who provides minimal care during their parenting time could have adverse effects on the child’s mental health.³⁶

Second, children in many cases have good reasons not to want to see one parent,³⁷ causing that parent to file a contempt action against the other parent.³⁸ Iowa courts are similarly unlikely to find temporary custody orders appropriate in these situations under the “physical absence” interpretation of *Grantham*. Once again, the parent is willing and available to provide care but may not be an appropriate caregiver. The court’s refusal to enter temporary orders in these circumstances fails to reflect the reality of the situation and comes at the expense of the child’s mental health. Forcing parents to maintain a custody schedule that is not working and compelling a parent to send the child to the other parent’s house despite the child’s wishes often negatively

33. See *id.* (“Michael’s absence from the parental role as a result of his military service necessitated that a temporary reassignment of custodial responsibilities be made without delay.”); *In re Bates*, No. 13-0469, 2013 WL 6405471, at *2 (Iowa Ct. App. Dec. 5, 2013) (unpublished table decision) (“[The mother] had placed herself in a situation where she was unable to physically care for the child.”).

34. See *In re Marriage of Grantham*, 698 N.W.2d at 146.

35. Facing immediate harm or danger would likely meet even the most stringent necessity standard. See IOWA CODE § 598B.204(1) (2024) (giving courts emergency jurisdiction “to protect the child because the child . . . is subjected to or threatened with mistreatment or abuse”); see, e.g., *Antonetti v. Amato*, 544 So.2d 286, 287 (Fla. Ct. App. 1989) (modifying custody on a temporary basis upon a showing “that the change in custody was necessary to protect the child from abuse, mistreatment or other neglect”).

36. See *Parentification Trauma: What It Is and How to Heal*, CHARLIE HEALTH (Apr. 23, 2023), <https://www.charliehealth.com/post/parentification-trauma-what-it-is-and-how-to-heal> [<https://perma.cc/5PDD-6EQD>].

37. See, e.g., *In re Marriage of Van Fleet*, No. 18-1585, 2020 WL 377032, at *1 (Iowa Ct. App. Jan. 23, 2020) (unpublished table decision) (stating the child did not want to return to the father’s care). A child may not want to see a parent for a number of reasons, such as when a child feels unsafe in a parent’s care, when a parent has a substance abuse disorder, or when a parent is abusive, rather than the child being defiant.

38. See Rachel Rizzieri Feist, *What Happens When a Child Refuses Visitation with a Parent?*, GORANSON BAIN & AUSLEY FAM. L. (June 1, 2023), <https://gbfamilylaw.com/blogs/what-happens-when-a-child-refuses-visitation-with-a-parent> [<https://perma.cc/NE92-L99S>] (explaining a parent can get the court involved when a child refuses to follow the decree).

affects the child's mental health and safety.³⁹ The court, then, places the parent in the position of choosing between defending a contempt action (that may have financial or criminal penalties)⁴⁰ or harming the child's mental health by ignoring the child's wishes.

2. The "Necessity" Interpretation

Alternatively, courts may interpret *Grantham* as imposing a necessity standard.⁴¹ Necessity is a high burden that often focuses on whether a child faces imminent harm.⁴² However, courts mostly consider physical harm when determining whether an emergency qualifies for immediate modification, ignoring the child's mental health⁴³ because of the often "invisible effects" of mental and emotional trauma.⁴⁴ Applying this "necessity approach" to the two scenarios above leads to similar unfavorable results—the child's mental health is disregarded in favor of the parent's wishes and current court order.

39. See Jess Hill, *Children and Family Law: 'How Can You Share Parenting with an Abusive Parent?'*, GUARDIAN (Mar. 14, 2020, 3:00 PM), <https://www.theguardian.com/society/2020/mar/15/children-and-family-law-how-can-you-share-parenting-with-an-abusive-parent> [https://perma.cc/W4TM-5QSZ] (explaining how parents with abuse allegations often end up with shared care of the child due to the presumption that a child's best interest is served by having time with both parents and how being around abuse can lead to "complex trauma" also known as "C-PTSD"); see also E.A. Gjelten, *What to Do If a Child Refuses Visitation*, DIVORCENET, <https://www.divorcenet.com/resources/what-to-do-if-my-child-refuses-visitation.html> [https://perma.cc/4EU7-T9EN] (giving advice on what parents should do if a child does not want to follow the custody arrangement, including prioritizing the child's mental health by talking with the child about the reasons for their decision or taking the child to a therapist, and not including forcing the child to follow the arrangement).

40. *Enforcing Custody and Visitation Orders*, PEOPLE'S L. LIBR., <https://www.peopleslawiowa.org/index.php/research-topics/family-law/custody-and-visitation/enforcing-custody-and-visitation-orders> [https://perma.cc/T8RP-746E].

41. See Iowa Sup. Ct. Att'y Disciplinary Bd. v. Baldwin, 857 N.W.2d 195, 206 (Iowa 2014) (refusing to find an attorney to be incompetent for seeking emergency temporary orders with the district court instead of immediately filing for modification and construing the *Grantham* standard as a "proper showing of necessity"). In *Iowa Supreme Court Attorney Disciplinary Board v. Baldwin*, the Supreme Court of Iowa acknowledged the high burden *Grantham* imposes and concluded that an attorney's filing for emergency temporary orders based on the mother's belief that the father's behavior was "immediate threat to her and her children" was unlikely to succeed. *Id.*

42. See Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A(c)(2)(C) (2018) (stating a court has jurisdiction to enter custody orders if "it is necessary in an emergency to protect the child because the child . . . has been subjected to or threatened with mistreatment or abuse"); IOWA CODE § 598B.204 (2024) (adopting the Uniform Child-Custody Jurisdiction and Enforcement Act, which features the same language present in the Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A(c)(2)(C)).

43. See, e.g., *Antonetti v. Amato*, 544 So.2d 286, 287 (Fla. Dist. Ct. App. 1989) (modifying custody on a temporary basis upon a showing "that the change in custody was necessary to protect the child from abuse, mistreatment, or other neglect" (emphasis added)). But see *Ferreira v. Ferreira*, 512 P.2d 304, 312 (Cal. 1973) (indicating that to prove a child's health or safety is in jeopardy requires "a showing of substantial emotional harm or other forms of injury in addition to physical mistreatment").

44. See Allen M. Bailey, *Prioritizing Child Safety as the Prime Best-Interest Factor*, 47 FAM. L.Q. 35, 35 (2013) (describing how the best interest of the child standard tends to focus on physical abuse rather than emotional or psychological abuse).

Although the necessity interpretation provides more flexibility than one premised strictly on physical absence, it still fails to set a clear definition of “necessity.” For example, when a parent provides minimal care, a court may be more willing to enter temporary custody orders than it would be under the “physical absence” interpretation, especially if the parent’s inattentiveness and irresponsibility threatens to place or does place the child in imminent harm.⁴⁵ However, the degree of necessity required for temporary orders is not clearly defined, which leads to inconsistent results. To illustrate, imagine a parent placing an older child in a parental role to care for younger children in the household while the parent is away. A court may not think this arrangement reaches a “necessity” threshold because the children are taken care of and (probably) physically safe. However, this “parentification”⁴⁶ could put a lot of pressure on the child in charge (especially depending on the age of the child and the age of the siblings), which may lead to anxiety and other mental health problems.⁴⁷ If courts were more willing to issue temporary orders, these mental health concerns could be alleviated by placing the children in the other parent’s care. Likewise, a young child consistently preparing their own dinner or occasionally being left home alone may not meet the necessity standard if the parent is home often enough or keeps adequate food in the home. But this analysis does not consider the effect the parent’s abdication of responsibility has on the child’s mental health.⁴⁸ A judicial approach that considers the child’s mental health and wishes would avoid this harm. It would place the child with the parent they feel comfortable and safe with immediately, rather than waiting until the parent can permanently modify the custody arrangement.

Under the contempt scenario—where a parent withholds visitation/parenting time because a child is unwilling to go to the other parent’s home—a court would similarly be unlikely to enter temporary orders. Depending on the reasons the child does not wish to see the parent, the child would likely not be in immediate danger or at risk of harm. Once again, the child’s mental health would likely not be considered, and a court would try other arrangements, instead of temporary custody orders, that could potentially facilitate the relationship between the child and the parent (e.g., attending therapy sessions).⁴⁹ Additionally, in Iowa, a child’s wishes to remain with one

45. See IOWA CODE § 598B.204(1) (2024) (giving courts emergency jurisdiction “to protect the child because the child . . . is subjected to or threatened with mistreatment or abuse”).

46. See Rhona Lewis, *What Is Parentification?*, HEALTHLINE (Sept. 23, 2021), <https://www.healthline.com/health/parentification> [<https://perma.cc/gZRM-ZBPJ>] (defining “parentification” as a scenario where the parent relegates traditional parental duties to one of their children).

47. See *Parentification Trauma: What It Is and How to Heal*, *supra* note 36 (reporting “anxiety, depression, and low self-esteem” as long-term effects of parentification).

48. See *id.*

49. See Gjelten, *supra* note 39 (noting noncustodial parents may ask the court to order therapy sessions to repair the parent–child relationship before modifying parenting time). See generally *Court Ordered Reunification Therapy in Divorce Proceedings*, ARNOLD & SMITH PLLC ATT’YS L., <https://www.arnoldsmithlaw.com/court-ordered-reunification-therapy-in-divorce-proceedin>

parent more than the other is generally not given considerable weight in a modification.⁵⁰ The Supreme Court of Iowa has stated that even though a child's preference is significant, it is entitled to less weight in a modification proceeding than in an original allocation of custody.⁵¹ Disregarding the child's preference in a modification could leave the child in a custody arrangement that harms their mental health or is not conducive to their best interest.⁵²

* * *

No matter which interpretation of *Grantham* the district courts have adopted, neither interpretation takes the child's mental health into account—even though the best interest of the child (including the risk of emotional harm)⁵³ is supposed to be the court's guiding star.⁵⁴ Either standard imposes a heavy burden, leading to temporary orders being entered in only rare circumstances. Adding to the confusion is the fact that the Iowa Court of Appeals has been inconsistent in how it approaches applications for temporary custody pending a permanent modification.⁵⁵

B. HOW THE COURTS HAVE HANDLED TEMPORARY ORDERS SINCE GRANTHAM

Since the Supreme Court of Iowa decided *Grantham* in 2005, it has not revisited temporary custody orders pending a modification. However, the Iowa Court of Appeals has decided several cases addressing this issue. Even with the added precedent, the standard remains unclear. In a 2007 case, *In re Marriage of Curtis* (“*Curtis*”), the Iowa Court of Appeals declined to enter a temporary modification order of a father's visitation rights based on a mother's allegation of sexual child abuse against the father.⁵⁶ While the court cited

gs.html [https://perma.cc/Z4HU-JVHK] (explaining reunification therapy and identifying an increase in courts ordering reunification therapy to restore relationships with estranged parents based on the belief “that a child is more likely to be successful if they have a relationship with both parents as opposed to just one”).

50. See *In re Marriage of Hoffman*, 867 N.W.2d 26, 35 (Iowa 2015) (giving less weight to a child's preference in a modification proceeding).

51. *Id.*

52. See Sarah Fotheringham, Jean Dunbar & Dale Hensley, *Speaking for Themselves: Hope for Children Caught in High Conflict Custody and Access Disputes Involving Domestic Violence*, 28 J. FAM. VIOLENCE 311, 320 (2013) (explaining that judges view children's needs as “critical evidence” in deciding children-related issues); see also *infra* Section III.C.2 (discussing the child-centered benefits of courts authorized to enter temporary custody orders while modifications are pending).

53. See IOWA CODE § 598.1(1) (2024).

54. See, e.g., *Schoonover v. Schoonover*, 228 N.W.2d 31, 34 (Iowa 1975).

55. Compare *In re Marriage of Curtis*, No. 06-1392, 2007 WL 1201758, at *2 (Iowa Ct. App. Apr. 25, 2007) (unpublished table decision) (denying grant of a temporary modification order), with *In re Bates*, No. 13-0469, 2013 WL 6405471, at *2 (Iowa Ct. App. Dec. 5, 2013) (unpublished table decision) (granting a temporary modification order), and *In re Marriage of Van Fleet*, No. 18-1585, 2020 WL 377032, at *2 (Iowa Ct. App. Jan. 23, 2020) (unpublished table decision) (granting a temporary modification order).

56. *In re Marriage of Curtis*, 2007 WL 1201758, at *2.

Grantham as authority for allowing temporary orders in rare circumstances, it declined to further address the temporary order because the issue was moot⁵⁷ and refused to provide any guidance on how courts should interpret *Grantham*.⁵⁸ The court reasoned that allegations of sexual abuse are not sufficient to justify a permanent modification, and therefore it did not determine whether a temporary order was appropriate.⁵⁹

Although *Curtis* lends support that *Grantham* is a high burden to meet, it does not clarify whether courts should consider physical presence, necessity, or something else entirely. Instead of providing clarity, *Curtis* muddles the standard even more. The court in *Curtis* suggests that a court should consider the likelihood of success on the merits when determining if a temporary modification is warranted.⁶⁰ Temporary custody orders would only be granted when the parent is likely to succeed on a permanent modification. This consideration turns the inquiry into one that is guided more by the policy of temporary injunctions than the policy of child custody.⁶¹ *Grantham* may be unclear, but the precedent in *Curtis* materially diverges from the concrete doctrinal principles *Grantham* does provide. In *Grantham*, the Supreme Court of Iowa suggested that the temporary custody inquiry is independent of the permanent custody inquiry by stating that the request for permanent modification did not diminish the need for the temporary orders.⁶² Under *Grantham*, there may be cases where temporary orders are warranted even when permanent modification is uncertain;⁶³ however, under *Curtis*, these concepts are inappropriately linked.

The Iowa Court of Appeals next considered temporary modification orders in 2013 in *In re Bates* (“*Bates*”).⁶⁴ In *Bates*, a child’s mother was granted primary custody following the end of the child’s parents’ nonmarital relationship.⁶⁵ A few years later, the child’s mother attempted suicide in a violent manner after her subsequent husband (not the child’s father) informed her that he was filing for divorce.⁶⁶ The district court held the

57. An issue is moot when the case “no longer present[s] a justiciable controversy because the issues involved have become academic or nonexistent.” *Id.* (citing *Junkins v. Branstad*, 421 N.W.2d 130, 133 (Iowa 1988)).

58. *Id.*

59. *Id.* (“[I]t would only be an academic exercise to determine whether the type of temporary modification, as entered in this case, is appropriate under Iowa law.”).

60. *See id.* (denying a temporary modification where the evidence of the underlying abuse allegation was “insufficient to justify a *permanent* modification” (emphasis added)).

61. Courts consider “the likelihood of success on the merits” when entering temporary injunctions. *Max 100 L.C. v. Iowa Realty Co.*, 621 N.W.2d 178, 181 (Iowa 2001).

62. *In re Marriage of Grantham*, 698 N.W.2d 140, 146 (Iowa 2005).

63. *See id.*

64. *In re Bates*, No. 13-0469, 2013 WL 6405471, at *1 (Iowa Ct. App. Dec. 5, 2013) (unpublished table decision).

65. *Id.*

66. *Id.*

mother's mental health amounted to a substantial change in circumstances and granted modification of the custody arrangement on a temporary basis.⁶⁷

Oddly, in affirming the district court's authority to issue temporary orders, the court never cited *Grantham* as support. It instead relied on a dated case that only addressed temporary custody orders in an initial determination of custody.⁶⁸ The Iowa Court of Appeals reasoned that the mother, by way of her attempted suicide and ensuing hospitalization, "placed herself in a situation where she was unable to physically care for the child."⁶⁹ The appellate court agreed with the lower court that the temporary modification order was necessary.⁷⁰

Bates is plagued with the same problems as *Grantham*—even though the court does not cite *Grantham*. The opinion shows district courts' confusion and inconsistency in which standard to apply, exemplifying the need for a statute that gives clear direction. The court, like the court in *Grantham*, seems to take an extreme, parent-centered approach of only granting temporary custody modifications when the parent is physically unable to care for the child. After *Bates*, questions remain: What is the standard? Is necessity sufficient, or must the necessity be caused by the parent's physical absence? If necessity is sufficient, what constitutes necessity?

The most recent decision involving temporary custody modification orders occurred in 2020 in the case of *In re Marriage of Van Fleet* ("*Van Fleet*"). In *Van Fleet*, the parents divorced in 2008, agreeing to joint legal custody and joint physical care on an alternating weekly basis.⁷¹ Seven years after the divorce, the Department of Human Services ("DHS") issued a founded child abuse assessment⁷² against the father, and a year later, DHS issued another founded child abuse assessment.⁷³ Around the same time as the DHS investigations, the children's father pled guilty to possession of marijuana to avoid prosecution for additional drug charges.⁷⁴ The children's mother petitioned to modify the custody arrangement, seeking sole legal custody and primary physical care of the children.⁷⁵ In her filing, she requested the court limit the father's visitation with the children, which the court denied.⁷⁶ While her petition was pending, the State initiated child-in-need-of-assistance

67. *Id.*

68. *Id.* at *2 (citing *Shipley v. Shipley*, 182 N.W.2d 125, 127 (Iowa 1970)).

69. *Id.*

70. *Id.*

71. *In re Marriage of Van Fleet*, No. 18-1585, 2020 WL 377032, at *1 (Iowa Ct. App. Jan. 23, 2020) (unpublished table decision).

72. *Id.* A founded child abuse assessment "means that more than half of the available evidence shows that abuse occurred, and the abuse DOES meet the criteria for placement on the Central Abuse Registry." IOWA DEP'T OF HUM. SERVS., 470-3243; NOTICE OF CHILD ABUSE: FOUNDED, <https://hhs.iowa.gov/sites/default/files/470-3243.pdf> [<https://perma.cc/R8J6-UWGV>].

73. *In re Marriage of Van Fleet*, 2020 WL 377032, at *1.

74. *Id.*

75. *Id.*

76. *Id.*

proceedings, removed the children from the father's care, and adjudicated the children to be in need of assistance.⁷⁷ Based on these circumstances (and likely nudged by the juvenile court), the district court temporarily modified the custody arrangement to give the mother primary care of the children and limited the children's visitation with the father to two unsupervised overnight visits per week.⁷⁸ Despite the centrality of the issue in this case, the appellate court did not discuss the authority of courts to enter temporary custody orders or whether the facts here met the *Grantham* standard.

Van Fleet supports the idea that courts will only temporarily modify custody when there are extreme circumstances that implicate the child's physical safety.⁷⁹ It took two founded child abuse assessments, drug charges, and the children being adjudicated in need of assistance for the court to have a clear case to enter temporary orders (perhaps lending support for a necessity interpretation of *Grantham*). However, because the appellate court did not review the lower court's authority to enter temporary orders, it is still unclear how judges should decide whether temporary orders are appropriate. *Van Fleet* emphasizes two important shortfalls of current Iowa law. First, courts incorrectly undervalue the child's preference in modification proceedings. In *Van Fleet*, the court gave little to no weight to the fact that the couple's eldest child, who was seventeen at the time of the appeal, wanted to have no contact with their father.⁸⁰ Second, *Van Fleet* also illustrates the importance courts often place on the children's physical safety rather than their emotional or mental health.⁸¹

Concerns that temporary custody orders harm children more than they help are misplaced. Those against temporary orders fear they cause more uncertainty in the child's life, enhance tension among the child's family, and encourage litigation by giving parents more opportunities to fight over custody.⁸² However, with the right statute and judicial standard, temporary orders can help children escape situations that harm their mental health when they otherwise would have to wait for a permanent modification. Additionally, at the modification trial, courts are better suited to make long-term decisions based on the needs of the family because the temporary orders will show what did and did not work for that particular family.⁸³ The court will

77. *Id.*

78. *Id.*

79. *See id.* at *2 (modifying custody temporarily after a couple founded child abuse assessments and after the children were adjudicated to be in need of assistance).

80. *Id.*

81. *See* Bailey, *supra* note 44, at 35 (describing how the best interest of the child standard tends to focus on physical abuse rather than emotional or psychological abuse).

82. *See* Angela K. Upchurch, *Parenting in a Post-Pandemic World: The Impact of COVID-19 on Child Custody Disputes*, 15 ELON L. REV. 123, 170 (2023).

83. *Id.*

also have more flexibility to consider the child's preferences,⁸⁴ leading to decisions that support the child's mental health.⁸⁵

In 2016, the Iowa Legislature enacted the Uniform Deployed Parents Custody and Visitation Act proposed by the National Conference of Commissioners on Uniform State Laws.⁸⁶ The statute addresses how courts should modify custody when one parent is deployed—the very problem in *Grantham*.⁸⁷ This legislation helped alleviate real mental and emotional trauma faced by children. However, that trauma is not confined to children involved in the custody disputes of military families. In Iowa, *Grantham* still remains good, if opaque, law for all other temporary orders requests—including the more common scenario among nonmilitary parents. Since *Grantham*, the standard for nonmilitary parents has not been changed or clarified by the legislature nor the courts, and it is still equally confusing and unclear. Even though the standard has remained the same, society has not. Other states that faced challenges similar to the recent social and legal developments in Iowa have addressed the issue of temporary orders either statutorily or through court rules.

C. HOW OTHER STATES HAVE ADDRESSED TEMPORARY CUSTODY ORDERS
PENDING MODIFICATION

Even before the Supreme Court of Iowa decided *Grantham*, other states passed statutes or enacted court rules that better addressed the temporary custody issue. Before *Grantham*, for example, Georgia enacted a statute allowing a judge to change custody upon the commencement of a modification action.⁸⁸ Texas had passed Texas Family Code section 156.006, under which a temporary order must be in the best interest of the child under specific enumerated criteria.⁸⁹ And Utah had a rule of civil procedure that allowed temporary modifications pending resolution to protect the child from threats

84. See *id.* For the increased opportunity to hear the child's preferences and for them to be given adequate affect, Iowa would need to give more weight to the child's preferences in modifications.

85. See Fotheringham et al., *supra* note 52, at 320–22 (explaining a program in which children's views were expressed to the court in contentious custody cases and how this program improved the children's mental health); *Listening to Children*, FUTURE LEARN, <https://www.futurelearn.com/info/courses/coping-with-changes/o/steps/158839> [<https://perma.cc/Y7TU-KMDG>] (“Listening to children and creating opportunities for them to express their thoughts and feelings can promote wellbeing . . . [by] help[ing] children cope with change.”).

86. See *Military Parent Custody and Visitation*, NAT'L CONF. STATE LEGISLATURES (Sept. 6, 2018), <https://www.ncsl.org/military-and-veterans-affairs/military-parent-custody-and-visitation> [<https://perma.cc/U5AY-JHQ5>]; IOWA CODE §§ 598C.301–311 (2024).

87. *In re Marriage of Grantham*, 698 N.W.2d 140, 142–43 (Iowa 2005).

88. GA. CODE ANN. § 19-9-3 (2022).

89. These circumstances include: (1) when “the child's present circumstances . . . significantly impair the child's physical health or emotional development;” (2) “the person designated in the final order” has given up caring for the child “for more than six months;” or (3) “the child is [twelve] years of age or older and has expressed” their preference to the court in chambers. TEX. FAM. CODE ANN. § 156.006(b)(1)–(3) (West 2014 & Supp. 2023) (emphasis added).

of immediate, irreparable harm or to reflect changes already made by the parents, as long as the order is in the child's best interest.⁹⁰

Since *Grantham*, even more states, such as Idaho⁹¹ and Arizona,⁹² have enacted more helpful statutes and court rules that allow for temporary custody modification and clarify procedures surrounding them.⁹³ Iowa should follow their lead and enact legislation giving courts broader authority to enter temporary custody orders, especially considering the recent changes to society's recognition of children's mental health.⁹⁴

II. THE NEED FOR TEMPORARY CUSTODY ORDERS IN IOWA

Iowa's current standard for temporary custody orders pending a custody modification fails to adequately protect the child's best interest. Under the *Grantham* standard, courts fail to account for circumstances where there is no emergency of physical harm or where a parent is physically absent, even when temporary custody orders would better support and protect the child's emotional and mental health. The standard does not account for the child's mental health, denies adequate relief in many common scenarios,⁹⁵ and fails to give judges a clear standard to apply.

A. LENGTH OF TIME TO REACH THE COURTROOM

Recently, there has often been a long wait between filing a petition for modification and receiving a final order, making the need for temporary orders more necessary than ever before. In Iowa, before the court will hear the issue, it may require the parties to attempt mediation, attend a children-in-the-middle parenting class, or both.⁹⁶ A parent opposing the modification may refuse to participate in mediation or prolong the process as long as possible by failing to file required documents. This interference can make the

90. UTAH R. CIV. P. 106.

91. IDAHO R. FAM. L.P. 504.

92. ARIZ. R. FAM. L.P. 47.2.

93. For a more in-depth discussion of these provisions see *infra* Section III.A.

94. AAP-AACAP-CHA Declaration of a National Emergency in Child and Adolescent Mental Health, AM. ACAD. PEDIATRICS (Oct. 19, 2021), <https://www.aap.org/en/advocacy/child-and-adolescent-healthy-mental-development/aap-aacap-cha-declaration-of-a-national-emergency-in-child-and-adolescent-mental-health> [<https://perma.cc/ZBC9-2MCK>] (declaring a mental health emergency in children due to the COVID-19 pandemic and structural racism).

95. See *supra* Section I.B.

96. *How to Modify a Custody Order*, IOWA LEGAL AID (Apr. 4, 2023), <https://www.iowalegalaid.org/resource/how-to-modify-a-custody-order> [<https://perma.cc/YXW6-ZV5X>].

Children in the middle classes aim to help parents navigate divorce by mitigating the harm to their children and considering their children's needs. *Children in the Middle Class*, CTR. FOR INTERPERSONAL EFFECTIVENESS, <https://www.cie-ankeny.com/services/children-in-the-middle-class> [<https://perma.cc/XQ48-3QRH>]. These classes cover topics such as: communication between parents and with the children, dealing with parental conflict, helping children with the divorce, and co-parenting. *Id.*

timeline from petition to trial rather lengthy.⁹⁷ For example, in Massachusetts (where temporary custody modifications pending a permanent modification are permitted), it can take as long as eight months after filing a petition for the court to hold the final modification hearing.⁹⁸ Depending on when interim events such as mediation or additional hearings are scheduled, or if either party files a motion for a continuance, the process can be delayed even further.⁹⁹

This is especially true in Iowa, with nearly every district facing a shortage of court reporters from mid-2023 to 2024.¹⁰⁰ This shortage has led to delays in cases and added stress to the litigants and judges.¹⁰¹ What is more, litigants in family law cases are more likely to be self-represented,¹⁰² which further hampers the process given the complex nature of the legal system and the sensitive issues involved.¹⁰³ In mid-2023 in Iowa's Sixth District, a modification proceeding could take twelve to twenty-four months to reach trial, making the need for temporary orders during this time more necessary than ever,¹⁰⁴ especially considering the fact that custody designations can affect other considerations such as child support.¹⁰⁵

Given these long timelines, unworkable custody arrangements can be very detrimental to children. Long timelines are even longer for children: one year in a ten-year-old's life is a tenth of their life, so being stuck in a harmful situation can negatively impact their childhood in a significant way. For example, a court's unwillingness to enter temporary custody orders could

97. See Philip Anh, *Can Child Custody be Modified?*, UNBUNDLED LEGAL HELP, <https://www.unbundledlegalhelp.com/blog/can-child-custody-be-modified> [<https://perma.cc/7UXU-94YZ>] (explaining that contested custody cases can take months or longer to be resolved); *Modifying an Order*, IOWA DEP'T HUM. SERVS. (Mar. 28, 2023), <https://secureapp.dhs.state.ia.us/customerweb/resources/Modifying%20an%20Order/Modifying%20an%20Order> [<https://perma.cc/7UXE-99ZH>] (stating that a requested change in child support, which commonly accompanies a change in custody, can take months to be completed).

98. See *How Long Does a Modification Case Take in Massachusetts?*, BILL FARIAS FAM. L., P.C., <https://www.billfariaslaw.com/blog/how-long-does-a-modification-case-take> [<https://perma.cc/JQC3-2ZLB>] (explaining the general modification process in Massachusetts).

99. See *id.*

100. Kristin Rogers, *Working Iowa: Dire Need for Court Reporters*, KCRG (Feb. 12, 2024, 7:20 AM), <https://www.kcrg.com/2024/02/12/working-iowa-dire-need-court-reporters> [<https://perma.cc/RNQ7-89WM>]; see *Iowa Has a Court Reporter Shortage*, GAZETTE (June 22, 2023, 7:00 AM), <https://www.thegazette.com/careers-coffee/iowa-has-a-court-reporter-shortage> (explaining how some hearings must be rescheduled due to court reporter unavailability) (on file with the *Iowa Law Review*).

101. *Iowa Has a Court Reporter Shortage*, *supra* note 100.

102. See Drew A. Swank, *The Pro Se Phenomenon*, 19 BYU J. PUB. L. 373, 376 (2005) ("Some reports indicate that eighty to ninety percent or more of family law cases involve at least one pro se litigant.").

103. See *id.* at 384 (suggesting *pro se* litigants require more judicial resources because they do not have the guidance of an attorney).

104. See E-mail from Allison M. Heffern, Att'y, Kids First L. Ctr., to author (Aug. 31, 2023, 8:04 AM) (on file with author).

105. See *How Does Child Support Work in Iowa*, FAM. L. SOLS. IOWA (Nov. 20, 2020), <https://www.familylawsof Iowa.com/blog/2020/november/how-does-child-support-work-in-iowa> [<https://perma.cc/X87B-NVWH>] ("[Child support] is typically paid to the parent who is the child's primary caregiver.").

leave a child in the middle of a contentious relationship between their parents. The COVID-19 pandemic has given parents even more topics to argue about, such as vaccination status and what school district the child should attend.¹⁰⁶

Indeed, the need for temporary orders when parents have disputes is more important now than ever. In a recent Iowa Supreme Court case dealing with a disagreement between parents about whether to vaccinate their children for COVID-19, the court stated that it could not step in to resolve parental disputes when parents have joint legal custody.¹⁰⁷ Instead, the challenging parent must seek sole legal custody because joint legal custodians have equal rights and entitlements to participate in “their children’s ‘legal status, medical care, education, extracurricular activities, and religious instruction.’”¹⁰⁸ Requiring the parent to seek permanent modification of the custody arrangement without addressing temporary matters leaves the child in the middle of this quarrel until the court hears the case for permanent modification. Instead, a temporary custody order could fast-track the case, leading to a quicker resolution of the issue between the parents and placing the child in a more suitable environment.

Additionally, if parents frequently disagree on important decisions that revolve around the children, maximizing contact with both parents should no longer be the court’s priority, as it may be harmful to the child.¹⁰⁹ Rather, the child’s mental health can be better protected by primarily living with one parent, even though the legal system prefers the child to have frequent contact with both parents.¹¹⁰ The court’s emphasis on parental contact goes against the child’s best interest in these situations by failing to reduce the risk of children developing psychological issues in the future.¹¹¹

B. LEGISLATURE’S FOCUS ON MENTAL HEALTH

The Iowa Legislature has recently taken an interest in changing access to mental health care.¹¹² Since 2018, the Iowa Legislature has passed several laws

106. See Traci Capistrant, *Family Law: The COVID Chronicles*, 78 BENCH & BAR MINN. 16, 18–19 (2021).

107. *In re Marriage of Frazier*, 1 N.W.3d 775, 788 (Iowa 2024).

108. *Id.* at 779 (quoting IOWA CODE § 598.1(3) (2024)); see also *id.* at 788.

109. See, e.g., Robert E. Emery, Randy K. Otto & William T. O’Donohue, *A Critical Assessment of Child Custody Evaluations*, 6 PSYCH. SCI. PUB. INT. 1, 18 (2005); E. Mark Cummings, Melissa R.W. George, Kathleen P. McCoy & Patrick Davies, *Interparental Conflict in Kindergarten and Adolescent Adjustment: Prospective Investigation of Emotional Security as an Explanatory Mechanism*, 83 CHILD DEV. 1703, 1711–12 (2012); J. Benjamin Hinnant, Mona El-Sheikh, Margaret Keiley & Joseph A. Buckhalt, *Marital Conflict, Allostatic Load, and the Development of Children’s Fluid Cognitive Performance*, 84 CHILD DEV. 2003, 2011–12 (2013).

110. Emery et al., *supra* note 109, at 18; see also Cummings et al., *supra* note 109, at 1711–12 (discussing how exposure to parental conflict may have negative long-term effects on the child’s mental health).

111. Emery et al., *supra* note 109, at 18.

112. See S. File 2113, 87th Gen. Assemb., Reg. Sess. (Iowa 2018); H.R. File 2456, 87th Gen. Assemb., Reg. Sess. (Iowa 2018); H.R. File 690, 88th Gen. Assemb., Reg. Sess. (Iowa 2019).

addressing mental health for the public and for children specifically.¹¹³ In 2018, the state legislature passed a bill requiring teachers and other school employees to complete suicide awareness and prevention trainings, recognizing the importance of protecting children’s mental health.¹¹⁴ That same year, Iowa also passed a bill requiring the State to provide additional mental health services, some intensive, for the public in general.¹¹⁵ In 2019, the legislature focused directly on children’s mental health needs.¹¹⁶ House File 690 was designed to create a statewide system concerning children’s mental health.¹¹⁷ The bill encouraged the coordination of “children’s behavioral health services” to ensure all persons, including children, are able to receive the services they need regardless of economic circumstances.¹¹⁸ “Children’s behavioral health services” is defined by the act as “services for children with a serious emotional disturbance.”¹¹⁹ Serious emotional disturbances include “mental, behavioral, or emotional disorder[s]” diagnosable under the current American Psychiatric Association manual.¹²⁰ Further, the act required state agencies to work together “to develop and implement a strategic plan to expand access to qualified mental health workers across the state.”¹²¹ Finally, the legislature created a state board to oversee the new children’s behavioral health system.¹²²

However, since these developments, the legislature has seemed to turn their attention elsewhere, and Iowa is still behind on its mental health services.¹²³ While passing the acts was a significant step, Iowans are still waiting for them to be fully implemented.¹²⁴ Indeed, questions remain about the financing of this program, and some mental health providers worry about

113. Iowa S. File 2113; Iowa H.R. File 2456; Iowa H.R. File 690.

114. Iowa S. File 2113.

115. Iowa H.R. File 2456.

116. Iowa H.R. File 690.

117. *Id.*; Ryan Matheny, *Reynolds Signs Bill Creating Children’s Mental Health System in Iowa*, KMALAND (May 2, 2019), https://www.kmaland.com/news/reynolds-signs-bill-creating-childrens-mental-health-system-in-iowa/article_28225c46-6ce3-11e9-acfb-3f524fa0b1fd.html [https://perma.cc/4DSB-W48B].

118. Iowa H.R. File 690; *see also* Michaela Ramm, *Iowa’s Children’s Mental Health System Making Progress, State Official Says*, GAZETTE (Nov. 14, 2019, 11:51 AM), <https://www.thegazette.com/health-care-medicine/iowas-childrens-mental-health-system-making-progress-state-official-says> (on file with the *Iowa Law Review*).

119. Iowa H.R. File 690.

120. *Id.*

121. *Id.*

122. *Id.*

123. *See* Leslie Carpenter, *Iowa’s Mental Illness Treatment System Is Not Fixed Yet, Especially for Children*, IOWA CAP. DISPATCH (Jan. 26, 2023, 8:00 AM), <https://iowacapitaldispatch.com/2023/01/26/iowas-mental-illness-treatment-system-is-not-fixed-yet-especially-for-children> [https://perma.cc/PWT3-8E54] (reporting that Iowa only has 125 staffed inpatient-psychiatric beds for children, when it should have 416 based on the population).

124. *Id.*

access for children who have not been diagnosed with a condition.¹²⁵ This legislation shows that Iowa has an interest in supporting children's mental health, and enacting a statute allowing temporary custody orders pending a permanent modification would be a meaningful next step in furthering support for children.

Children's mental health is still an important concern, and Iowans feel children's mental health should remain a priority.¹²⁶ In 2021, the American Academy of Pediatrics declared a "worsening [mental health] crisis" among children and adolescents due to the COVID-19 pandemic and racial inequalities.¹²⁷ A year later, children's health organizations (including the American Academy of Pediatrics) wrote to President Biden asking for help funding and supporting children's access to mental and behavioral healthcare.¹²⁸ Even with this increased awareness, there remains a children's mental health crisis in the United States, with more children seeking mental health services than ever and a serious lack of these resources¹²⁹ to provide each child with the level of care they need.¹³⁰

In Iowa, children's rights advocates filed a lawsuit against the State for denying Medicaid-eligible children access to mental health care,¹³¹ which the

125. Grant Gerlock, *Children's Mental Health System Signed into Law*, IOWA PUB. RADIO (May 1, 2019, 5:25 PM), <https://www.iowapublicradio.org/state-government-news/2019-05-01/childrens-mental-health-system-signed-into-law> [<https://perma.cc/VJ9T-DMJX>].

126. See, e.g., Carpenter, *supra* note 123.

127. AAP-AACAP-CHA Declaration of a National Emergency in Child and Adolescent Mental Health, *supra* note 94.

128. *Health Organizations Urge the Biden Administration to Declare a Federal National Emergency in Children's Mental Health*, AM. ACAD. PEDIATRICS (Oct. 13, 2022), <https://www.aap.org/en/news-room/news-releases/aap/2022/health-organizations-urge-the-biden-administration-to-declare-a-federal-national-emergency-in-childrens-mental-health> [<https://perma.cc/HA3V-JEPP>].

129. Erika Edwards, *Emergency Room Doctors Beg for Help Treating Children with Mental Health Illnesses*, NBC NEWS (Aug. 16, 2023, 4:00 AM), <https://www.nbcnews.com/health/health-news/emergency-room-doctors-beg-help-treating-children-mental-health-illness-rcna99951> [<https://perma.cc/FAN4-6ME7>].

130. There is often a long wait time to receive mental health care services. See Danielle R. Adams, *Availability and Accessibility of Mental Health Services for Youth: A Descriptive Survey of Safety-Net Health Centers During the COVID-19 Pandemic*, 60 CMTY. MENTAL HEALTH J. 88, 92 (2024); David Beeman, Opinion, *In Iowa, Attention to Children's Mental Health Is Tragically Lacking*, DES MOINES REG. (Jan. 29, 2023, 6:04 AM), <https://www.desmoinesregister.com/story/opinion/columnists/iowa-view/2023/01/29/iowa-children-mental-health-attention-tragically-lacking/69845179007> (on file with the *Iowa Law Review*) (discussing the long wait times for children to see mental health professionals and issues related to insurance); Heather Stringer, *Providers Predict Longer Wait Times for Mental Health Services. Here's Who It Impacts Most*, AM. PSYCH. ASS'N (Apr. 1, 2023), <https://www.apa.org/monitor/2023/04/mental-health-services-wait-times> [<https://perma.cc/PW9P-MFDQ>].

In March 2022, the wait for children in Polk County, Iowa was as long as one year. See Jason Clayworth, *Hundreds of Iowa Kids Wait for Mental Health Care*, AXIOS DES MOINES (Mar. 17, 2022), <https://www.axios.com/local/des-moines/2022/03/17/iowa-children-mental-health-care-waits-pandemic> (on file with the *Iowa Law Review*).

131. Michaela Ramm, *Lawsuit Accuses Iowa of 'Longstanding Failure' to Provide Kids with Mental Health Services*, DES MOINES REG. (Jan. 6, 2023, 4:52 PM), <https://www.desmoinesregister.com/story/news/health/2023/01/06/groups-accuse-iowa-of-failing-to-address-kids-mental-health-needs/69785335007> (on file with the *Iowa Law Review*).

State settled by agreeing to develop more services and schedule monthly meetings with the children's rights advocates to plan the services and provide oversight.¹³² Several counties have addressed the ongoing need for improved mental health on their own. Johnson County reported an increase in youth seeking mental health services since the pandemic,¹³³ and Pottawattamie County issued a statement addressing their commitment to improving mental health.¹³⁴ But disappointingly, in 2023, the Iowa Legislature took steps back by enacting legislation that significantly constrains children's mental health. Iowa introduced a bill prohibiting "social and emotional learning," despite its importance in learning and promoting mental health,¹³⁵ and it passed a bill limiting children's access to mental health treatment at school.¹³⁶

Iowa is undermining its own professed dedication¹³⁷ to addressing the mental crises facing its children. Often, the children most at risk are those experiencing domestic turmoil during divorce and custody disputes, especially if those disputes leave them facing a lack of parental support or outright rejection.¹³⁸ By failing to expand the ability to obtain temporary custody modifications, lawmakers are leaving some of the children most in need of legislative action to float adrift in doctrinal indeterminacies that the judiciary has refused to resolve. Adopting a statute providing for temporary orders during the pendency of a child custody modification would be consistent with Iowan's recent focus on children's mental health and its continuing need for further protection of children's mental health.

132. Hannah Fingerhut, *Iowa Promises Services to Kids with Severe Mental and Behavioral Needs After Lawsuit Cites Failures*, ABC NEWS (Oct. 2, 2023, 6:12 PM), <https://abcnews.go.com/Health/wireStory/iowa-promises-services-kids-severe-mental-behavioral-after-1093673698> [<https://perma.a.c.c/D2PZ-VZ8Y>].

133. Roxy Ekberg, *JoCo Reports Jump in Youth Crises, Merges Mental Health Services*, DAILY IOWAN (Sept. 26, 2023), <https://dailyiowan.com/2023/09/26/joco-reports-jump-in-youth-crises-merges-mental-health-services> [<https://perma.cc/TH5M-T76X>].

134. *Mental Health Remains a Priority for the Region*, POTTAWATTAMIE CNTY. (Aug. 29, 2023), https://www.pottawattamie-ia.gov/news/mental_health_remains_a_priority_for_the_region [<https://perma.cc/V7VV-P7ZP>].

135. H.R. File 362, 90th Gen. Assemb., Reg. Sess. (Iowa 2023); Grace King, *Iowa Bill Seeks to Ban Social-Emotional Learning, but Educators Say It's Critical to Kids' Development*, GAZETTE (Feb. 25, 2023, 5:00 AM), <https://www.thegazette.com/k/iowa-bill-seeks-to-ban-social-emotional-learning-but-educators-say-its-critical-to-kids-developme> (on file with the *Iowa Law Review*).

136. S. File 496, 90th Gen. Assemb., Reg. Sess. (Iowa 2023). Under Iowa Senate File 496, parents or guardians have to give written consent to the board of directors of the school district before their children can participate "in any survey, analysis, activity, or evaluation that reveals information concerning . . . [m]ental or psychological problems of the student or the student's family" and other important topics like the child's "[s]exual behavior, orientation, or attitudes." *Id.*

137. See *Iowa Lawmakers Send Bipartisan Children's Mental Health Bill to Governor's Desk*, WQAD8 (Apr. 17, 2019, 9:44 AM), <https://www.wqad.com/article/news/local/drone/8-in-the-air/iowa-lawmakers-send-bipartisan-childrens-mental-health-bill-to-governors-desk/526-586f8bde-7ef3-49do-a602-f20ebde20699> [<https://perma.cc/XF4F-5XRW>] ("Children's mental health has been a priority for Gov. Kim Reynolds since her campaign in 2018.").

138. See *The Effects of Divorce on Children & How to Help Them Cope*, U. ILL. CHI. (Feb. 22, 2023), <https://www.psych.uic.edu/research/community-based-children-and-family-mental-health-services-research-program/in-the-news/the-effects-of-divorce-on-children-how-to-help-them-cope> [<https://perma.cc/7PQJ-CEgK>].

C. EFFECT OF DIVORCE ON THE CHILD'S MENTAL HEALTH

Divorce can have long-lasting negative effects on the children involved. Adverse Childhood Experiences (“ACEs”) are events experienced during childhood that have traumatic or stressful consequences.¹³⁹ One of the most common (and powerful) ACEs is divorce.¹⁴⁰ Not only does divorce negatively affect the child as it occurs, but it can also have effects into adulthood. Researchers have “estimated that childhood adversity plays a major role in . . . [thirty] percent of mental health disorders among adults.”¹⁴¹ ACEs can lead to not only physical ailments when the child gets older, such as heart attack and diabetes, but also to mental health conditions, such as depression and suicidal ideation or attempts.¹⁴² Even worse, the effects and trauma can be passed down to the child’s own children.¹⁴³ However, ACEs can be prevented by protecting the child from violence and physical harm, uniting children with caring adults, and intervening to lessen the harms by providing treatment.¹⁴⁴ In the family law context, temporary custody orders pending a modification would greatly prevent parental separation from turning into an ACE. Temporary orders would reduce the stress and conflict the child is exposed to during the divorce proceeding by placing the child with the parent that creates a safe, positive, and supportive environment.

An increasingly important topic to consider is the effect of the current standard on children in the LGBTQ+ community. In general, divorce can have long-lasting effects on the child, even into adulthood. A court’s refusal to enter temporary custody orders could trap a child who identifies as part of the LGBTQ+ community into primarily living with or spending significant time with an unsupportive parent. This increased contact with an unsupportive parent can be detrimental to the child’s mental health, even though there is not a per se emergent situation.¹⁴⁵ Being rejected by a parent can be significantly detrimental for a child because of the important role of the

139. Jan Jeske & Mary Louise Klas, *Adverse Childhood Experiences: Implications for Family Law Practice and the Family Court System*, 50 FAM. L.Q. 123, 124 (2016).

140. Kerry Jamieson, *ACEs and Divorce*, CTR. FOR CHILD COUNSELING (Feb. 25, 2019), <https://www.centerforchildcounseling.org/aces-and-divorce> [<https://perma.cc/7Z7L-87NC>].

141. BRUCE D. PERRY & OPRAH WINFREY, WHAT HAPPENED TO YOU? CONVERSATIONS ON TRAUMA, RESILIENCE, AND HEALING 104 (2021).

142. *Fast Facts: Preventing Adverse Childhood Experiences*, CTRS. FOR DISEASE CONTROL & PREVENTION (June 29, 2023), <https://www.cdc.gov/violenceprevention/aces/fastfact.html> [<https://perma.cc/XJ7C-VFFA>].

143. STRATEGIC PREVENTION TECH. ASSISTANCE CTR., SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., ADVERSE CHILDHOOD EXPERIENCES AND THE ROLE OF SUBSTANCE MISUSE PREVENTION 3 (2023).

144. See *Fast Facts: Preventing Adverse Childhood Experiences*, *supra* note 142.

145. See Sabra L. Katz-Wise, Margaret Rosario & Michael Tsappis, *Lesbian, Gay, Bisexual, and Transgender Youth and Family Acceptance*, 63 PEDIATRIC CLINICS N. AM. 1011, 1018 (2016) (reporting that parental rejection may lead to an inability of the child to accept their sexual identity). See generally Caitlin Ryan, David Huebner, Rafael M. Diaz & Jorge Sanchez, *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults*, 123 PEDIATRICS 346 (2009) (finding adolescents who experienced familial rejection reported higher levels of suicide attempts, depression, and substance use).

family in the child's development.¹⁴⁶ This type of familial rejection often leads to adverse social and emotional development and attachment issues.¹⁴⁷

One study found that during the COVID-19 pandemic, LGBTQ+ youth were concerned “about being ‘stuck at home with unsupportive parents,’” which contributed to the “stress, frustration, anxiety, depression, and general struggles with mental health” they reported feeling during that time.¹⁴⁸ It stands to reason that being stuck in any situation—pandemic or divorce—with an unsupportive parent would also lead to these concerns and feelings. In general, youths who identify as LGBTQ+ are more likely to have suicidal thoughts and attempts.¹⁴⁹ However, parental support and family acceptance are important protective factors leading to lower incidences of suicidal ideation and better self-esteem and general health.¹⁵⁰ An essential method in preventing suicide among these children is to promote parental support and connectedness.¹⁵¹

Finally, familial support can protect against adverse academic outcomes. Studies show that support from the child's family leads to better grades and lower risks of dropping out.¹⁵² Without temporary custody orders, the child has no recourse until the court has entered a modification decree, unless the supportive parent wants to defend against and suffer the consequences of a contempt action.¹⁵³ Removing a child from an unsupportive environment and placing them in a supportive, caring one could dramatically improve the child's mental health or even save the child's life. For all the reasons mentioned in Part II, the Iowa Legislature should adopt a statute vesting the court with authority to grant temporary custody orders, especially considering the child's wishes and to protect the child's mental health.

III. THE STATUTORY SOLUTION

Iowa needs a more concrete judicial standard allowing for temporary custody orders while a permanent modification is pending. The standard in

146. William J. Hall, *Psychosocial Risk and Protective Factors for Depression Among Lesbian, Gay, Bisexual, and Queer Youth: A Systematic Review*, 65 J. HOMOSEXUALITY 263, 299 (2018).

147. *Id.*

148. Jessica N. Fish et al., “I’m Kinda Stuck at Home with Unsupportive Parents Right Now”: LGBTQ Youths’ Experiences with COVID-19 and the Importance of Online Support, 67 J. ADOLESCENT HEALTH 450, 451 (2020).

149. Sarah Fortune, David Cottrell & Sarah Fife, *Family Factors Associated with Adolescent Self-Harm: A Narrative Review*, 38 J. FAM. THERAPY 226, 238–39 (2016).

150. *Id.*; Lindsay A. Taliaferro & Jennifer J. Muehlenkamp, *Nonsuicidal Self-Injury and Suicidality Among Sexual Minority Youth: Risk Factors and Protective Connectedness Factors*, 17 ACAD. PEDIATRICS 715, 719 (2017).

151. Taliaferro & Muehlenkamp, *supra* note 150, at 719.

152. Enoch Leung, Gabriela Kassel-Gomez, Samantha Sullivan, Flavio Murahara & Tara Flanagan, *Social Support in Schools and Related Outcomes for LGBTQ Youth: A Scoping Review*, DISCOVER EDUC., Nov. 14, 2022, at 1, 7.

153. See generally *Contempt Actions: When the Rules Aren’t Followed*, SAILERLAW, <https://www.sailelaw.com/contempt-actions> [<https://perma.cc/7TJJ-73MK>] (discussing how contempt actions often arise because a parent is withholding visitation or parenting time from the other parent).

Grantham fails to provide guidance to judges and fails to account for the harm a problematic custody arrangement can inflict on children’s mental health. Iowa should follow the lead of other states and pass a statute to alleviate the harm to children’s mental health. This Part first discusses the different states’ approaches to temporary custody orders pending modification. Next, it advocates for the Iowa Legislature to adopt a statute giving courts broader authority to enter temporary custody orders. Finally, it explains why that approach is best for Iowa.

A. OTHER STATES’ APPROACHES TO TEMPORARY ORDERS

Several states have some sort of legislative authority (either through a statute or rule of procedure) allowing courts to enter temporary custody orders.¹⁵⁴ Nonetheless, Iowa remains one of the few to rely on a common law doctrine. Other states’ provisions range from purely procedural in nature to providing explicit circumstances for courts to consider. This Section begins by exploring examples of procedural provisions. Next, it briefly examines a narrow provision that allows temporary orders when there is harm to the child. Third, this Section discusses broad approaches that focus on the child’s best interest and how these approaches do not always lead to ideal outcomes. Finally, this Section concludes by introducing limited approaches that grant courts the power to enter temporary custody orders only when certain circumstances are present.

1. Procedural Provisions

Procedural provisions either grant the court authority to enter temporary custody orders or specify how parties should prepare their case, including which documents should be filed and any page limits on those documents. Although procedural guidelines would be a step in the right direction, they do not completely address the issue. For example, in 2013, Idaho promulgated Idaho Rule of Family Law Procedure 504 (“Rule 504”), requiring a party filing any motion for temporary custody orders to include a proposed parenting plan, the parents’ work schedules, any circumstances posing a risk of neglect or abuse, any special needs of the child, and a description of how the parents are currently caring for the child.¹⁵⁵ Because the rule is procedural in nature, it also limits the number and length of affidavits the court will consider.¹⁵⁶

154. See, e.g., ARIZ. R. FAM. L.P. 47.2; D.C. CODE § 16-831.09 (2024); GA. CODE ANN. § 19-9-3(e) (2022); IDAHO R. FAM. L.P. 504; KY. REV. STAT. ANN. § 403.280 (West 2017 & Supp. 2023); MASS. GEN. LAWS ch. 208, § 28A (2020); MINN. STAT. ANN. § 518.131 (West 2019); N.D. R. OF CT. 8.2 (2023); OHIO REV. CODE ANN. § 3109.043 (West 2011); 231 PA. CODE § 1915.13 (2023); TEX. FAM. CODE ANN. § 156.006 (West 2014 & Supp. 2023); UTAH R. CIV. P. 106; WASH. REV. CODE § 26.09.194 (2023); W. VA. CODE ANN. § 48-9-203 (West 2021 & Supp. 2023); WIS. STAT. ANN. § 767.225 (West 2009 & Supp. 2023).

155. IDAHO R. FAM. L.P. 504.

156. *Id.*

The Supreme Court of Idaho enacted this rule because the court docket was often slow-moving, and this delay disserved emergent situations.¹⁵⁷ Before the rule, judges would have to engage in “mini-trials” with lengthy testimony where parties tried to get all of their issues decided before the final trial.¹⁵⁸ By having a rule for temporary orders specific to the family law context, the court could better utilize its time, have a more focused hearing (which creates a better understanding of the case), and more effectively address any immediate needs of a family.¹⁵⁹ Rule 504 standardized the expectations and requirements of judges, leading to more uniformity and fairer decision-making.¹⁶⁰

Likewise, in 2019, Arizona amended its general rule of procedure for temporary orders to include a section specific to post-decree temporary custody orders.¹⁶¹ Under Arizona’s rule, a motion for post-decree temporary orders “must include [the parties’] proposed parenting plan.”¹⁶² However, since this rule focuses on procedure, it does not include what the judge is to consider when deciding the motion. The Arizona Supreme Court added the provision to help simplify the process and help people pursuing the court’s help more easily find the appropriate rule.¹⁶³ Having a separate rule for seeking temporary custody orders after a decree has been entered gives the public, attorneys, and judges more guidance on how to proceed with these orders.¹⁶⁴ The Supreme Court of Arizona has recently amended the rule again to require the judge to rule on the motion within twenty-one days after the conclusion of the hearing.¹⁶⁵ The mere existence of the rule in Arizona gives judges more license to issue temporary custody orders than judges in Iowa may glean from the *Grantham* standard.

Choosing to include procedural guidance in the temporary custody legislation would help parties seeking temporary custody orders file the correct documents with the court and consolidate the applicable provisions into one

157. Anja R. Rodriguez, Note, *Tailoring the Rules: Finding the Right Fit of Rules of Procedure to Suii Idaho Family Law*, 52 IDAHO L. REV. 755, 777 (2016).

158. *Id.* at 778.

159. *See id.* at 777–78.

160. *See id.* at 780.

161. Order Amending the Arizona Rules of Family Law Procedure and Rule 9, Arizona Rules of Civil Appellate Procedure at 70–71, 179, *In re Ariz. Rules of Fam. L. Proc.*; Rule 9, Ariz. Rules of Civ. App. Proc., No. R-17-0054 (Ariz. Aug. 8, 2018).

162. ARIZ. R. FAM. L.P. 47.2.

163. *See* ARIZ. CTS., TASK FORCE ON THE ARIZONA RULES OF FAMILY LAW PROCEDURE: MEETING MINUTES: DECEMBER 15, 2017, at 5, 7 (2017), <https://www.azcourts.gov/Portals/74/FamilyRulesTF/Meetings/02162018/2DraftMinutesFLR%2012-15-17.pdf> [<https://perma.cc/D22V-CXBD>] (providing the reasons for amending Family Court Rule 47 to include Family Court Rules 47.1 and 47.2).

164. *See id.* at 5–7 (explaining how the courts are to proceed with Rule 47 motions and expressing the desire to simplify Rule 47’s provisions).

165. Order Adopting on a Permanent Basis Amendments to Rules 30, 43.1, 44.1, 45, 45.1, 47, 47.1, 47.2, 48, and 91.5 of the Rules of Family Law Procedure at 2, 8, *In re Rule 30, Rules of Fam. L. Proc.*, No. R-22-0044 (Ariz. Dec. 6, 2023) [hereinafter “Order Adopting Amendments to Rules of Family Law Procedure”].

rule.¹⁶⁶ But if Iowa chose to only enact a procedural rule, Iowa’s challenges would still remain—the factors by which to judge these temporary order applications would not be addressed and would remain unclear.

2. Narrow Approaches: Harm to the Child

A few states have very restrictive statutes that focus on the risk of harm to the child. Tennessee, for instance, does not allow temporary modifications to the existing arrangement absent a finding “that the child will be subject to a likelihood of substantial harm absent the temporary modification.”¹⁶⁷ Tennessee defines “substantial harm” to mean “a real hazard or danger that is not minor, trivial, or insignificant” and the harm “must be more than a theoretical possibility.”¹⁶⁸ This language seems to point more towards physical rather than emotional harm.¹⁶⁹ Although adopting a statute like Tennessee’s would be a step in the right direction for Iowa by providing judges with a clear standard, it does not adequately take into account the child’s mental health or a risk of emotional harm. By limiting the availability of temporary orders to situations with physical harm, courts fail to recognize that other circumstances may have deleterious effects on the child’s mental health.¹⁷⁰ To better protect the child’s health and well-being, temporary orders pending a modification should be more available than in just these narrow settings.

3. Broad Approaches: The Child’s Best Interest

Several states have enacted broad rules that allow for temporary custody orders no matter the circumstance, so long as the modification is in the child’s best interest. Pennsylvania, for example, has enacted a rule of civil procedure that allows for modifications of “legal or physical custody” on a temporary basis “[a]t any time after commencement of the [permanent modification] action.”¹⁷¹

In the spirit of broad relief, the court may grant temporary orders upon application by the parties or *sua sponte*.¹⁷² Pennsylvania courts simply consider the best interest of the child and do not have to look for the presence of specific circumstances before entering orders¹⁷³:

Such “special relief” may in some cases be appropriate (and necessary) where the situation is such that, for example, temporary modification

166. See ARIZ. CTS., *supra* note 163, at 5, 7.

167. TENN. CODE ANN. § 36-6-405(b) (2021).

168. Ray v. Ray, 83 S.W.3d 726, 732 (Tenn. Ct. App. 2001).

169. *But see* Killian v. Moore, No. M2020-01283-COA-R3-CV, 2022 WL 457395, at *6 (Tenn. Ct. App. Feb. 15, 2022) (“The trial court found that ‘an immediate and present risk of physical danger or psychological harm’ existed . . .”). However, in *Killian*, the finding that the child was at risk of physical or psychological harm was based on the child’s step-father’s threats on her life. *Id.* at *1, 6. Given these facts, the change in custody was likely primarily based on concerns over the child’s physical safety rather than the effect of the living situation on the child’s mental health.

170. See *supra* Sections I.A.1–2.

171. 231 PA. CODE § 1915.13 (2023).

172. *Id.*

173. Choplosky v. Choplosky, 584 A.2d 340, 343 (Pa. Super. Ct. 1990).

of custody or visitation rights would preserve the well-being of the children involved while the parties prepare to resolve more permanently the question of where and/or with whom the children should remain.¹⁷⁴

Georgia has a similar provision allowing a judge to “change the terms of custody on a temporary basis pending final judgment on such issue.”¹⁷⁵ In determining whether the custody of the child should be changed, Georgia courts do not require a showing of changed circumstances, and instead engage in a best-interest-of-the-child analysis.¹⁷⁶

Again, enacting a broad provision allowing temporary custody modifications when it is in the best interest of the child would lead to more equitable outcomes and more temporary custody orders than currently allowed. Iowa law defines the “best interest of the child” as “the opportunity for maximum continuous physical and *emotional contact* possible with both parents, unless direct physical or *significant emotional harm* to the child may result from this contact.”¹⁷⁷ This definition considers the emotional health of the child, but it sets a high bar by requiring *significant* emotional harm before disrupting contact with a parent. Additionally, several of the factors courts consider in determining the child’s best interest indirectly account for the child’s mental health.¹⁷⁸

Relying on the best interest of the child in these circumstances may not always lead to ideal outcomes, and it is inconsistent with Iowa’s policy of rarely disturbing a child’s custody arrangement. Best interest standards alone give judges a lot of discretion and “permit[] ad hoc decisions based on the judge’s personal values and biases.”¹⁷⁹ Judges may insert their own views on what they think is best for the child and the child’s well-being, picking and choosing from

174. *Id.*

175. GA. CODE ANN. § 19-9-3(e) (2022).

176. *See* McManus v. Johnson, 849 S.E.2d 708, 711 (Ga. Ct. App. 2020) (citing Hadden v. Hadden, 659 S.E.2d 353 (Ga. 2008)).

177. IOWA CODE § 598.1(1) (2024) (emphasis added).

178. *See* IOWA CODE § 598.41(3) (2024). Considering “[w]hether the . . . emotional needs and development of the child will suffer due to lack of active contact with and attention from both parents” directly addresses the child’s mental health, but other factors do so more indirectly. *Id.* For example, “[w]hether the parents can communicate with each other regarding the child’s needs,” and “[w]hether each parent can support the other parent’s relationship with the child” seem to hint at whether the child will be in the middle of parental conflict. *Id.*

“Whether both parents have actively cared for the child before and since the separation” considers the child’s emotional attachments to the parents and if separation from a parent the child has had frequent contact with would be harmful to the child, and “[w]hether the custody arrangement is in accord with the child’s wishes” gives weight to how the child is feeling (however, as mentioned, this weight is lesser for modifications). *Id.*

The statute also places a more direct emphasis on the child’s physical safety, which judges may give more weight to than other provisions. The statute considers “[w]hether the safety of the child . . . will be jeopardized by the awarding of joint custody or by unsupervised or unrestricted visitation,” whether there is “a history of domestic [violence],” and whether the parent has allowed a “person required to register or is on the sex offender registry as a sex offender” to have custody or alone time with the child. *Id.*

179. Anne L. Alstott, Anne C. Dailey & Douglas NeJaime, *Psychological Parenthood*, 106 MINN. L. REV. 2363, 2421 (2022).

the factors enumerated in the applicable statute.¹⁸⁰ Further, based on the contentious nature of the litigation and the child's diminished voice in modification proceedings in Iowa,¹⁸¹ judges may naturally focus on what parents want rather than what will help the child flourish.¹⁸² Due to the unpredictability judicial discretion can introduce, a best interest standard alone may lead to shifts of custody for unconvincing reasons and more disruption in a child's life. These concerns could be mitigated by adopting a limited approach whereby one or more circumstances must be present to allow the court to modify custody if the modification also serves the child's best interest.

4. Limited Approaches: The Child's Best Interest and a Specified Circumstance

Other states allow temporary custody orders in more limited circumstances. In these states, the court considers the child's best interest but also checks for the presence of one or more other criteria. Utah, for example, has strict circumstances when temporary orders are permitted, and these circumstances may be too restrictive. Under Utah's Rules of Civil Procedure, a judge may enter temporary custody orders "to address an immediate and irreparable harm or to ratify changes made by the parties, provided that the modification serves the best interests of the child."¹⁸³ Once again, this rule focuses on the child's physical safety rather than the effects on the child's mental health.¹⁸⁴ Additionally, even the Court of Appeals of Utah has recognized that limiting temporary custody orders to these instances may be too restrictive and may not serve the child's best interest in certain cases.¹⁸⁵

In *Taylor v. Elison*, the Utah Court of Appeals suggested that there may be instances where the child's best interest warrants a temporary modification, even though it would not otherwise be available under the statute. In *Taylor*, a mother with primary physical custody was planning to move to Arizona.¹⁸⁶ This relocation triggered a clause in the parties' divorce stipulation that transferred primary physical care to the father upon the mother's relocation.¹⁸⁷ The mother sought temporary custody orders from the court so she could move with the children while maintaining the status quo as their primary

180. *Id.* at 2365.

181. *Id.* at 2422; *see also In re Marriage of Hoffman*, 867 N.W.2d 26, 35 (Iowa 2015).

182. Alstott et al., *supra* note 179, at 2422.

183. UTAH R. CIV. P. 106(b)(1)(B).

184. *See generally* Harper v. Harper, 480 P.3d 1097 (Utah Ct. App. 2021) (entering temporary orders when the child had frequently missed school in one parent's care and that parent had health issues); *Taylor v. Elison*, 263 P.3d 448 (Utah Ct. App. 2011) (reviewing a district court's decision to deny temporary custody orders when a mother was planning on relocating because the court did not find the children were in danger of immediate irreparable harm regardless of which parent they were with).

185. *See Taylor*, 263 P.3d at 455-46.

186. *Id.* at 450.

187. *Id.*

caregiver.¹⁸⁸ The father filed a motion for temporary custody at the same time, seeking primary physical care of the children pursuant to their stipulation.¹⁸⁹ The district court entered temporary orders in favor of the father, reframing the request as one to enforce the decree rather than temporarily modify the arrangement.¹⁹⁰

In its review of the district court's decision, the court of appeals found the district court failed to consider the children's best interests and the effect an abrupt change in which parent was providing primary care would have on the children.¹⁹¹ The court noted that the district court "misapplied" the rule of civil procedure by not giving due weight to the best interest of the child,¹⁹² suggesting that the best interest analysis deserved more weight even though the facts of the case did not meet the criteria enumerated in the statute: The parents had not made any changes to their custodial arrangement, and the children were not facing any direct irreparable harm.

Another example of a provision granting courts authority to enter temporary orders pending a custody modification is Texas Family Code section 156.006. Under that section, the court is not allowed to enter temporary modification orders that change the sole legal or physical custodian designation unless the court finds the modification is in the best interest of the child and meets one of three enumerated considerations¹⁹³: if (1) "the child's present circumstances . . . significantly impair the child's physical health *or emotional development*," (2) a parent has given up caring for the child for more than six months; or (3) the child is twelve years old or older and has expressed their preference to the court in chambers.¹⁹⁴

This provision allows judges to enter temporary custody orders in more circumstances to protect the best interest of the child and gives a child's preference adequate weight. However, it could be improved by expressly considering the child's mental health rather than just the child's emotional development. Such a change could look something like, "the child's present circumstances impair the child's physical *or mental health* or emotional development." The provision could also be amended to include the ratification portion of Utah's rule.

B. SETTING TIME PERIODS FOR HEARINGS AND DECISION-MAKING

In addition to setting a clear standard, the Iowa Legislature should designate a time period for when hearings for temporary custody motions will be heard and how long judges have to rule on them. The District of Columbia has implemented such a rule, requiring "the *pendente lite* hearing shall be

188. *Id.*

189. *Id.*

190. *Id.* at 454.

191. *Id.* at 455.

192. *Id.* at 456.

193. TEX. FAM. CODE ANN. § 156.006 (West 2014 & Supp. 2023).

194. *Id.* § 156.006(b)(1)-(3) (emphasis added).

held no later than [thirty] days after a party requests a pendente lite custody determination by the court.”¹⁹⁵ The Arizona Supreme Court has likewise set a timeframe for judges to decide such motions.¹⁹⁶ The Arizona provision requires the court to “rule on the motion no later than [twenty-one] days after the . . . hearing is concluded.”¹⁹⁷ By ensuring parties receive their temporary custody orders swiftly, the court can ensure that a child will not remain in an environment harmful to their mental health and can expediently protect the child’s best interest.

C. THE BEST APPROACH

Iowa should enact a statutory provision mirroring Texas Family Code section 156.006, giving courts authority to enter temporary custody orders while a modification is pending if (1) the temporary custody orders are in the child’s best interest; and (2) one of the following circumstances is present: (a) if “the child’s present circumstances . . . significantly impair the child’s physical [*or mental health*] or emotional development”; (b) if the child’s parent has given up caring for the child for more than six months; (c) if the child is twelve years old or older¹⁹⁸ and has expressed their preference to the court in chambers;¹⁹⁹ or (d) if it would be equitable for the court “to ratify changes made by the parties.”²⁰⁰ Additionally, the provision should provide that the hearing for temporary custody matters will be held within thirty days of the filing,²⁰¹ and the judge must decide on the motion within twenty-one days after the hearing.²⁰² Adopting this proposed statutory provision would fix several issues with Iowa’s current law while retaining Iowa’s policy of allowing temporary orders in limited circumstances.

1. Clear Judicial Standard

First, the above provision gives judges a concrete standard to apply when parties request temporary orders. The evaluative criteria is unclear under the current *Grantham* standard,²⁰³ and Iowa courts have been inconsistent in issuing temporary custody orders since the standard was set forth.²⁰⁴ Judicial

195. D.C. CODE § 16-831.09(a)(2) (2024).

196. See Order Adopting Amendments to Rules of Family Law Procedure, *supra* note 165, at 8.

197. *Id.*

198. Rather than specify the age of twelve, the Iowa Code currently considers “[w]hether the custody arrangement is in accord with the child’s wishes or whether the child has strong opposition, taking into consideration the *child’s age and maturity*.” IOWA CODE § 598.41(3)(f) (2024) (emphasis added). The age twelve threshold should also be added to initial custody and dissolution cases, but that discussion is beyond the scope of this Note.

199. TEX. FAM. CODE ANN § 156.006(b)(1)–(3) (West 2014 & Supp. 2023).

200. UTAH R. CIV. P. 106(b)(1)(B).

201. See D.C. CODE § 16-831.09(a)(2) (2024).

202. See Order Adopting Amendments to Rules of Family Law Procedure, *supra* note 165, at 8.

203. See *supra* Sections I.A.1–2.

204. See *supra* Section I.B.

guidance is chronically lacking when it comes to temporary orders,²⁰⁵ and without clear standards, there is more room for judges to insert their own biases.²⁰⁶ Judges' decision-making is often "highly variable," leading to unpredictable results.²⁰⁷ By setting objective criteria for when temporary custody orders are allowed, the legislature can better guide the judiciary to more consistent results that align with Iowa's child custody policy.²⁰⁸ Such an approach would expand the circumstances where courts can change custody on a temporary basis, leading to better outcomes for the children involved. Giving judges more guidance will lead to more equitable outcomes for the parties and increased reliance on the judicial system.²⁰⁹ "[C]onsistency . . . contribute[s] to a more just society [by] reduc[ing] the appearance of inequality in the administration of justice."²¹⁰

2. Accounting for the Child's Mental Health

Next, the proposed provision would directly consider and protect the child's mental health by allowing for more circumstances where temporary orders are warranted. The prescribed limited circumstances where temporary orders are allowed help ensure that custody will only be modified for the most cogent reasons, in line with Iowa's long-standing policy.²¹¹ Most importantly, this provision would be more child-centered than parent-centered.²¹² As previously discussed, it is more important now than ever to protect children's mental health due to the overall decline in children's mental health since the COVID-19 pandemic.²¹³ Further, this enactment would advance children's mental health reforms in Iowa.²¹⁴

205. See Jeffrey L. Martlew, *The Early Parenting Conference: A Simple Solution for Making Custody and Parenting Time Decisions Less Painful for Parents and Children in Divorce*, 13 T.M. COOLEY J. PRAC. & CLINICAL L. 365, 365-66 (2011) ("There is little legal guidance when it comes to making decisions about temporary custody, for example, which parent will have physical custody and what roles the other parent will play while the case is pending. As a result, most courts issue temporary custody orders by virtue of local practices and procedures that have developed over decades.").

206. When a judge must follow a given criteria, the judge is no longer free to decide based on purely personal preferences. See Alstott et al., *supra* note 179, at 2421-22.

207. See Allison P. Harris & Maya Sen, *Bias and Judging*, 22 ANN. REV. POL. SCI. 241, 242 (2019).

208. See Gregory Mitchell, *Evaluating Judges*, in PSYCH. JUD. DECISION MAKING 221, 236 (David Klein & Gregory Mitchell eds., 2010).

209. See Paul M. Collins, Jr., *The Consistency of Judicial Choice*, 70 J. POL. 861, 861, 870 (2008) ("The pursuit of consistency is arguably the driving force behind all decision making.").

210. See *id.* at 861.

211. *In re Marriage of Melton*, 256 N.W.2d 200, 205 (Iowa 1977) (citing *Schoonover v. Schoonover*, 228 N.W.2d 31, 34 (Iowa 1975); *Stouwie v. Stouwie*, 222 N.W.2d 435, 438 (Iowa 1974); *In re Marriage of Bowen*, 219 N.W.2d 683, 687 (Iowa 1974)).

212. See Linda D. Elrod, *Reforming the System to Protect Children in High Conflict Custody Cases*, 28 WM. MITCHELL L. REV. 495, 518 (2001) (suggesting the best-interest test could be improved by focusing more on the child).

213. See discussion *supra* Section II.B.

214. See H.R. File 690, 88th Gen. Assemb., Reg. Sess. (Iowa 2019).

This provision is also needed as most custody decisions only focus on the parent's mental health, not the child's.²¹⁵ Although the parent's mental health is a valid factor to take into consideration,²¹⁶ the child's mental health is equally important, if not more so.²¹⁷ Indeed, judges should not forget that the child's safety and well-being are the primary concerns in determining custody²¹⁸:

Judges must be careful not to forget about the children involved in the proceeding. After all, the judge must determine what is in the best interests of the *child*, not the parents. It is easy to lose sight of the child, literally, because the children are minimally involved throughout the proceeding.²¹⁹

Giving the child the autonomy to choose their own living situation after the age of twelve will improve their mental health.²²⁰ One study found that children who perceived they had control over their environment had less anxiety, and those children gained better emotional regulation skills, such as problem-solving, that helped them deal with negative events in their daily lives.²²¹ Another study found that children with autonomy and perceived control have more self-motivation in academics and tend to be more emotionally engaged while at school.²²² Increased autonomy also leads to increased well-being and an ability for children to prosper both academically and socially.²²³

Further, allowing the child to have a say in the matter positively affects their mental health. One study developed a program called "Speaking for Themselves" in which children were paired with attorneys and therapists during contentious legal battles concerning either custody disputes or

215. See, e.g., *In re Bates*, No. 13-0469, 2013 WL 6405471, at *2 (Iowa Ct. App. Dec. 5, 2013) (unpublished table decision); *In re Marriage of Van Fleet*, No. 18-1585, 2020 WL 377032, at *1 (Iowa Ct. App. Jan. 23, 2020) (unpublished table decision).

216. See Robin M. Deutsch & Jeremy Clyman, *Impact of Mental Illness on Parenting Capacity in a Child Custody Matter*, 54 FAM. CT. REV. 29, 29-31 (2016) (explaining how parental mental illness can affect the parent's ability to provide care and a safe environment and impact the child's development); Edmund M. Dane & Jamie A. Rosen, *View from the Bench: Parental Mental Health and Child Custody*, 54 FAM. CT. REV. 10, 11-12 (2016).

217. See Kelly A. Jurs, *Children's Mental Health Issues in Custody Cases in 2023*, LAW.COM (July 10, 2023, 12:23 PM), <https://www.law.com/thelegalintelligencer/2023/07/10/childrens-mental-health-issues-in-custody-cases-in-2023> (on file with the *Iowa Law Review*).

218. Dane & Rosen, *supra* note 216, at 11, 14.

219. *Id.* at 14.

220. See, e.g., Kristy Benoit Allen et al., *Parental Autonomy Granting and Child Perceived Control: Effects on the Everyday Emotional Experience of Anxious Youth*, 57 J. CHILD PSYCH. & PSYCHIATRY 835, 835-36 (2016) (noting that children who feel a lack of autonomy are more likely to be anxious and have decreased coping skills).

221. *Id.* at 840.

222. Brian C. Patrick, Ellen A. Skinner & James P. Connell, *What Motivates Children's Behavior and Emotion? Joint Effects of Perceived Control and Autonomy in the Academic Domain*, 65 J. PERSONALITY & SOC. PSYCH. 781, 788-89 (1993).

223. Sakhavat Mammadov & Dogan Tozoglu, *Autonomy Support, Personality, and Mindset in Predicting Academic Performance Among Early Adolescents: The Mediating Role of Self-Determined Motivation*, 60 PSYCH. SCHS. 3754, 3755 (2023).

domestic violence.²²⁴ In 97.5% of the cases, the children's views were expressed to the court, and 89% of the time, the children agreed with the outcome.²²⁵ At the conclusion of the program, the children spoke highly of it.²²⁶ They expressed how they felt safer during the program and spoke positively about having a voice in the process.²²⁷ Finally, the project developers noted their goals of "enhanc[ing] the physical, psychological, and emotional safety of children," among other objectives, "were largely achieved."²²⁸ Children's overall mental health improved, and children left the program less traumatized than when they began.²²⁹ "Children shared that through the [Speaking for Themselves] program, they felt a greater sense of control and personal power, as well as a feeling of hope for things to change."²³⁰ By providing children with the opportunity to have their voice heard in their custody case, their mental health will be better protected.

This new, clear standard that directly considers the child's mental health would remedy the failure of the courts to temporarily modify custody in the two common scenarios previously discussed,²³¹ and these orders would promote and protect the child's best interest and mental health. In scenarios where a parent is physically present but providing minimal care (such as leaving the child alone or placing the child in a parental role), temporary orders would now be warranted because the child's present circumstances would significantly harm the child's current and future mental health and emotional development.²³²

Implementing this proposed provision would also alleviate the problem of when a child wishes not to see or visit one parent. Under the proposed statute, a judge would enter temporary custody orders either because of the child's preference or because the current arrangement and pressure to see the parent would adversely affect the child's mental health.²³³ Also, instead of having to defend a contempt action for not following the decree, the parent caring for the child would now only need to apply for temporary orders. This

224. Fotheringham et al., *supra* note 52, at 314–15.

225. *Id.* at 318.

226. *See id.* at 319.

227. *Id.*

228. *Id.* at 320.

229. *Id.* at 321.

230. *Id.*

231. This discussion can be found *supra* Sections I.A.1–2.

232. *See Parentification Trauma: What It Is and How to Heal, supra* note 36.

233. *See* Lela Moore, *How Too Much Parental Pressure Can Affect Kids' Mental Health*, PSYCHCENTRAL (May 20, 2022), <https://psychcentral.com/lib/parental-pressure-and-kids-mental-health> [https://perma.cc/V6RF-9UQ5] (explaining how pressure from parents affects children and that "pressure imposed by family members can be the most impactful form of stress on teenagers' mental health"); Gjelten, *supra* note 39 (advising parents with a child refusing to follow a custody decree to prioritize the child's mental health by talking with the child about the reasons for their decision or taking the child to a therapist, and not forcing the child to follow the arrangement).

would save the parent from being in the difficult position of forcing the child to do something unsafe or unhealthy or face a civil or criminal penalty.²³⁴

3. Protecting Parties' Expectations

Further, by allowing courts to enter temporary custody orders that reflect changes made by the parents, the court can protect the expectations of parents if they have, in essence, agreed to a “de facto modification.”²³⁵ If a mother with primary physical care agrees to give the father parenting time more akin to joint physical care, the court should uphold the parties’ agreement and estop the mother from trying to single-handedly revoke that arrangement to the father’s detriment.²³⁶ Considering the child’s mental health, the child would likely be used to the de facto arrangement and would suffer emotional harm if they could not continue to see their father as often.²³⁷ Respecting the de facto modification would align with the overall goals of family law: to “cause as little additional disruption in the child’s life as possible, ensure that the child’s needs are being met, continue parental connections whenever possible, and reduce unnecessary risks of harm.”²³⁸ Additionally, expressly providing for temporary custody orders when a parent has voluntarily relinquished care will help parents who are seeking temporary custody modifications also receive modified child support sooner.²³⁹

234. The penalty for violating custody orders and being found in contempt can be as severe as thirty days in jail. *Enforcing Custody and Visitation Orders*, *supra* note 40. See generally *Contempt Actions: When Rules Aren’t Followed*, *supra* note 153 (discussing contempt actions and the penalties associated with a finding of contempt).

235. See *In re Marriage of Redman*, No. 15-0798, 2015 WL 9451090, at *1-2 (Iowa Ct. App. Dec. 23, 2015) (unpublished table decision) (choosing to uphold the parties’ modified custody schedule rather than the schedule in the decree); *In re Marriage of Huseman*, No. 12-0303, 2012 WL 3026538, at *4-5 (Iowa Ct. App. July 25, 2012) (unpublished table decision) (enforcing higher child support payments from a father due to the parties’ de facto modification).

236. Estoppel is an equitable remedy employed when “the party against whom the estoppel is asserted has received a benefit, or the party asserting the estoppel has changed his position to his detriment.” *Knapp v. Knapp*, 99 N.W.2d 396, 400 (Iowa 1959). In this situation, a parent relying on a de facto modification would likely not have filed a modification with the court despite grounds for doing so, which would equate to a detrimental change in position to the benefit of the other parent in that that parent did not have to defend the suit.

237. See *In re Marriage of Williams*, 589 N.W.2d 759, 762 (Iowa Ct. App. 1998) (noting Iowa law places immense “importance on the stability of the relationship” between the child and their primary caretakers); *In re Marriage of Hansen*, 733 N.W.2d 683, 696-97 (Iowa 2007) (“We continue to believe that stability and continuity of caregiving are important factors that must be considered in custody and care decisions. . . . In contrast, imposing a new physical care arrangement on children that significantly contrasts from their past experience can be unsettling, cause serious emotional harm, and thus not be in the child’s best interest.”).

238. Upchurch, *supra* note 82, at 169.

239. See IOWA CODE § 598.21B(2)(b) (2024). In determining the amount of child support, the Iowa Code tells courts to consider the responsibility of the parents “to support and provide for the welfare of the minor child.” *Id.* It also states, “the income of the parent from whom support is sought shall be used as the noncustodial parent income for purposes of application of the guidelines,” indicating the calculation differs based on which parent has primary custody of the child. *Id.*; see also *How Does Child Support Work in Iowa*, *supra* note 105 (noting child support is

4. Giving Adequate Weight to the Child's Preference

Finally, by allowing a child who is over the age of twelve to express which parent they would prefer to live with and effectively allow the child to choose an appropriate custody arrangement,²⁴⁰ the statute would give adequate weight to the child's preferences in modification proceedings²⁴¹ and better protect the child's mental health and well-being.²⁴² Age twelve accords with other recognition of autonomy in Iowa. For example, even the Iowa Rules of Professional Conduct recognize that children over the age of twelve have opinions entitled to due weight.²⁴³

In Iowa, children's wishes are given less weight in custody modification proceedings than proceedings that initially set the custody schedule.²⁴⁴ However, giving less weight to the child's preference in a modification action does not make sense. At the time of a modification, the child is older, better able to make informed decisions,²⁴⁵ and has more developed thoughts and

typically awarded to the parent with primary physical care); *Using Custody to Avoid Child Support: It's Not That Simple*, CUSTODYX CHANGE, <https://www.custodyxchange.com/topics/child-support/avoiding-child-support.php> [<https://perma.cc/B67H-U7FM>] (explaining custodial parents often have more child-related expenses).

240. It may seem odd to let a teenager choose the custody arrangement, but a court order contrary to the child's wishes would likely be futile anyway. *See, e.g.*, David M. Siegel & Suzanne Hurley, *The Role of the Child's Preference in Custody Proceedings*, 11 FAM. L.Q. 1, 9-10 (1977).

241. *See In re Marriage of Hoffman*, 867 N.W.2d 26, 35 (Iowa 2015) (affording less weight to a child's preference in a modification proceeding than in an original proceeding).

Courts often only give weight to a child's preference if there is a legitimate reason for that preference. *See id.* (explaining less weight is given to a child's preferences that have little to do with the child's parents); *In re Marriage of Jahnel*, 506 N.W.2d 473, 475 (Iowa Ct. App. 1993) (considering the reasons the child gives for their preference); *see also In re Marriage of Rosonke*, No. 18-1468, 2019 WL 2871211, at *3 (Iowa Ct. App. July 3, 2019) (unpublished table decision) (indicating the child's preference was influenced by the mother); *In re Marriage of Grap*, No. 00-0457, 2001 WL 194743, at *3-4 (Iowa Ct. App. Feb. 28, 2001) (declining to give weight to the child's preference because he had not expressed reasons why he preferred to live with his father). For a general discussion of how the child's motivation impacts how much weight the court gives the preference, *see Siegel & Hurley, supra note 240*, at 10-15.

242. By giving the child a voice, judges are better able to make decisions about what is truly in the child's best interest. *See Upchurch, supra note 82*, at 170; *see also Fotheringham et al., supra note 52*, at 320 (noting that judges recognize that without critical evidence regarding the child's needs, "the system . . . casus[es] harm to families").

243. IOWA RULES OF PRO. CONDUCT r. 32:1.14, cmt. 1 ("[C]hildren as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody.").

244. *In re Marriage of Hoffman*, 867 N.W.2d at 35 (entitling a teenager's preference to less weight despite its significance). The dissenters in *Hoffman* took an alternative stance, stating "[the daughter], a high school sophomore, is old enough to have a say" and that "the GAL and district court judge are better positioned than our appellate courts to determine the weight to be given the daughter's preference." *Id.* at 44 (Waterman, J., dissenting).

245. *See, e.g.*, Leon Mann, Ros Harmoni & Colin Power, *Adolescent Decision-Making: The Development of Competence*, 12 J. ADOLESCENCE 265, 269-70, 275 (recognizing older children are better able to appreciate and consider the consequences of a decision and how children fifteen or older have reasonable levels of competence to make decisions); *Cognitive Development in the Teen Years*, STAN. MED.: CHILD.'S HEALTH, <https://www.stanfordchildrens.org/en/topic/default?id=cognitive-development-90-Po1594> [<https://perma.cc/N9XJ-BKY3>].

preferences on what the custody arrangement should be after living in an arrangement for a considerable time.²⁴⁶ The child's ability to meaningfully express their preferences to the court should not be diminished based on the type of proceeding. Several other states entitle the child to choose their primary caregiver after attaining a certain age, provided that the parent is not otherwise unfit.²⁴⁷ Enacting a statute giving children a voice in their custody arrangements would help protect children's mental health during this vulnerable time.

CONCLUSION

Protecting the child's best interest is an important goal of Iowa courts. Despite this ambition, courts routinely fail to actually do so because of outdated standards. In 2005, the Supreme Court of Iowa in *Grantham* took an important step toward protecting children's best interests by recognizing the authority of the courts to enter temporary custody orders. However, *Grantham* failed to provide sufficient guidance to judges faced with applications for temporary custody orders pending a modification action or to adequately consider the child's mental health and emotional well-being. And Iowa courts have so far failed to add the clarity that children and families need. Iowa needs a better standard to keep pace with the changing role of mental health in American society and the deterioration of children's mental health after the COVID-19 pandemic.

The Iowa Legislature should statutorily authorize the courts to enter temporary custody orders when (1) it serves the best interest of the child and (2) at least one of the following circumstances is present: (a) the current arrangement is harmful to the child's physical or mental health or emotional development; (b) a parent has given up parenting for more than six months; (c) the child is above the age of twelve and has expressed their preferences to the court; or (d) it would be equitable for the court to recognize changes made by the parties. And, to ensure that a child is not stuck in a harmful environment while the action is pending, the legislature should provide a time frame for when the hearings must be scheduled and when the application for temporary orders must be ruled upon.

This approach will help bring equitable outcomes to children who find themselves trapped in undesirable situations while retaining Iowa's long-

246. See Upchurch, *supra* note 82, at 170 (theorizing that temporary orders can serve as an "experiment" helping parties see what worked for them and helping judges make better informed decisions for the final decree).

247. See, e.g., GA. CODE ANN. § 19-9-3(a)(5) (2022) (giving children fourteen years of age or older the ability to choose which parent to live with unless the choice does not align with the child's best interest); *Slusher v. Slusher*, No. 1823, 1983 WL 4944, at *2-3 (Ohio Ct. App. Aug. 30, 1983) (allowing children over twelve to choose which parent they want to live with unless the parent is unfit or the court determines it is not in the child's best interest to have the ability to choose). Under Georgia's law, a child's preference can also count as the material change of circumstances warranting a modification, subject to limitations that the modification is in the child's best interest and that the child can only select once within two years after the previous selection. § 19-9-3(a)(5).

standing policy that a child's custody should only be modified for important reasons. Although statutory intervention would be ideal, until such legislation is enacted in Iowa, courts should be more open to considering the child's mental health as an emergent situation when considering the risk of harm to the child and giving the child's preference more weight to accomplish that goal.