MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 18, 1981

The forty-sixth meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF HOUSE BILL 711:

TO GENERALLY REVISE THE LAWS REGULATING NOTARIES PUBLIC.

The bill was presented by Rep. Harper as a simple bill to update the law.

Don Coburn spoke in support as the originator of the bill.

Senator Mazurek asked Mr. Coburn if notaries generally charge fees for their services. Mr. Coburn said that notaries who take depositions quite often do, but many notaries who just notarize signatures do not charge a fee.

CONSIDERATION OF HOUSE BILL 773:

TO PROVIDE FOR RECORDING AND DISTRIBUTION OF SENTENCING DATA PERTAINING TO PERFORMANCE OF DISTRICT COURT JUDGES.

The bill was presented by Rep. Keedy, who pointed out that voting a judge out of office is not always the threat that it would seem, because many practicing attorneys are going to be reluctant to run against an incumbent judge. He added that people should have as much information available to them as possible, and that this bill would help give the public access to reasonably compiled and reasonably useful data.

David Stewart read from his written testimony, which is attached to these minutes.

Senator Mazurek asked why the list of items to be forwarded to the clerk of court did not include the result and how the sentence was obtained. Rep. Keedy said that he would not object to having the information included relative to whether the sentence was a plea or a verdict. In response to another

question by Senator Mazurek, Rep. Keedy stated that the clerk would make photocopies of the judge's remarks to forward, not write out copies.

David Niss referred to page 2, line 12, and asked if it was Rep. Keedy's intent to have only one type of sentence reported per month, even if more than one type of sentence was handed down. Rep. Keedy felt that it specified that every instance would be reported.

Senator Anderson asked if there was a fiscal note with this bill. Keedy replied that there was not, and that he felt the fiscal impact would be minimal because the reports would consist of information that was readily available.

Senator Anderson mentioned the publication of the LAYMAN'S GUIDE TO PHYSICIANS' SERVICES, which was a record compiled of the cures and deaths resulting from surgeries performed by various surgeons. He said that because the top surgeons were given the hardest cases to try to cure, their records ended up looking the worst because of a high death rate. He said that he feared a similar situation could develop with judges under this bill if it becomes law.

Senator Crippen directed attention to page 2, line 10, and asked why these reports would be made monthly rather than on a quarterly or seim-annual basis. Rep. Keedy replied that it might be better to change this to "quarterly".

CONSIDERATION OF HOUSE BILL 703:

TO ESTABLISH A PREFERENCE FOR JOINT CUSTODY AWARDS UPON DISSOLUTION OF MARRIAGE.

The bill was presented by Rep. Dussault.

Senator Mazurek, District 16, Helena, testified in support of the bill, saying that joint custody is preferable to sole custody in many cases. He said that when one parent is awarded sole custody there tends to be a divorce of the family, as well as the parents. He said that this bill was patterned after California law. He pointed out that "joint custody" means joint responsibility, not necessarily physical presence. He felt that enough parents are currently working out successful joint custodies that this alternative should be required in the law.

Joan Uda, Helena attorney, supported the bill and read from a written statement by Alan Nicholson, an affected parent. Her testimony, and that of Mr. Nicholson (attached Exhibit C), is attached to these minutes. She defined the intent of this bill

as avoiding the casual severing of responsibility for and contact with their children by divorcing parents.

Jim Mallard and Skip Culver testified for the bill as divorced fathers who could have been helped had this bill been law.

Cathy Kendall gave expert testimony that joint custody is in the best interests of the children involved in divorce.

Ann Smoyer, Helena attorney, supported the bill as shown on her attached testimony sheet.

Alan Joscelyn, Helena attorney involved in custody proceedings wherein he represents the interests of children, said that he felt the bill would be beneficial. He also stated that an expert witness from Carroll College would like to submit written testimony, and received permission from the committee for him to send it.

Speaking in opposition to the bill, J. C. Weingartner, representing the State Bar of Montana, pointed out possible practical problems with Section 3. He said that it creates a presumption that joint custody is a way to solve problems, and takes away the court's discretion in determining the best solution. He added that not all parents can get along well enough to make joint custody work. He felt that this bill might result in additional time spent before the court trying to modify joint custodies in order to make them work.

Clare Luebeck read from written testimony, which is attached to these minutes, in opposing passage of this bill.

In closing, Rep. Dussault said that this bill would tend to force the divorcing parties to accept continued responsibility for and contact with the children. She said that page 2, line 5 allows for a plan to be drawn out to fit the individual needs, and does not demand that physical custody alter from one location to another throughout the year.

Senator Crippen referred to a letter he had received from a Billings judge who opposes this bill, saying that current law allows for joint custody agreements to be reached, and asked Mrs. Uda to respond. Mrs. Uda replied that in almost every case joint custody is superior for both the children and the parents. She added that because of the great divorce rate this custody issue is becoming more and more important, and forcing amicable handling of custody is therefore doubly important.

Senator Mazurek asked Mrs. Uda about the presumption which takes away the court's discretion. She said the bill only dictates that if there is a contest, the preferred solution

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Jim Mallard and Skip Culver testified for the bill as divorced fathers who could have been helped had this bill been law.

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Senator Mazurek asked Mrs. Uda about the presumption which takes away the court's discretion. She said the bill only dictates that if there is a contest, the preferred solution

is joint custody. It does not limit the judge to only that choice, however.

Senator Crippen pointed out that in the bill the judge does have the right to choose something other than joint custody, and asked J. C. Weingartner to address this. Mr. Weingartner felt that under the bill one more hurdle would be placed for the judge to overcome before arriving at a custody solution.

Senator Mazurek asked Cathy Kendall if, in her experience, children were ever actually uprooted from school and moved from parent to parent throughout the year, as had been suggested in Mrs. Luebeck's testimony. Ms. Kendall said that in her four years of handling some thirty to forty cases, she has never encountered this situation.

Mrs. Uda brought up the increasing situations involving child-snatching, and said that this bill would give enough control into the hands of both parents to possibly alleviate this practice.

CONSIDERATION OF HOUSE BILL 698:

TO PROVIDE THAT A DEFENDANT WHO IS PROVIDED WITH COURT-APPOINTED COUNSEL MAY BE REQUIRED UPON CONVICTION TO REPAY THE COSTS OF COUNSEL.

Rep. Meyer presented the bill, saying that it included all the strongest points of Oregon law on this subject. He said that one county in Oregon recovered thirty thousand dollars in one month after passing similar legislation.

Senator Mazurek asked whether, if such a judgment were passed, it could be overcome through filing bankruptcy. Rep. Meyer did not know if this would be the case.

Senator Crippen said that this type of law could affect the number of appeals raised, because if the defendant knew he would have to pay the cost, he might not be as willing to make the appeal.

DISPOSITION OF HOUSE BILL 711:

Senator S. Brown moved that the bill BE CONCURRED IN, and his motion passed over the opposition of Senator Mazurek.

Mike Anderson
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981 Date March 18, 198

NAME	PRESENT	ABSENT	EXCUSED
~~Anderson, Mike, Chr. (R)~~	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

NAME: Donald L Cleburn DATE: 12/12, 1991

ADDRESS: PO Box 92 East Helena MT

PHONE: Home 227-5710 Work 449-3271

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: HB 711

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: I am the originator of this bill. I asked Mr Harper to introduce this bill to delete certain outdated language currently in the statutes

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: David W. Stewart DATE: 3/18/81

ADDRESS: 2315 National Ave. Helena

PHONE: 442-0677

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: HB 777

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

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David W Stewart

The equitable sentencing of persons convicted of crimes is a problem in varying degrees throughout this state. We hear or read of examples of where two different persons convicted of virtually the same crime under similar circumstances being sentenced to two entirely different sentences. The difference in the sentences is just as inequitable to one as the other. The people don't understand how we can call it justice when it is so inequitable.

We find defense lawyers having to shop around for the most lenient judge as a matter of doing their best under the law for their client this results in unnecessary delays in going to trial. This bill is designed to alleviate that situation.

It is an adaptation of the methods used by large corporations to monitor the key elements of their business

Adopting this method to the criminal justice system as I have done I believe will reveal to the District court judges where their sentencing is heavier or lighter than others. ~~Assuming they want to do a good job~~ The two key items that this will reveal are the percentage of maximum sentence that the judge gave and the percent suspended.

By making this report available to other interested parties, I believe that through an evolutionary process it will result in more equitable sentencing of those convicted of a crime.

As a voting layman, I have looked at a ballot and tried to decide what judge to vote for. At best I had some abstract idea of how I thought the judge had performed his duties but nothing solid to base my vote on.

I believe those convicted of crime a

entitled to the kind of equitable justice this bill will provide. I believe the judge is entitled to this kind of information which will enable him to do a better job. I believe the voters and taxpayers are entitled to this information to get more for their tax dollar and their vote.

I hope you will give this bill a do pass

NAME: Joan Uda DATE: 3-18-81

ADDRESS: P.O. Box 543 Helena MT

PHONE: 443-7250

REPRESENTING WHOM? Myself

APPEARING ON WHICH PROPOSAL: HB 703

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: Written comments presented to Committee.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Testimony on H.B. 703, re: Joint Custody
Prepared by Joan Uda, Attorney at Law
March 18, 1981
Senate Judiciary Committee

Mr. Chairman and Committee Members:

I am an attorney in private practice in Helena. In my practice I handle a great many dissolutions of marriage and custody matters. Based on my experience as an attorney in this field, as a school teacher before becoming a lawyer, and as a mother of four children, I believe this bill offers substantial benefits to children of divorced parents, and to their parents.

Our present law on custody of children following a divorce is the result of haphazard growth over the years, and is not, as one might assume, the result of thoughtful planning. A century ago, in the rare event of divorce, the children went with the father, excluding the mother. As a reaction to that situation, we developed the "maternal preference," which for many years reversed the situation to the point that any father who wanted custody of his children was considered peculiar, and a father had very little if any chance of getting custody. Today, divorce is all too common, and just now our understanding of the effects of divorce on children is beginning to cause some rethinking of the traditional either/or custodial pattern.

Most children are born with two living, present parents. Both parents have rights and obligations toward their children. However, the usual "sole custody" arrangement has certain effects on the parent/parent and parent/child relationships

which we are only now beginning to understand and address. What the sole custody arrangement does, in fact and in law, is to terminate virtually all rights of the non-custodial parent to his children except the right of periodic "visitation." The non-custodial parent has no legal say in how the child is reared at all. Further, the sole custody arrangement terminates the non-custodial parent's obligations except the obligation to pay a periodic amount of child support - often a quite inadequate amount, giving the cost of raising a child.

If the state wants to terminate a parents rights and place a child in foster care, the state must follow complicated procedures designed to protect the child's and the parent's rights. This is so even if the child has been subjected to the most gruesome sorts of child abuse by the parent. However, in divorce situations, we do this all the time, often very casually, and with little attention to the rights and obligations of the parents or the children.

This bill is intended to address that situation, by making joint custody - retaining the child in the custody of both parents, the way he was born and raised until the divorce - the preferred option if either or both parents request. It raises a presumption that this is in the best interests of the children involved, unless the court finds that that there are facts showing that it is not in the children's best interests.

We believe that the bill will put some pressure on divorcing parents, as it properly should be, to reach agreement between themselves as to the best custodial arrangement for their

children, rather than to battle out custody in court. This is so because all too often, custody battles result when parents cannot agree which one of them "gets the kids," as if the children were a washing machine or car. And, far too often, the divorcing couple fight out their anger toward each other through the battle over who gets custody, so that one of them can emerge the "winner," with the "prize." And, very often, both parents are basically decent people, good parents, and there is no real reason either of them should "lose" their children to the other.

This bill, if enacted, would tell them in no uncertain terms that if both are basically decent people and good parents, both will have custody, and both will remain parents for life, as they properly should. Thus, lawyers will learn to advise their clients that if they cannot prove that the other parent is truly not fit, they had best start working toward a reasonable agreement with the other parent, because that is what will happen anyway if they fight it out in court.

On the other hand, if one parent is truly not fit, that can and should be brought to the court's attention, and sole custody would still be most appropriate under those circumstances.

In short, we believe the bill would be a great disincentive for custody fights, thus relieving some of the pressure on the courts which must handle so many of these matters.

The emerging research on children from divorced families shows clearly that the single most important factor in such

children's emotional health and stability after divorce is a strong continuing relationship with both parents.

For the above reasons, I strongly urge that this Committee give H.B. 703 a "Do Pass" recommendation.

NAME: James E. Mallard DATE: 3-18-81

ADDRESS: 2480 E. Broadway 14B, Helena

PHONE: 443-0827

REPRESENTING WHOM? Myself

APPEARING ON WHICH PROPOSAL: HB 703

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Robert M. Culver DATE: 3-19-81

ADDRESS: 1020 9th Helena

PHONE: 442-2746

REPRESENTING WHOM? Myself

APPEARING ON WHICH PROPOSAL: HB 703

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Cathy Kendall DATE: 3/18/81

ADDRESS: 913 Buckeridge, Helena

PHONE: 442-1564

REPRESENTING WHOM? Myself

APPEARING ON WHICH PROPOSAL: HB 703 Joint Custody

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Ann L. Smeyer DATE: 3/18/91

ADDRESS: 1085 Helena Ave, Helena, Mt.

PHONE: 442-3625

REPRESENTING WHOM? Attorney in private practice

APPEARING ON WHICH PROPOSAL: H.B. 703 - joint Custody

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: I feel that this bill will create a situation where the parties will attempt to resolve other dissolution issues without using children as a means or club to resolve property disputes. It will also provide more input by both parents into the rearing of the children.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Alan Joscelyn DATE: 3/18/81

ADDRESS: Diamond Block, Helena

PHONE: 443-5554

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: HB 703

DO YOU: SUPPORT? / AMEND? _____ OPPOSE? _____

COMMENTS: Creation of presumption in favor of joint custody will result in parents making better arrangements for children with less strife and bitterness

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: JC Weidner DATE: 3/15/01

ADDRESS: N/A

PHONE: 442-1700

REPRESENTING WHOM? SEA

APPEARING ON WHICH PROPOSAL: -

DO YOU: SUPPORT? _____ AMEND? - OPPOSE? -

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Clare Swiecki DATE: 3-18-91

ADDRESS: 2710 Smiths

PHONE: 494-7853

REPRESENTING WHOM? Miners

APPEARING ON WHICH PROPOSAL: 2 [illegible]93

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? _____

COMMENTS: Attached

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(1)

Clare [illegible]
[illegible]
Butte, Mont.
5970[illegible]

I would like to take this opportunity to testify against HB 7[illegible]5 on [illegible] custody.

I am presently involved in a custody matter in a divorce, where I am knowledgeable about this [illegible] the problems [illegible] in my own life. I can [illegible] nothing but chaos & [illegible] in every area for the child or children involved.

[illegible] my personal interest [illegible] I feel strongly that such a bill would not work as well in the majority of cases.

I think it's important to mention [illegible] that [illegible] constantly mentioned the "best interest of the child". I strongly

that flexibility also is necessary for the achievement of a sound decision in the individual case. More important than the issue of one presumption versus another in the reform of the decision-making process itself is that Courts act affirmatively to safeguard the best interests of children.

The trouble is that the experience of most lawyers is that the typical client is embittered during and after divorce and is not prepared to accept the continuing contact with the other parent that joint custody requires.

Thank you for your indulgence.

Clare Luebke
2710 Arbrook
Butte, Mont.

J. CHAN ETHEN
Box 1230
HAVRE, MONTANA 59501

Exhibit A

March 2, 1981

Hon. Stan Stephens
Montana Senate
Capitol Building
Helena, Montana 59601

Re: H. B. 703

Dear Stan:

H. B. 703 creates a presumption that joint custody is a priori the preferred custody arrangement in such cases, as being in the best interests of the children.

I've done research on the proposition of joint custody arrangement and can find no emperical studies supporting it. I do find some sociologists in favor, but their arguments are primarily subjective.

My own experience of almost forty years involving custody arrangements militates against it. If one of the parties opposes the idea, then, almost invariably, there is trouble over how, when and where the children will be, and a Judge has the problem back in his lap.

The only assurance of success in joint custody is if the parents are agreeable. In those cases, even if custody is decreed in one, the parents create a de facto custody arrangement.

Judges already have the power to create joint custody arrangements under MCA 40-4-212, and are doing it. They are already required to make findings and conclusions supporting custody decrees, and are doing it.

When the new marriage, divorce and custody laws were enacted in Chapter 536, 1975 Laws, it was argued that divorce and custody would simplify the field and relieve the courts of an increasingly crushing burden; that it would lessen legal costs, and make things so simple, a party could pursue dissolution and custody on their own, and without benefit of counsel.

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However, the consequences of these laws are a greater court workload, and increased labor and fees for lawyers.

I think, if the district judges were surveyed, it would be found that criminal and marriage laws have emburdened courts to a far greater extent than any other fields of law.

Legislative session no longer passes without a bill asking a new judgeship in the busier districts.

Parties and their lawyers, rather than relying on present divorce and custody laws, will seize on the semantics and ambiguities of H.B. 703 to carry on litigation.

Under H.B. 703, the legislature declares joint custody is in the best interests of the children involved. This simply isn't so. Every child custody case has a different set of circumstances upon which a custodial adjudication is based, though they often seem quite similar.

Experience shows that the parent not having actual physical custody becomes varyingly disinterested in his children by former marriage. In this day of loosening family bonds, an original joint custody decree could well hamstring the efforts of the parent in custody.

There is no showing that H.B. 703 has undergone examination by a representative field of judges and lawyers who are actively involved in these matters.

I see no present urgency for this legislation. It seems to require more study.

I think an interim committee or staff could survey the experience and opinion of judges who deal with the matter almost every judicial day.

I think a study should be made as to its effect on judicial workloads and increased costs.

I know it is going to cost more in legal expense to the parties. H.B. 703 simply creates more opportunity for further litigation in matters of custody.

As previously pointed out, there is no question that present marriage and custody laws have been significant factors in the need for more judgeships.

H.B. 703 doesn't do anything which can't be done now, except it guarantees more work and expense for court and bench and, most likely, more work and expense for child welfare agencies.

Very truly yours,

J. Chan Ettien

JCE/ta

P.S. I assume this is in Judiciary. Would you steer a copy of the letter to the proper committee?

Exhibit B

TESTIMONY TAKEN BY TELEPHONE MARCH 18, 1981, at 9:22 a.m.

Subject John Fowler, of Wyola, Montana, had intended to be here this morning to testify in favor of HB 703, but is currently in the hospital in Salt Lake City. Therefore, he called in this testimony and asked that it be considered.

Mr. Fowler is divorced, and awaiting a decision on custody. He and his wife have petitioned for joint custody, and he believes that when the parents are both willing to take the interests of the child ahead of their own, it is preferable to handle it that way.

Speaking of his two-year-old son, he said, "I feel he definitely needs the influence of both of us, and needs the traditional father figure in his life, but also he needs the mother. Just because the parents cannot get along, there is no reason why the child cannot interact with both parents. Also, I feel that it is to the advantage of both parents for joint custody to be worked out. Both the child and the parents would benefit from the joint custody. They would both have periods of freedom from the responsibility, and periods of time to spend with the child.

"I agree particularly with the part of the bill that says there should be a professional of some kind involved in laying the groundwork for the type of custody situation which will fit the family situation. There is not a pat answer for every family."

He said that he would definitely urge support for the bill, and added that he had contacted his attorney who may be bringing expert testimony to the hearing this morning.

Exhibit C

JOINT CUSTODY

House Bill No. 703

Testimony 2/16/81,Senate Judiciary Committee

Alan D. Nicholson, Joint-Custody Parent

I am a joint-custody parent. My little boy, Aaron, will be 3 years old in two weeks. For about 18 months now, his mother and I have been sharing the warmth, the joy, the sorrow, the frustration, the responsibility and the priviledge which is this little person. And he has been sharing us. He is bright, mischevious, loving, well behaved, spoiled, potty-trained and, thank God, on the other side of the terrible two's. He has a mother. He has a father. We both love him very much. It is not easy or painless or perfect, but I'm absolutely convinced it's the very best for him.

It was very hard. Tens of thousands of dollars were spent on legal fees and counselors fees. Hours were spent in lawyers offices and in the awsome presence of the court. Emotions and passions became exaggerated as each parent, tormented by the spectre of losing a child, fought to convince everyone that the other was unfit. Work went undone. Play was impossible. No living thing which touched either parent escaped the anguish, especially the object of it all, little Aaron.

Somehow it worked out. Threats, promises, counselors, jurists, lawyers, psychologists, psychiatrists, mental breaks, emotional fatigue, spirit, purpose, love, hate, growing and learning---somehow it worked out. We agreed to jointly petition the court to make permanent the temporary joint-custody order it had previously given with certain procedures, peculiar to one situation, for making it work.

Aaron's mother and I do not love each other. We do not even like each other. We do not agree on many fundamental things. We do, however, agree that our son and his welfare is of paramount concern to each of us. So, with the frequent exchanges of Aaron's physical presence, we are also exchanging anecdotes and observations about our son, about his doctors and babysitter, about his sickness

and his health, about his appropriate and inappropriate behaviors. And because we are equal, because we have joint responsibility, the hidden agenda is not about personal triumph, not about obliterating the other. (We have what Kissinger could only dream about for nations--we have detente'.) However disguished or open, our agenda is the same...to make Aaron's world the very best it can be and to do that within the context of joint parenting. As one of two very proud parents, I can report that Aaron is thriving and growing in this joint-parenting family with love of both of his parents shining fully on him.

This Bill, had it been around a year ago, would have given much guidance to us and would have saved much pain and expense. In this rapidly changing and increasingly perilous world it seems inappropriate to assume that the "best interests" of a child are always served by subjecting the child to sameness and routine, by avoiding conflict and change or by favoring the continuity of the physical surroundings and the appearances of a conventional family over the continuity of the love and responsibility of both parents and a shared family existence with each parent. What among humankind's oddesys sustains us more, gives us more hope, enriches us more, or gives us more faith in some kind of immortality than our relationships with our own children and our own parents? I urge passage of this timely Bill.

JOINT CUSTODY

HOUSE BILL NO. 703

Testimony 2/16/81,Senate Judiciary Committee

Excerpt From A Legal Journal
Regarding a California Statute Similar
To The One Now Before The Montana Legislature

JOINT CUSTODY, SOLE CUSTODY: A NEW STATUTE REFLECTS A NEW PERSPECTIVE

James A. Cook*

The greatest impact of California's new child custody Statute is the effect it will have upon the expectations and conduct of parents prior to a court hearing. Secondarily, the new law modifies the options available to the court and the considerations which must be weighed in disposing of custody cases. Transition into the new concept may initially be difficult for the courts. However the burden of change will be lessened as the divorcing public becomes aware, in advance of custody proceedings, of the Statute's intent. The new Statute facilitates preservation of the child's needs for contact with both parents; it reduces use of the courtroom by one parent to destroy the other parent, to the detriment of the child's best interests. This new Statute's emphasis on joint custody is intended to alleviate other problems frequently generated under the former law:

1. Defusing child-stealing and support-avoidance

This legislative recognition of joint custody and its implementation by the courts may defuse and reverse the increasingly menacing recourse by excluded parents to "child stealing" and/or abandonment of financial support for lack of meaningful, frequent and extensive contact with their children. Legal practitioners have been reluctant to apply punitive or confiscatory sanctions in cases of child-stealing or abandonment of support. Observers have been uneasy about a legal solution that focused solely on punishment and support-collection on behalf of custodial parents, when many custodial parents share the responsibility for the provocation. Instead, joint custody provides an opportunity to demonstrate and increase respect for equality under the law while effecting a possible reduction of child-stealing and support-avoidance.

2. Redressing the imbalance between mother vs. father custody fights.

Additionally, it is intended that this new emphasis upon joint custody will result in tempering a recent trend of fathers to strive for sole custody. While the opportunity for fathers to compete for sole custody tests the equality of the sexes insofar as sole-custody decrees are concerned, the result is increasingly hostile custody battles because of a heightened expectation of unilateral victory by both parents. The new law will shift the view of equality—from a statistical determination of how frequently fathers rather than mothers achieve sole custody—to a decision based on protecting a child's access to both parents and on encouraging parental sharing of responsibility for the child.

3. Discouraging the use of child custody for intimidation.

The most immediately apparent feature of California's new child custody law is "the message it sends in advance to divorcing parents": a powerplay for exclusive child custody, either for purposes of intimidation or to force subservience in negotiation, is less likely to be tolerated by the court. Therein, the new Civil Code Section 4600 and 4600.5 is regarded as one of the most significant evolutions of California's family law since the advent of "no fault" divorce in 1970, which eliminated the airing of "faults" as justification for divorce. Henceforth, the new child custody Statute will largely dissolve the recourse to winner-take-all custody litigation that has heretofore been substituted for the catharsis of airing "faults."

Preference is likely to favor joint custody, or sole custodianship for that parent who demonstrates the most cooperation and tolerance for the child's frequent and continuing contact with the alternate parent. Consequently, an antagonistic and covetous parent is likely to be denied sole custody and may jeopardize the opportunity to participate equally in joint custody

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*James A. Cook has been a long time advocate of joint custody and was instrumental in the introduction and passage of A.B. 1480 by Assemblyman Charles Imbrecht (Ventura, California).

Assembly Bill 1480 appears at the end of this article as Exhibit A.

DATE March 18, 1981

COMMITTEE ON JUDICIARY

HB 773
HB 711
HB 703
HB 698

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppos
Phyllis A. Bock	MLSA	703		
Tom Gleason	CAS. CO. ELECTED OFF.	698	—	

(Please leave prepared statement with Secretary.)

STANDING COMMITTEE REPORT

March 18, 19 81

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 711

HARPER (S. BROWN)

Respectfully report as follows: That HOUSE Bill No. 711

L/C

~~XXXXX~~
DO PASS

BE CONCURRED IN

Chairman.

STATE PUB. CO.
Helena, Mont.