

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

February 9, 1985

The twenty-fifth meeting of the Senate Judiciary Committee was called to order at 12:10 p.m. on February 9, 1985, by Chairman Joe Mazurek in Rooms 413-415 of the Capitol Building.

ROLL CALL: All committee members were present.

ACTION ON SB 186: Senator Towe moved the amendments attached as Exhibit 1 be adopted. The motion carried unanimously. Senator Brown moved the bill be recommended DO PASS AS AMENDED. The motion carried unanimously.

ACTION ON SB 268: Senator Pinsoneault moved the bill be amended as follows:

Page 2, line 3.
Following: "(1)"
Strike: "(a)"

Page 2, line 5.
Following: "order"
Insert: "or an aftercare agreement"

The motion carried unanimously. Senator Pinsoneault moved the bill be recommended DO PASS AS AMENDED. The motion carried unanimously.

ACTION ON SB 152: Proposed amendments to SB 152 were distributed to the committee (see Exhibit 2). Senator Mazurek stated the standard of serious endangerment is pretty tough. He indicated what these amendments say is we are creating a presumption of joint custody and then one parent would have to come in and disprove that. You are turning the proof standard upside down. Senator Crippen questioned why we were saying this is bad--why should we continue to discriminate against the fathers. Senator Daniels stated the policy over the past is to get the bitterness out of divorce. He believes if you start putting stuff like this back into it, you are going to restore that bitterness. He believes 95% of the time the mother is the better one to raise the children. Senator Pinsoneault stated divorce is the most agonizing, gut wrenching chore a judge has. You have this push and pull all of the time, and the child is always the pawn. If you start out with this presumption, then the judge has some starting point. If you put this language in here, you are turning it back into the situation of the push

and pull. Senator Shaw stated he wants to see this bill stay just exactly the way it is. He is very opposed to the fact the wife or the mother is the only one that can take the kids. Senator Brown stated the language you see here leaves in the idea we presume joint custody, but you don't hold the judge to quite that standard. Senator Towe stated he has some reservations with the Uda amendments. He believes in most divorces, generally, one party ends up not caring very much, and custody is no problem. When there are problems in a divorce, his experience is the wife is going to end up with the best part of the argument, because there isn't a judge anywhere that doesn't favor the wife. He feels if you just say the best interests of the child, the father will lose every time. His suggestion would be maybe just say clear and convincing evidence must be shown. Senator Mazurek believes the judges are going to resist. Senator Mazurek stated we are talking about the presumption and standard of proof. Senator Brown moved amendments Nos. 1, 2, 4, and 5 be adopted, with amendment No. 4 to be further changed to read:

Page 1, line 16.

Following: "unless"

Strike: remainder of line 16 through "parents" on line 19

Insert: "the court finds, under the factors set forth in 40-4-212
by clear and convincing evidence, that joint custody is not
in the best interests of the child"

The motion carried with Senators Daniels and Mazurek voting in opposition. Senator Pinsoneault moved SB 152 be amended as follows:

Title, line 7.

Following: "RESIDENCY"

Strike: "TIME WHEN PRACTICAL"

Page 2, line 3.

Following: "parents."

Strike: remainder of line 3 through "equal." on line 4

Insert: "The allotment of time between parties shall be as equal
as possible; however, each case shall be determined according
to its own practicalities with the best interests of the
child as the primary consideration."

Senator Mazurek stated joint custody has two concepts: the technical right to access of records, etc., and the actual physical custody consideration. Senator Pinsoneault stated with this amendment, at least you start out by saying it is half and half. Senator Daniels stated he believes Senator Mazurek has put his finger on it, and that is we need to define joint custody. He believes if we define joint custody, we will be taking away a lot of the problems. The motion to amend carried

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with Senators Daniels and Mazurek voting in opposition. Senator Towe moved the bill be amended as follows:

Title, line 8.

Following: "MCA"

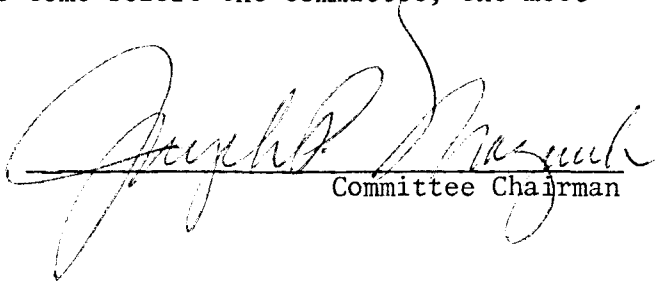
Strike: remainder of line 8 through "DATE"

Page 2, lines 13 and 14.

Strike: Section 2 in its entirety

The motion carried with Senator Crippen voting in opposition. Senator Pinsonneault moved SB 152 be recommended DO PASS AS AMENDED. The motion carried with Senators Daniels and Mazurek voting in opposition.

There being no further business to come before the committee, the meeting was adjourned at 1:00 p.m.


Committee Chairman

PROPOSED AMENDMENTS TO SB 186:

1. Page 1, line 21.

Following: "(2)"

Strike: "punish a criminal offender by assuring"

Insert: "assure"

2. Page 4, line 2.

Following: "district courts"

Strike: remainder of line 2 through "cases" on line 3

3. Page 5, line 11.

Following: "capacity."

Strike: remainder of line 11 through "capacity." on line 15

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 02-09-80

BILL NO. SB 186

Uda Amendments SB 152

- ✓ 1. Title, line 5.
Following: "CUSTODY"
Strike: remainder of line 5 through "THE" on line 6
Insert: "IF IN A"
- ✓ 2. Title, line 6.
Following: "CHILD'S"
Strike: "WELFARE IS ENDANGERED"
Insert: "BEST INTERESTS"
Following: "PROVIDING"
Insert: "STANDARDS"
Following: "FOR"
Strike: remainder of line 6 through "OF" on line 7
Insert: "ESTABLISHING"
3. Title, line 7.
Following: "RESIDENCY"
Strike: "TIME WHEN PRACTICAL"
- ✓ 4. Page 1, line 16. *Not clear and convincing evidence*
Following: "unless"
Strike: remainder of line 16 through "parents" on line 19
Insert: "the court finds, under the factors set forth in 40-4-212, that joint custody is not in the best interests of the minor child"
- ✓ 5. Page 1, line 22.
Following: "custody."
Insert: "Objection to joint custody by a parent seeking sole custody is not a sufficient basis for a finding that joint custody is not in the best interests of a child, nor is a finding that the parents are hostile to each other."
6. Page 2, line 3.
Following: "parents."
Strike: remainder of line 3 through line 4 in its entirety
7. Page 2, line 5.
Following: line 4
Insert: "(3) To determine the residential schedule of a minor child under a joint custody award, the court shall consider the wishes of the parents, the wishes of the child, the ages of the child, the child's relationships with siblings, the child's school schedule, extracurricular activities and other interests and activities, the distance between the parents' homes, and any other relevant factors. The court shall consider residential schedules which permit the child to have equal time with the parties along with any others urged by the parties, and the court shall determine the schedule based upon the best interests of the child."
Renumber: subsequent subsections

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 020985

BILL NO. SB 152

8. Page 2, line 7.

Following: "may"

Strike: "with the consent of both parties"

9. Page 2, line 10.

Following: "a"

Insert: "residential"

Following: "plan"

Strike: "for implementation of the custody order"

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 020985
BILL NO. SB 152

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PROPOSED AMENDMENTS TO SB 152:

1. Page 1, line 14.

Following: "custody,"

Strike: remainder of line 14 through "presume" on line 15

Insert: "it is presumed"

2. Page 2, line 3.

Following: "parents."

Strike: remainder of line 3 through "equal." on line 4

Insert: "This section contemplates an ^xequal residency sharing; however,
each case shall be determined according to its own practicalities
with the best interests of the child as the primary consideration."

x
The allotment of time
between the parties
shall be as equal
as possible;

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 020985

BILL NO. SB 152

PROPOSED AMENDMENTS TO SB 152:

1. Title, line 6.

Following: "THAT"

Insert: "IT IS AGAINST"

Following: "CHILD'S"

Strike: "WELFARE IS ENDANGERED"

Insert: "BEST INTERESTS"

2. Page 1, line 17.

Following: line 16

Strike: "clear and convincing"

Insert: "substantial"

Following: "the"

Strike: remainder of line 17 through 18 in their entirety

Insert: "child's best interests require sole"

3. Page 1, line 19.

Following: "custody"

Strike: "of both parents"

4. Page 2, line 4.

Following: "allotment"

Strike: "must be equal"

Insert: "should have a reasonable semblance of parity"

5. Page 2, line 13.

Following: line 12

Insert: "(5) In a custody proceeding, the court shall consider whether a child support obligation pursuant to 40-4-204, is necessary."

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 020985

BILL NO. SB 152

STANDING COMMITTEE REPORT

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MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE BILL No. 152

first reading copy (white)
color

PRESUMPTION IN FAVOR OF JOINT CUSTODY EQUAL RESIDENCY TIME.

Respectfully report as follows: That SENATE BILL No. 152

be amended as follows:

- ✓ 1. Title, line 5.
Following: "CUSTODY"
Strike: remainder of line 5 through "THE" on line 6
Insert: "IF IN A"
- ✓ 2. Title, line 6.
Following: "CHILD'S"
Strike: "WELFARE IS ENDANGERED"
Insert: "BEST INTERESTS"
Following: "PROVIDING"
Insert: "STANDARDS"
Following: "FOR"
Strike: remainder of line 6 through "OF" on line 7
Insert: "ESTABLISHING"
- ✓ 3. Title, line 7.
Following: "RESIDENCY"
Strike: "TIME WHEN PRACTICAL"
- ✓ 4. Title, line 8.
Following: "MCA"
Strike: remainder of line 8 through "DATE"

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~~XXXXXXXX~~

Senator Joe Mazurek

Chairman.

Page 2 of 2

SENATE BILL NO. 152

- ✓ 5. Page 1, line 16.
Following: "unless"
Strike: remainder of line 16 through "parents" on line 19
Insert: "the court finds, under the factors set forth in 49-4-212 by clear and convincing evidence, that joint custody is not in the best interests of the minor child"
- ✓ 6. Page 1, line 22.
Following: "custody."
Insert: "Objection to joint custody by a parent seeking sole custody is not a sufficient basis for a finding that joint custody is not in the best interests of a child, nor is a finding that the parents are hostile to each other."
- ✓ 7. Page 2, line 3.
Following: "parents."
Strike: remainder of line 3 through "equal." on line 4
Insert: "The allotment of time between parties shall be as equal as possible; however, each case shall be determined according to its own practicalities with the best interests of the child as the primary consideration."
- 8. Page 2, lines 13 and 14.
✓ Strike: Section 2 in its entirety

AND AS AMENDED

DO PASS

Senator Joe Mazurek, Chairman

STANDING COMMITTEE REPORT

February 9 1985

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE BILL No. 136

first reading copy (white)
color

SENTENCING GUIDELINES COMMISSION ACT

Respectfully report as follows: That SENATE BILL No. 136

be amended as follows:

1. Page 1, line 21.

Following: "(2)"

Strike: "punish a criminal offender by assuring"

Insert: "assure"

2. Page 4, line 2.

Following: "district courts"

Strike: remainder of line 2 through "cases" on line 3

3. Page 5, line 11.

Following: "capacity."

Strike: remainder of line 11 through "capacity." on line 15

AND AS AMENDED

DO PASS

~~XXXXXX~~

Senator Joe Mazurek

Chairman.

STANDING COMMITTEE REPORT

February 9

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MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE BILL No. 268

first reading copy (white)
color

REVISE CRITERIA FOR DETENTION OF YOUTH

Respectfully report as follows: That SENATE BILL No. 268

be amended as follows:

1. Page 2, line 3.

Following: "(1)"

Strike: "(a)"

2. Page 2, line 5.

Following: "order"

Insert: "or an aftercare agreement"

AND AS AMENDED

DO PASS

~~DO NOT PASS~~

Senator Joe Mazurek

Chairman.