

SENATE BILL NO. 516

INTRODUCED BY TURNAGE

BY REQUEST OF THE SENATE JUDICIARY COMMITTEE

IN THE SENATE

February 15, 1979	Introduced and referred to Committee on Judiciary.
February 17, 1979	Committee recommend bill do pass. Report adopted.
February 19, 1979	Printed and placed on members' desks.
February 20, 1979	Second reading, do pass.
February 21, 1979	Considered correctly engrossed.
February 22, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 23, 1979	Introduced and referred to Committee on Judiciary.
March 19, 1979	Committee recommend bill be concurred in. Report adopted.
March 20, 1979	Motion pass consideration.
March 21, 1979	Second reading, concurred in.
March 23, 1979	Third reading, concurred in.

IN THE SENATE

March 24, 1979	Returned from second house. Concurred in. Sent to enrolling. Reported correctly enrolled.
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1 *Amended* BILL NO. *516*
 2 INTRODUCED BY *Terrance*
 3 By request of Senate Judiciary Committee

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAW
 5 CONCERNING CUSTODY ORDERS; TO ALLOW EX PARTE TEMPORARY
 6 CUSTODY ORDERS; TO DELETE THE 2-YEAR RESTRICTION ON SEEKING
 7 MODIFICATION OF A CUSTODY ORDER; AMENDING SECTIONS 40-4-213,
 8 40-4-219, AND 40-4-220, MCA."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 40-4-213, MCA, is amended to read:

12 "40-4-213. Temporary orders. (1) A party to a custody
 13 proceeding may move for a temporary custody order. The
 14 motion must be supported by an affidavit as provided in
 15 40-4-220(1). The court may award temporary custody under the
 16 standards of 40-4-212 after a hearing ~~or if under the~~
 17 ~~standards of 40-4-212 and 40-4-220(2) before a hearing. If~~
 18 there is no objection, ~~the court may act~~ solely on the basis
 19 of the affidavits.

20 (2) If a proceeding for dissolution of marriage or
 21 legal separation is dismissed, any temporary custody order
 22 is vacated unless a parent or the child's custodian moves
 23 that the proceeding continue as a custody proceeding and the
 24 court finds, after a hearing, that the circumstances of the
 25 parents and the best interest of the child require that a

1 custody decree be issued.
 2 (3) If a custody proceeding commenced in the absence
 3 of a petition for dissolution of marriage or legal
 4 separation is dismissed, any temporary custody order is
 5 vacated."

6 Section 2. Section 40-4-219, MCA, is amended to read:

7 "40-4-219. Modification. ~~(1) No motion to modify a~~
 8 ~~custody decree may be made earlier than 2 years after its~~
 9 ~~date, unless the court permits it to be made on the basis of~~
 10 ~~affidavits that there is reason to believe the child's~~
 11 ~~present environment may endanger seriously his physical,~~
 12 ~~mental, moral, or emotional health.~~

13 (2) (1) The court shall not modify a prior custody
 14 decree unless it finds, upon the basis of facts that have
 15 arisen since the prior decree or that were unknown to the
 16 court at the time of entry of the prior decree, that a
 17 change has occurred in the circumstances of the child or his
 18 custodian and that the modification is necessary to serve
 19 the best interest of the child. In applying these standards
 20 the court shall retain the custodian appointed pursuant to
 21 the prior decree unless:

- 22 (a) the custodian agrees to the modification;
- 23 (b) the child has been integrated into the family of
- 24 the petitioner with consent of the custodian; or
- 25 (c) the child's present environment endangers

1 seriously his physical, mental, moral, or emotional health
2 and the harm likely to be caused by a change of environment
3 is outweighed by its advantages to him.

4 ~~(3)~~(2) Attorney fees and costs shall be assessed
5 against a party seeking modification if the court finds that
6 the modification action is vexatious and constitutes
7 harassment."

8 Section 3. Section 40-4-220, MCA, is amended to read:

9 "40-4-220. Affidavit practice. (1) A party seeking a
10 temporary custody order or modification of a custody decree
11 shall submit, together with his moving papers, an affidavit
12 setting forth facts supporting the requested order or
13 modification and shall give notice, together with a copy of
14 his affidavit, to other parties to the proceeding, who may
15 file opposing affidavits. The court shall deny the motion
16 unless it finds that adequate cause for hearing the motion
17 is established by the affidavits, in which case it shall set
18 a date for hearing on an order to show cause why the
19 requested order or modification should not be granted.

20 ~~(2) (a) A party seeking a temporary custody order may~~
21 ~~request that the court grant a temporary assignment of~~
22 ~~custody ex parte. He shall so request in his moving papers~~
23 ~~and shall submit an affidavit showing that:~~

24 ~~(i) no previous determination of custody has been made~~
25 ~~by a court and it would be in the child's best interest~~

1 ~~under the standards of 40-4-212 if temporary custody were~~
2 ~~placed with the person designated by the moving party; or~~

3 ~~(ii) although a previous determination of custody has~~
4 ~~been made, the child's present environment endangers his~~
5 ~~physical or emotional health and an immediate change of~~
6 ~~custody would serve to protect the child's physical or~~
7 ~~emotional health.~~

8 ~~(b) If the court finds from the affidavits submitted~~
9 ~~by the moving party that a temporary assignment of custody~~
10 ~~would be in the child's best interest under the standards of~~
11 ~~40-4-212 or that the child's physical or emotional health is~~
12 ~~endangered and would be protected by a temporary assignment~~
13 ~~of custody, the court shall make an order placing temporary~~
14 ~~custody with the person designated by the moving party or~~
15 ~~with some other person designated by the court and shall~~
16 ~~require all parties to appear and show cause within 20 days~~
17 ~~from the execution of the order why, in the case of a~~
18 ~~temporary order issued under subsection (2)(a)(i), the~~
19 ~~temporary order should not remain in effect until further~~
20 ~~order of court or, in the case of a temporary order issued~~
21 ~~under subsection (2)(a)(ii), the court should not restore~~
22 ~~the child to the custodian from whom the child was removed~~
23 ~~by the temporary order."~~

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By request of Senate Judiciary Committee

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAW CONCERNING CUSTODY ORDERS; TO ALLOW EX PARTE TEMPORARY CUSTODY ORDERS; TO DELETE THE 2-YEAR RESTRICTION ON SEEKING MODIFICATION OF A CUSTODY ORDER; AMENDING SECTIONS 40-4-213, 40-4-219, AND 40-4-220, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-4-213, MCA, is amended to read:

"40-4-213. Temporary orders. (1) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in 40-4-220(1). The court may award temporary custody under the standards of 40-4-212 after a hearing ~~or if under the standards of 40-4-212 and 40-4-220(2) before a hearing.~~ If there is no objection, ~~the court may act~~ solely on the basis of the affidavits.

(2) If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parents and the best interest of the child require that a

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custody decree be issued.

(3) If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated."

Section 2. Section 40-4-219, MCA, is amended to read:

~~"40-4-219. Modification. (1) No motion to modify a custody decree may be made earlier than 2 years after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may endanger seriously his physical, mental, moral, or emotional health.~~

~~(2)~~(1) The court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interest of the child. In applying these standards the court shall retain the custodian appointed pursuant to the prior decree unless:

- (a) the custodian agrees to the modification;
- (b) the child has been integrated into the family of the petitioner with consent of the custodian; or
- (c) the child's present environment endangers

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1 seriously his physical, mental, moral, or emotional health
2 and the harm likely to be caused by a change of environment
3 is outweighed by its advantages to him.

4 ~~(3)~~(2) Attorney fees and costs shall be assessed
5 against a party seeking modification if the court finds that
6 the modification action is vexatious and constitutes
7 harassment."

8 Section 3. Section 40-4-220, MCA, is amended to read:

9 "40-4-220. Affidavit practice. (1) A party seeking a
10 temporary custody order or modification of a custody decree
11 shall submit, together with his moving papers, an affidavit
12 setting forth facts supporting the requested order or
13 modification and shall give notice, together with a copy of
14 his affidavit, to other parties to the proceeding, who may
15 file opposing affidavits. The court shall deny the motion
16 unless it finds that adequate cause for hearing the motion
17 is established by the affidavits, in which case it shall set
18 a date for hearing on an order to show cause why the
19 requested order or modification should not be granted.

20 (2) (a) A party seeking a temporary custody order may
21 request that the court grant a temporary assignment of
22 custody ex parte. He shall so request in his moving papers
23 and shall submit an affidavit showing that:

24 (i) no previous determination of custody has been made
25 by a court and it would be in the child's best interest

1 under the standards of 40-4-212 if temporary custody were
2 placed with the person designated by the moving party; or

3 (ii) although a previous determination of custody has
4 been made, the child's present environment endangers his
5 physical or emotional health and an immediate change of
6 custody would serve to protect the child's physical or
7 emotional health.

8 (b) If the court finds from the affidavits submitted
9 by the moving party that a temporary assignment of custody
10 would be in the child's best interest under the standards of
11 40-4-212 or that the child's physical or emotional health is
12 endangered and would be protected by a temporary assignment
13 of custody, the court shall make an order placing temporary
14 custody with the person designated by the moving party or
15 with some other person designated by the court and shall
16 require all parties to appear and show cause within 20 days
17 from the execution of the order why, in the case of a
18 temporary order issued under subsection (2)(a)(i), the
19 temporary order should not remain in effect until further
20 order of court or, in the case of a temporary order issued
21 under subsection (2)(a)(ii), the court should not restore
22 the child to the custodian from whom the child was removed
23 by the temporary order."

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parents and the best interest of the child require that a custody decree be issued.

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~~(2)(1)~~ The court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interest of the child. In applying these standards the court shall retain the custodian appointed pursuant to the prior decree unless:

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4 (ii) although a previous determination of custody has
5 been made, the child's present environment endangers his
6 physical or emotional health and an immediate change of
7 custody would serve to protect the child's physical or
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9 (b) If the court finds from the affidavits submitted
10 by the moving party that a temporary assignment of custody
11 would be in the child's best interest under the standards of
12 40-4-212 or that the child's physical or emotional health is
13 endangered and would be protected by a temporary assignment
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