

HOUSE BILL NO. 703

INTRODUCED BY DUSSAULT, MAZUREK

IN THE HOUSE

February 10, 1981	Introduced and referred to Committee on Judiciary.
February 20, 1981	Committee recommend bill do pass as amended. Report adopted.
February 21, 1981	Bill and printed and placed on members' desks.
February 23, 1981	Second reading, do pass.
February 24, 1981	Correctly engrossed.
February 25, 1981	Third reading, passed. Ayes, 79; Noes, 13. Transmitted to Senate.

IN THE SENATE

March 3, 1981	Introduced and referred to Committee on Judiciary.
March 26, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 28, 1981	Motion pass consideration.
March 30, 1981	Motion pass consideration.
March 31, 1981	Second reading, concurred in as amended.
	On motion rules suspended. Bill placed on calendar for third reading this day and allowed to be transmitted on 71st legislative day. Motion adopted.
	Third reading, concurred in as amended. Ayes, 45; Noes, 3.

IN THE HOUSE

April 1, 1981

Returned from Senate with amendments.

April 9, 1981

Second reading, amendments concurred in.

On motion rules suspended and bill placed on third reading this day.

Third reading, amendments concurred in. Ayes, 87; Noes, 3. Sent to enrolling.

Reported correctly enrolled.

1 HOUSE BILL NO. 703
2 INTRODUCED BY *Shawn M. Mergul*
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A
5 PREFERENCE FOR JOINT CUSTODY AWARDS UPON DISSOLUTION OF
6 MARRIAGE; ESTABLISHING AN ORDER OF PREFERENCE ACCORDING TO
7 THE BEST INTERESTS OF THE CHILD; AND ALLOWING THE
8 NONCUSTODIAL PARENT ACCESS TO RECORDS."

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

11 Section 1. Declaration of legislative intent -- joint
12 custody. (1) The legislature of the state of Montana finds
13 and declares that it is the public policy of this state to
14 assure minor children frequent and continuing contact with
15 both parents after the parents have separated or dissolved
16 their marriage and to encourage parents to share the rights
17 and responsibilities of child rearing in order to effect
18 this policy. The legislature believes that the district
19 courts of the state of Montana have the authority to award
20 joint custody to any interested party if the court finds
21 joint custody in the best interests of the children in the
22 case then before the court. The intent of [this act] is to
23 establish preferences and certain guidelines for resolution
24 of custody disputes.

25 Section 2. Award of joint or separate custody. In

1 custody disputes involving both parents of a minor child,
2 custody shall be awarded in the following order of
3 preference according to the best interests of the child as
4 set out in 40-4-212:

5 (1) to both parents jointly pursuant to [section 3].
6 The court, in its discretion, may require the submission to
7 the court of a plan for the implementation of the joint
8 custody order; or

9 (2) to either parent. In making an award to either
10 parent, the court shall consider, along with the factors set
11 out in 40-4-212, which parent is more likely to allow the
12 child frequent and continuing contact with the noncustodial
13 parent and may not prefer a parent as custodian because of
14 the parent's sex. The court, in its discretion, may require
15 the submission to the court of a plan for the implementation
16 of the custody order.

17 Section 3. Presumption in favor of joint custody --
18 modification -- consultation with professionals. (1) Upon
19 application of either parent or both parents for joint
20 custody, there is a presumption, affecting the burden of
21 proof, that joint custody is in the best interests of a
22 minor child. If the court declines to enter an order
23 awarding joint custody the court shall state in its decision
24 the reasons for denial of an award of joint custody.

25 (2) For the purposes of this section, "joint custody"

1 means an order awarding custody of the minor child to both
 2 parents and providing that the residency of the child shall
 3 be shared by the parents in such a way as to assure the
 4 child frequent and continuing (but not necessarily equal)
 5 contact with both parents.

6 (3) Any order for joint custody may be modified
 7 pursuant to 40-4-219 to terminate the joint custody. If
 8 modification is granted and either parent opposes the
 9 modification, the court shall state in its decision the
 10 reasons for modification.

11 (4) Any order for the custody of a minor child entered
 12 by a court in this state or any other state may, subject to
 13 appropriate jurisdictional requirements, be modified at any
 14 time to an order of joint custody in accordance with the
 15 provisions of 40-4-212 and [this act].

16 (5) The court may, at any time, direct the parties to
 17 consult with appropriate professionals for the purpose of
 18 assisting the parties to formulate a plan for implementation
 19 of the custody order or to resolve any controversy that has
 20 arisen in the implementation of a plan for custody.

21 Section 4. Access to records by noncustodial parent.
 22 Notwithstanding any other provision of law, access to
 23 records and information pertaining to a minor child,
 24 including but not limited to medical, dental, law
 25 enforcement, and school records, may not be denied to a

1 parent because such parent is not the child's custodial
 2 parent.

3 Section 5. Codification instruction. Sections 1
 4 through 4 are intended to be codified as an integral part of
 5 Title 40, chapter 4, part 2.

-End-

Approved by Committee
on Judiciary

HOUSE BILL NO. 703

INTRODUCED BY DUSSAULT, MAZUREK

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A PREFERENCE FOR JOINT CUSTODY AWARDS UPON DISSOLUTION OF MARRIAGE; ESTABLISHING AN ORDER OF PREFERENCE ACCORDING TO THE BEST INTERESTS OF THE CHILD; AND ALLOWING THE NONCUSTODIAL PARENT ACCESS TO RECORDS."

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

Section 1. Declaration of legislative intent -- joint custody. (1) The legislature of the state of Montana finds and declares that it is the public policy of this state to assure minor children frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy. The legislature believes that the district courts of the state of Montana have the authority to award joint custody to any interested party if the court finds joint custody in the best interests of the children in the case then before the court. The intent of [this act] is to establish preferences and certain guidelines for resolution of custody disputes.

Section 2. Award of joint or separate custody. In

custody disputes involving both parents of a minor child, custody shall be awarded in the following order of preference according to the best interests of the child as set out in 40-4-212:

(1) to both parents jointly pursuant to [section 3]. The court, in its discretion, may require the submission to the court of a plan for the implementation of the joint custody order; or

(2) to either parent. In making an award to either parent, the court shall consider, along with the factors set out in 40-4-212, which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent and may not prefer a parent as custodian because of the parent's sex. The court, in its discretion, may require the submission to the court of a plan for the implementation of the custody order.

Section 3. Presumption in favor of joint custody -- modification -- consultation with professionals. (1) Upon application of either parent or both parents for joint custody, there is a presumption, affecting the burden of proof, that joint custody is in the best interests of a minor child. If the court declines to enter an order awarding joint custody the court shall state in its decision the reasons for denial of an award of joint custody.

(2) For the purposes of this section, "joint custody"

1 means an order awarding custody of the minor child to both
 2 parents and providing that the residency of the child shall
 3 be shared by the parents in such a way as to assure the
 4 child frequent and continuing (but not necessarily equal)
 5 contact with both parents.

6 (3) Any order for joint custody may be modified
 7 pursuant to 40-4-219 to terminate the joint custody. If
 8 modification is granted and either parent opposes the
 9 modification, the court shall state in its decision the
 10 reasons for modification.

11 (4) Any order for the custody of a minor child entered
 12 by a court in this state or any other state may, subject to
 13 appropriate jurisdictional requirements, be modified at any
 14 time to an order of joint custody in accordance with the
 15 provisions of 40-4-212 and [this act].

16 (5) The court may WITH THE CONSENT OF BOTH PARTIES, at
 17 any time, direct the parties to consult with appropriate
 18 professionals for the purpose of assisting the parties to
 19 formulate a plan for implementation of the custody order or
 20 to resolve any controversy that has arisen in the
 21 implementation of a plan for custody.

22 Section 4. Access to records by noncustodial parent.
 23 Notwithstanding any other provision of law, access to
 24 records and information pertaining to a minor child,
 25 including but not limited to medical, dental, law

1 enforcement, and school records, may not be denied to a
 2 parent because such parent is not the child's custodial
 3 parent.

4 Section 5. Codification instruction. Sections 1
 5 through 4 are intended to be codified as an integral part of
 6 Title 40, chapter 4, part 2.

-End-

1 HOUSE BILL NO. 703

2 INTRODUCED BY DUSSAULT, MAZUREK

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A
5 PREFERENCE FOR JOINT CUSTODY AWARDS UPON DISSOLUTION OF
6 MARRIAGE; ESTABLISHING AN ORDER OF PREFERENCE ACCORDING TO
7 THE BEST INTERESTS OF THE CHILD; AND ALLOWING THE
8 NONCUSTODIAL PARENT ACCESS TO RECORDS."

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

11 Section 1. Declaration of legislative intent -- joint
12 custody. (1) The legislature of the state of Montana finds
13 and declares that it is the public policy of this state to
14 assure minor children frequent and continuing contact with
15 both parents after the parents have separated or dissolved
16 their marriage and to encourage parents to share the rights
17 and responsibilities of child rearing in order to effect
18 this policy. The legislature believes that the district
19 courts of the state of Montana have the authority to award
20 joint custody to any interested party if the court finds
21 joint custody in the best interests of the children in the
22 case then before the court. The intent of [this act] is to
23 establish preferences and certain guidelines for resolution
24 of custody disputes.

25 Section 2. Award of joint or separate custody. In

1 custody disputes involving both parents of a minor child,
2 custody shall be awarded in the following order of
3 preference according to the best interests of the child as
4 set out in 40-4-212:

5 (1) to both parents jointly pursuant to [section 3].
6 The court, in its discretion, may require the submission to
7 the court of a plan for the implementation of the joint
8 custody order; or

9 (2) to either parent. In making an award to either
10 parent, the court shall consider, along with the factors set
11 out in 40-4-212, which parent is more likely to allow the
12 child frequent and continuing contact with the noncustodial
13 parent and may not prefer a parent as custodian because of
14 the parent's sex. The court, in its discretion, may require
15 the submission to the court of a plan for the implementation
16 of the custody order.

17 Section 3. Presumption in favor of joint custody --
18 modification -- consultation with professionals. (1) Upon
19 application of either parent or both parents for joint
20 custody, there is a presumption, affecting the burden of
21 proof, that joint custody is in the best interests of a
22 minor child. If the court declines to enter an order
23 awarding joint custody the court shall state in its decision
24 the reasons for denial of an award of joint custody.

25 (2) For the purposes of this section, "joint custody"

1 means an order awarding custody of the minor child to both
 2 parents and providing that the residency of the child shall
 3 be shared by the parents in such a way as to assure the
 4 child frequent and continuing (but not necessarily equal)
 5 contact with both parents.

6 (3) Any order for joint custody may be modified
 7 pursuant to 40-4-219 to terminate the joint custody. If
 8 modification is granted and either parent opposes the
 9 modification, the court shall state in its decision the
 10 reasons for modification.

11 (4) Any order for the custody of a minor child entered
 12 by a court in this state or any other state may, subject to
 13 appropriate jurisdictional requirements, be modified at any
 14 time to an order of joint custody in accordance with the
 15 provisions of 40-4-212 and [this act].

16 (5) The court may WITH THE CONSENT OF BOTH PARTIES, at
 17 any time, direct the parties to consult with appropriate
 18 professionals for the purpose of assisting the parties to
 19 formulate a plan for implementation of the custody order or
 20 to resolve any controversy that has arisen in the
 21 implementation of a plan for custody.

22 Section 4. Access to records by noncustodial parent.
 23 Notwithstanding any other provision of law, access to
 24 records and information pertaining to a minor child,
 25 including but not limited to medical, dental, law

1 enforcement, and school records, may not be denied to a
 2 parent because such parent is not the child's custodial
 3 parent.

4 Section 5. Codification instruction. Sections 1
 5 through 4 are intended to be codified as an integral part of
 6 Title 40, chapter 4, part 2.

-End-

HOUSE BILL NO. 703

INTRODUCED BY DUSSAULT, MAZUREK

A BILL FOR AN ACT ENTITLED: "AN ACT PERTAINING TO ESTABLISH A-PREFERENCE-FOR JOINT CUSTODY AWARDS UPON DISSOLUTION OF MARRIAGE; ESTABLISHING--AN-ORDER-OF-PREFERENCE-ACCORDING-TO CONSIDERING THE BEST INTERESTS OF THE CHILD; AND ALLOWING THE NONCUSTODIAL PARENT ACCESS TO RECORDS."

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

Section 1. Declaration of legislative intent -- joint custody. (1) The legislature of the state of Montana finds and declares that it is the public policy of this state to assure minor children frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy. The legislature believes that the district courts of the state of Montana have the authority to award joint custody to-any-interested-party if the court finds joint custody in the best interests of the children in the case then before the court. The intent of [this act] is to establish preferences-and certain guidelines for resolution of custody disputes.

Section 2. Award of joint or separate custody. In

custody disputes involving both parents of a minor child, custody shall be awarded in IQ the following order--of preference according to the best interests of the child as set out in 40-4-212:

(1) to both parents jointly pursuant to [section 3]. The court, in its discretion, may require the submission to the court of a plan for the implementation of the joint custody order; or

(2) to either parent. In making an award to either parent, the court shall consider, along with the factors set out in 40-4-212, which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent and may not prefer a parent as custodian because of the parent's sex. The court, in its discretion, may require the submission to the court of a plan for the implementation of the custody order.

Section 3. ~~Presumption-in-favor-of-joint~~ JOINT custody -- modification -- consultation with professionals. (1) Upon application of either parent or both parents for joint custody, ~~there--is--a--presumption, affecting the burden of proof, that~~ THE COURT SHALL CONSIDER WHETHER OR NOT joint custody is in the best interests of a minor child. If the court declines to enter an order awarding joint custody the court shall state in its decision the reasons for denial of an award of joint custody.

1 (2) For the purposes of this section, "joint custody"
 2 means an order awarding custody of the minor child to both
 3 parents and providing that the residency of the child shall
 4 be shared by the parents in such a way as to assure the
 5 child frequent and continuing (but not necessarily equal)
 6 contact with both parents.

7 (3) Any order for joint custody may be modified
 8 pursuant to 40-4-219 to terminate the joint custody. If
 9 ~~modification is granted and either parent opposes the~~
 10 ~~modification, the court shall state in its decision the~~
 11 ~~reasons for modification.~~

12 ~~(4) Any order for the custody of a minor child entered~~
 13 ~~by a court in this state or any other state may, subject to~~
 14 ~~appropriate jurisdictional requirements, be modified at any~~
 15 ~~time to an order of joint custody in accordance with the~~
 16 ~~provisions of 40-4-212 and [this act].~~

17 ~~(5)~~(4) The court may WITH THE CONSENT OF BOTH PARTIES,
 18 at any time, direct the parties to consult with appropriate
 19 professionals for the purpose of assisting the parties to
 20 formulate a plan for implementation of the custody order or
 21 to resolve any controversy that has arisen in the
 22 implementation of a plan for custody.

23 Section 4. Access to records by noncustodial parent.
 24 Notwithstanding any other provision of law, access to
 25 records and information pertaining to a minor child,

1 including but not limited to medical, dental, law
 2 enforcement, and school records, may not be denied to a
 3 parent because such parent is not the child's custodial
 4 parent.

5 Section 5. Codification instruction. Sections 1
 6 through 4 are intended to be codified as an integral part of
 7 Title 40, chapter 4, part 2.

-End-

March 31, 1981

SENATE COMMITTEE OF THE WHOLE

Proposed amendment to House Bill 703, third reading copy, as follows:

1. Page 3, lines 7 through 15.
Following: "custody." on line 7.
Strike: the remainder of these lines.
Renumber: subsequent subsections.

March 26, 1981

SENATE STANDING COMMITTEE REPORT
(Judiciary)

That House Bill No. 703 be amended as follows:

1. Title, lines 4 through 5.
Following: the second "ACT" on line 4
Insert: "PERTAINING"
Following: "TO" on line 4
Strike: line 4 through "FOR" on line 5
2. Title, line 6.
Following: ";"
Strike: line 6
Insert: "CONSIDERING"
3. Page 1, line 20.
Following: "custody"
Strike: "to any interested party"
4. Page 1, line 23.
Following: "establish"
Strike: "preferences and"
5. Page 2, lines 2 through 3.
Following: "awarded" on line 2
Strike: "in"
Insert: "to"
Following: "following" on line 2
Strike: line 2 through "preference" on line 3
6. Page 2, line 17.
Following: "3."
Strike: "Presumption in favor of joint"
Insert: "Joint"
7. Page 2, lines 20 through 21.
Following: "custody," on line 20
Strike: line 20 through "that" on line 21
Insert: "the court shall consider whether or not"