

HOUSE BILL NO. 717
INTRODUCED BY WALDRON

IN THE HOUSE

February 8, 1985	Introduced and referred to Committee on Judiciary.
February 20, 1985	Committee recommend bill do pass as amended. Report adopted.
	Bill printed and placed on members' desks.
February 21, 1985	Second reading, do pass.
February 22, 1985	Considered correctly engrossed.
February 23, 1985	Third reading, passed. Transmitted to Senate.

IN THE SENATE

March 4, 1985	Introduced and referred to Committee on Judiciary.
March 26, 1985	Committee recommend bill be concurrent in as amended. Report adopted.
March 29, 1985	Second reading, concurred in.
March 30, 1985	Third reading, concurred in. Ayes, 45; Noes, 4. Returned to House with amendments.

IN THE HOUSE

March 30, 1985	Received from Senate.
April 8, 1985	Second reading, amendments not concurred in. On motion, Free Conference Committee requested.
April 9, 1985	Free Conference Committee appointed.
April 22, 1985	Free Conference Committee reported.
April 23, 1985	Second reading, Free Conference Committee report adopted. Third reading, Free Conference Committee report adopted. Free Conference Committee report adopted by Senate.
April 24, 1985	Sent to enrolling. Reported correctly enrolled.

1 HOUSE BILL NO. 717
 2 INTRODUCTION BY Walshon
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE CHILD
 5 SUPPORT AND CUSTODY STATUTES TO PROVIDE THAT JOINT CUSTODY
 6 MAY BE AWARDED, WITHOUT ORDER OF PREFERENCE, ONLY WHEN BOTH
 7 PARENTS SEEK IT; TO REQUIRE THE SUBMISSION TO THE COURT OF A
 8 PLAN IMPLEMENTING ANY CUSTODY AWARD; TO REQUIRE THE COURT TO
 9 STATE THE FACTORS AND REASONS IT CONSIDERED IN MAKING A
 10 CUSTODY AWARD AND IN NOT ORDERING CHILD SUPPORT TO BE PAID;
 11 AMENDING SECTIONS 40-4-204 AND 40-4-222 THROUGH 40-4-224,
 12 MCA."
 13

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

15 Section 1. Section 40-4-204, MCA, is amended to read:

16 "40-4-204. Child support. (1) In a proceeding for
 17 dissolution of marriage, legal separation, maintenance, or
 18 child support, the court may order either or both parents
 19 owing a duty of support to a child to pay an amount
 20 reasonable or necessary for his support, without regard to
 21 marital misconduct, after considering all relevant factors
 22 including:

23 †1)(a) the financial resources of the child;

24 †2)(b) the financial resources of the custodial
 25 parent;

1 †3)(c) the standard of living the child would have
 2 enjoyed had the marriage not been dissolved;

3 †4)(d) the physical and emotional condition of the
 4 child and his educational needs;

5 †5)(e) the financial resources and needs of the
 6 noncustodial parent; and

7 †6)(f) for the purposes of determining a minimum
 8 amount for support, the amount received by children under
 9 the AFDC program, as defined in 53-2-702.

10 (2) If the court does not order a parent owing a duty
 11 of support to a child to pay any amount for the child's
 12 support, the court shall state the reasons for not ordering
 13 child support."

14 Section 2. Section 40-4-222, MCA, is amended to read:

15 "40-4-222. Declaration of legislative intent -- joint
 16 custody. The legislature of the state of Montana finds and
 17 declares that it is the public policy of this state to
 18 assure a minor children child frequent and continuing
 19 contact with both parents after the parents have separated
 20 or dissolved their marriage and to encourage parents to
 21 share the rights and responsibilities of child rearing in
 22 order-to-effect whenever this policy promotes the general
 23 welfare of the child. The legislature believes that the
 24 district courts of the state of Montana have the authority
 25 to award joint custody if ~~the court finds joint custody in~~

1 the best interests of the children in the case then before
 2 the court. The intent of 40-4-222 through 40-4-225 is to
 3 establish certain guidelines for resolution of custody
 4 disputes it is requested by both parents and is in the best
 5 interests of the child."

6 Section 3. Section 40-4-223, MCA, is amended to read:

7 "40-4-223. Award of joint or separate custody. (1) In
 8 custody disputes involving both parents of a minor child,
 9 ~~custody shall be awarded to the following~~ the court may
 10 award custody without order of preference according to the
 11 best interests of the child as set out in 40-4-212:

12 ~~(1)(a) to both parents jointly pursuant to 40-4-224;~~
 13 ~~the court, in its discretion, may require the submission to~~
 14 ~~the court of a plan for the implementation of the joint~~
 15 ~~custody order; or upon the application of both parents; the~~
 16 court, in its discretion, may award joint legal custody
 17 without joint physical custody and shall inquire whether the
 18 joint custody agreement was made knowingly and voluntarily;
 19 or

20 ~~(2)(b) to either parent. In making an award to either~~
 21 ~~parent, the court shall consider, along with the factors set~~
 22 ~~out in 40-4-212, which parent is more likely to allow the~~
 23 ~~child frequent and continuing contact with the noncustodial~~
 24 ~~parent and may not prefer a parent as custodian because of~~
 25 ~~the parent's sex. The court, in its discretion, may require~~

1 the submission to the court of a plan for the implementation
 2 of the custody order.

3 (2) In making an award, the court shall require the
 4 submission of a plan for the implementation of the custody
 5 order.

6 (3) In making an award, the court shall state in its
 7 decision the reasons and factors considered in making the
 8 award."

9 Section 4. Section 40-4-224, MCA, is amended to read:

10 "40-4-224. Joint custody -- modification --
 11 consultation with professionals. ~~(1) Upon application of~~
 12 ~~either parent or both parents for joint custody, the court~~
 13 ~~shall consider whether or not joint custody is in the best~~
 14 ~~interests of a minor child. If the court declines to enter~~
 15 ~~an order awarding joint custody, the court shall state in~~
 16 ~~its decision the reasons for denial of an award of joint~~
 17 ~~custody.~~

18 ~~(2) For the purposes of this section, "joint custody"~~
 19 ~~means an order awarding custody of the minor child to both~~
 20 ~~parents and providing that the residency of the child shall~~
 21 ~~be shared by the parents in such a way as to assure the~~
 22 ~~child frequent and continuing (but not necessarily equal)~~
 23 ~~contact with both parents.~~

24 ~~(3)(1) Any order for joint custody may be modified~~
 25 ~~pursuant to 40-4-219 to terminate the joint custody.~~

1 †4†(2) The court may with the consent of both parties,
2 at any time, direct the parties to consult with appropriate
3 professionals for the purpose of assisting the parties to
4 formulate a plan for implementation of the custody order or
5 to resolve any controversy that has arisen in the
6 implementation of a plan for custody."

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 717
INTRODUCED BY WALDRON

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE CHILD SUPPORT AND CUSTODY STATUTES TO PROVIDE THAT JOINT CUSTODY MAY BE AWARDED, WITHOUT ORDER OF PREFERENCE, ONLY WHEN BOTH PARENTS SEEK IT; TO REQUIRE THE SUBMISSION TO THE COURT OF A PLAN IMPLEMENTING ANY CUSTODY AWARD; TO REQUIRE THE COURT TO STATE THE FACTORS AND REASONS IT CONSIDERED IN MAKING A CUSTODY AWARD AND IN NOT ORDERING CHILD SUPPORT TO BE PAID; AMENDING SECTIONS 40-4-204 AND 40-4-222 THROUGH 40-4-224, MCA."

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

Section 1. Section 40-4-204, MCA, is amended to read:

"40-4-204. Child support. (1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court may order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for his support, without regard to marital misconduct, after considering all relevant factors including:

- (1)(a) the financial resources of the child;
- (2)(b) the financial resources of the custodial parent;

(3)(c) the standard of living the child would have enjoyed had the marriage not been dissolved;

(4)(d) the physical and emotional condition of the child and his educational needs;

(5)(e) the financial resources and needs of the noncustodial parent; and

(6)(f) for the purposes of determining a minimum amount for support, the amount received by children under the AFDC program, as defined in 53-2-702.

(2) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state the reasons for not ordering child support."

Section 2. Section 40-4-222, MCA, is amended to read:

"40-4-222. Declaration of legislative intent -- joint custody. The legislature of the state of Montana finds and declares that it is the public policy of this state to assure a minor children child 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 whenever this policy promotes the general welfare of the child. The legislature believes that the district courts of the state of Montana have the authority to award joint custody if the-court-finds-joint-custody-in

1 the best interests of the children in the case then before
 2 the court. The intent of 40-4-222 through 40-4-225 is to
 3 establish certain guidelines for resolution of custody
 4 disputes it is requested by both parents and is in the best
 5 interests of the child THE COURT FINDS JOINT CUSTODY IN THE
 6 BEST INTERESTS OF THE CHILDREN IN THE CASE THEN BEFORE THE
 7 COURT. THE INTENT OF 40-4-222 THROUGH 40-4-225 IS TO
 8 ESTABLISH CERTAIN GUIDELINES FOR RESOLUTION OF CUSTODY
 9 DISPUTES."

10 Section 3. Section 40-4-223, MCA, is amended to read:

11 "40-4-223. Award of joint or separate custody. (1) In
 12 custody disputes involving both parents of a minor child,
 13 custody shall be awarded to the following the court may
 14 award custody without order of preference according to the
 15 best interests of the child as set out in 40-4-212:

16 (1)(a) to both parents jointly pursuant to 40-4-224,
 17 the court, in its discretion, may require the submission to
 18 the court of a plan for the implementation of the joint
 19 custody order, or upon the application of both parents, the
 20 court, in its discretion, may award joint legal custody
 21 without joint physical custody and shall inquire whether the
 22 joint custody agreement was made knowingly and voluntarily;
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24 (2)(b) to either parent. In making an award to either
 25 parent, the court shall consider, along with the factors set

1 out in 40-4-212, which parent is more likely to allow the
 2 child frequent and continuing contact with the noncustodial
 3 parent and may not prefer a parent as custodian because of
 4 the parent's sex. The court, in its discretion, may require
 5 the submission to the court of a plan for the implementation
 6 of the custody order.

7 (2) In making an award, the court shall require the
 8 submission of a plan for the implementation of the custody
 9 order.

10 (3) In making an award, the court shall state in its
 11 decision the reasons and factors considered in making the
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13 Section 4. Section 40-4-224, MCA, is amended to read:

14 "40-4-224. Joint custody -- modification --
 15 consultation with professionals. (1) Upon application of
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 17 shall consider whether or not joint custody is in the best
 18 interests of a minor child. If the court declines to enter
 19 an order awarding joint custody, the court shall state in
 20 its decision the reasons for denial of an award of joint
 21 custody.

22 (2) For the purposes of this section, "joint custody"
 23 means an order awarding custody of the minor child to both
 24 parents and providing that the residency of the child shall
 25 be shared by the parents in such a way as to assure the

1 ~~child--frequent--and--continuing--(but--not--necessarily--equal)~~
2 ~~contact--with--both--parents.~~

3 †3†(1) Any order for joint custody may be modified
4 pursuant to 40-4-219 to terminate the joint custody.

5 †4†(2) The court may with the consent of both parties,
6 at any time, direct the parties to consult with appropriate
7 professionals for the purpose of assisting the parties to
8 formulate a plan for implementation of the custody order or
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-End-

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25 parent;1 (c) the standard of living the child would have
2 enjoyed had the marriage not been dissolved;3 (d) the physical and emotional condition of the
4 child and his educational needs;5 (e) the financial resources and needs of the
6 noncustodial parent; and7 (f) for the purposes of determining a minimum
8 amount for support, the amount received by children under
9 the AFDC program, as defined in 53-2-702.10 (2) If the court does not order a parent owing a duty
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7 (2) In making an award, the court shall require the
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4 pursuant to 40-4-219 to terminate the joint custody.

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10 implementation of a plan for custody."

-End-

SENATE

STANDING COMMITTEE REPORT

March 26 19 85

Page 1 of 2

March 26 19 85

MR. PRESIDENT

Page 2 of 2

HOUSE BILL NO. 717

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 717

third reading copy (blue color)

(Senator Brown)

5. Page 3, line 14.
Following: "custody"
Strike: "without order of preference"

6. Page 3, line 21.
Following: "whether"
Strike: "the"
Insert: "a"

AWARD JOINT CUSTODY, ONLY WHEN BOTH PARENTS REQUEST

7. Page 5, line 5.
Following: "may"
Strike: "with the consent of both parties"

Respectfully report as follows: That HOUSE BILL No. 717

be amended as follows:

1. Title, lines 5 and 6.
Following: "STATUTES" on line 5
Strike: remainder of line 5 through "PREFERENCE" on line 6

2. Title, line 11.
Following: line 10
Insert: "AUTHORIZING THE COURT TO REQUIRE CONSULTATION WITH PROFESSIONALS
IN FORMULATING OR IMPLEMENTING A CUSTODY PLAN OR ORDER;"
Following: "40-4-204"
Strike: "AND 40-4-222 THROUGH"
Insert: ", 40-4-223, AND"

3. Page 2, line 14 through line 9, page 3.
Strike: section 2 in its entirety
Re-number: subsequent sections

4. Page 3, line 13.
Following: "court"
Strike: "may"
Insert: "shall"

AND AS AMENDED

BE CONCURRED IN

FB

XXXXXX

XXXXXXXX

Senator Joe Mazurek Chairman

CONTINUED

Senator Joe Mazurek, Chairman

HOUSE BILL NO. 717

INTRODUCED BY WALDRON

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE CHILD SUPPORT AND CUSTODY STATUTES ~~TO PROVIDE THAT JOINT CUSTODY MAY BE AWARDED, WITHOUT ORDER OF PREFERENCE, ONLY WHEN BOTH PARENTS SEEK IT~~; TO REQUIRE THE SUBMISSION TO THE COURT OF A PLAN IMPLEMENTING ANY CUSTODY AWARD; TO REQUIRE THE COURT TO STATE THE FACTORS AND REASONS IT CONSIDERED IN MAKING A CUSTODY AWARD AND IN NOT ORDERING CHILD SUPPORT TO BE PAID; AUTHORIZING THE COURT TO REQUIRE CONSULTATION WITH PROFESSIONALS IN FORMULATING OR IMPLEMENTING A CUSTODY PLAN OR ORDER; AMENDING SECTIONS 40-4-204 AND ~~40-4-222 THROUGH,~~ 40-4-223, AND 40-4-224, MCA."

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(1)(a) the financial resources of the child;

(2)(b) the financial resources of the custodial parent;

(3)(c) the standard of living the child would have enjoyed had the marriage not been dissolved;

(4)(d) the physical and emotional condition of the child and his educational needs;

(5)(e) the financial resources and needs of the noncustodial parent; and

(6)(f) for the purposes of determining a minimum amount for support, the amount received by children under the AFDC program, as defined in 53-2-702.

(2) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state the reasons for not ordering child support."

~~Section 2. Section 40-4-222, MCA, is amended to read:~~

~~"40-4-222. Declaration of legislative intent. The legislature of the state of Montana finds and declares that it is the public policy of this state to assure a minor children child 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 whenever this policy promotes the general welfare of the child. The legislature believes that the~~

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 2 parent, the court shall consider, along with the factors set
 3 out in 40-4-212, which parent is more likely to allow the
 4 child frequent and continuing contact with the noncustodial
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15 Section 3. Section 40-4-224, MCA, is amended to read:
 16 "40-4-224. Joint custody -- modification --
 17 consultation with professionals. ~~{i}~~ Upon application of
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 20 interests of a minor child. If the court declines to enter
 21 an order awarding joint custody, the court shall state in
 22 its decision the reasons for denial of an award of joint
 23 custody.

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 25 means an order awarding custody of the minor child to both

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6 pursuant to 40-4-219 to terminate the joint custody.

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9 professionals for the purpose of assisting the parties to
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12 implementation of a plan for custody."

-End-

CONFERENCE COMMITTEE REPORT Report No. 1

April 19 1985

MR. SPEAKER

We, your FREE Conference Committee on

House Bill 717, reference copy (salmon)

met and considered House Bill 717 in its entirety.

We recommend as follows:

- 1. Page 3, lines 22 and 23. Following: "court" on line 22. Strike: remainder of line 22 through "and" on line 23.
2. Page 5, line 4. Following: "parents." Insert: "(1) Upon application of either parent or both parents for joint custody, 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. (2) For the purposes of this section, "joint custody" means an order awarding custody of the minor child to both parents and providing that the residency of the child shall be shared by the parents in such a way as to assure the child frequent and continuing (but not necessarily equal) contact with both parents." Renumber: subsequent subsections.

And that this Conference Committee report be adopted.

FOR THE SENATE

FOR THE HOUSE

Yellowtail
YELLOWTAIL, CHM.
PINSONEAULT
McCALLUM

Bradley
BRADLEY
IVERSON
JENKINS

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 11 the AFDC program, as defined in 53-2-702.

12 (2) If the court does not order a parent owing a duty
 13 of support to a child to pay any amount for the child's
 14 support, the court shall state the reasons for not ordering
 15 child support."

16 ~~Section 2. Section 40-4-222, MCA, is amended to read:~~
 17 ~~"40-4-222. Declaration of legislative intent. joint~~
 18 ~~custody. The legislature of the state of Montana finds and~~
 19 ~~declares that it is the public policy of this state to~~
 20 ~~assure a minor children child frequent and continuing~~
 21 ~~contact with both parents after the parents have separated~~
 22 ~~or dissolved their marriage and to encourage parents to~~
 23 ~~share the rights and responsibilities of child rearing in~~
 24 ~~order to effect whenever this policy promotes the general~~
 25 ~~welfare of the child. The legislature believes that the~~



1 district courts of the state of Montana have the authority
 2 to award joint custody if the court finds joint custody in
 3 the best interests of the children in the case then before
 4 the court. The intent of 40-4-222 through 40-4-225 is to
 5 establish certain guidelines for resolution of custody
 6 disputes it is requested by both parents and is in the best
 7 interests of the child THE COURT FINDS JOINT CUSTODY IN THE
 8 BEST INTERESTS OF THE CHILDREN IN THE CASE THEN BEFORE THE
 9 COURT. THE INTENT OF 40-4-222 THROUGH 40-4-225 IS TO
 10 ESTABLISH CERTAIN GUIDELINES FOR RESOLUTION OF CUSTODY
 11 DISPUTES."

12 Section 2. Section 40-4-223, MCA, is amended to read:

13 "40-4-223. Award of joint or separate custody. (1) In
 14 custody disputes involving both parents of a minor child,
 15 custody shall be awarded to the following the court may
 16 SHALL award custody without order of preference according to
 17 the best interests of the child as set out in 40-4-212:

18 (1)(a) to both parents jointly pursuant to 40-4-224,
 19 the court, in its discretion, may require the submission to
 20 the court of a plan for the implementation of the joint
 21 custody order; or upon the application of both parents; the
 22 court, in its discretion, may award joint legal custody
 23 without joint physical custody and shall inquire whether the
 24 A joint custody agreement was made knowingly and
 25 voluntarily; or

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

9 (2) In making an award, the court shall require the
 10 submission of a plan for the implementation of the custody
 11 order.

12 (3) In making an award, the court shall state in its
 13 decision the reasons and factors considered in making the
 14 award."

15 Section 3. Section 40-4-224, MCA, is amended to read:
 16 "40-4-224. Joint custody -- modification --
 17 consultation with professionals. (1) Upon application of
 18 either parent or both parents for joint custody, the court
 19 shall consider whether or not joint custody is in the best
 20 interests of a minor child. If the court declines to enter
 21 an order awarding joint custody, the court shall state in
 22 its decision the reasons for denial of an award of joint
 23 custody:

24 (2) For the purposes of this section, "joint custody"
 25 means an order awarding custody of the minor child to both

1 ~~parents-and-providing-that-the-residency-of-the-child--shall~~
2 ~~be--shared--by--the--parents--in-such-a-way-as-to-assure-the~~
3 ~~child-frequent-and-continuing-(but--not--necessarily--equal)~~
4 ~~contact-with-both-parents-~~

5 (1) UPON APPLICATION OF EITHER PARENT OR BOTH PARENTS
6 FOR JOINT CUSTODY, THE COURT SHALL CONSIDER WHETHER OR NOT
7 JOINT CUSTODY IS IN THE BEST INTERESTS OF A MINOR CHILD. IF
8 THE COURT DECLINES TO ENTER AN ORDER AWARDING JOINT CUSTODY,
9 THE COURT SHALL STATE IN ITS DECISION THE REASONS FOR DENIAL
10 OF AN AWARD OF JOINT CUSTODY.

11 (2) FOR THE PURPOSES OF THIS SECTION, "JOINT CUSTODY"
12 MEANS AN ORDER AWARDING CUSTODY OF THE MINOR CHILD TO BOTH
13 PARENTS AND PROVIDING THAT THE RESIDENCY OF THE CHILD SHALL
14 BE SHARED BY THE PARENTS IN SUCH A WAY AS TO ASSURE THE
15 CHILD FREQUENT AND CONTINUING (BUT NOT NECESSARILY EQUAL)
16 CONTACT WITH BOTH PARENTS.

17 ~~(3)~~(3) Any order for joint custody may be modified
18 pursuant to 40-4-219 to terminate the joint custody.

19 ~~(4)~~(4) The court may ~~with--the--consent--of--both~~
20 ~~parties,~~ at any time, direct the parties to consult with
21 appropriate professionals for the purpose of assisting the
22 parties to formulate a plan for implementation of the
23 custody order or to resolve any controversy that has arisen
24 in the implementation of a plan for custody."

-End-