

SENATE BILL NO. 152
INTRODUCED BY B. BROWN

IN THE SENATE

January 18, 1985	Introduced and referred to Committee on Judiciary.
February 11, 1985	Committee recommend bill do pass as amended. Report adopted.
February 12, 1985	Bill printed and placed on members' desks.
February 13, 1985	Second reading, do pass as amended.
February 14, 1985	Correctly engrossed.
February 15, 1985	Third reading, passed. Ayes, 37; Noes, 13.
	Transmitted to House.

IN THE HOUSE

February 27, 1985	Introduced and referred to Committee on Judiciary.
March 22, 1985	Committee recommend bill be concurrent in as amended. Report adopted.
March 23, 1985	Second reading, pass consideration.
March 25, 1985	Second reading, concurred in.
March 27, 1985	Third reading, concurred in.
	Returned to Senate with amendments.

IN THE SENATE

March 27, 1985

Received from House.

April 2, 1985

Second reading, amendments
concurrent in.

April 4, 1985

Third reading, amendments
concurrent in. Ayes, 48; Noes, 2.

Sent to enrolling.

Reported correctly enrolled.

1 Senate BILL NO. 152
 2 INTRODUCED BY Bob Brown

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE A
 5 PRESUMPTION IN FAVOR OF JOINT CUSTODY UNLESS IT IS SHOWN
 6 THAT THE CHILD'S WELFARE IS ENDANGERED; PROVIDING FOR EQUAL
 7 SHARING OF RESIDENCY TIME WHEN PRACTICAL; AMENDING SECTION
 8 40-4-224, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

11 Section 1. Section 40-4-224, MCA, is amended to read:

12 "40-4-224. Joint custody -- modification --
 13 consultation with professionals. (1) Upon application of
 14 either parent or both parents for joint custody, the court
 15 shall ~~consider--whether--or--not~~ presume joint custody is in
 16 the best interests of a minor child unless it is shown by
 17 clear and convincing evidence that the child is in danger of
 18 serious emotional or physical harm if left in the joint
 19 custody of both parents. If the court declines to enter an
 20 order awarding joint custody, the court shall state in its
 21 decision the reasons for denial of an award of joint
 22 custody.

23 (2) For the purposes of this section, "joint custody"
 24 means an order awarding custody of the minor child to both
 25 parents and providing that the residency of the child shall

1 be shared by the parents in such a way as to assure the
 2 child frequent and continuing ~~(but-not-necessarily-equal)~~
 3 contact with both parents. When practical, this time
 4 allotment must be equal.

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

7 (4) The court may with the consent of both parties, at
 8 any time, direct the parties to consult with appropriate
 9 professionals for the purpose of assisting the parties to
 10 formulate a plan for implementation of the custody order or
 11 to resolve any controversy that has arisen in the
 12 implementation of a plan for custody."

13 NEW SECTION. Section 2. Effective date. This act is
 14 effective on passage and approval.

-End-



APPROVED BY COMMITTEE
ON JUDICIARY

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 2 INTRODUCED BY B. BROWN
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 6 THAT--THE IF IN A CHILD'S WELFARE--IS--ENDANGERED BEST
 7 INTERESTS; PROVIDING STANDARDS FOR EQUAL--SHARING--OF
 8 ESTABLISHING RESIDENCY TIME-WHEN-PRACTICAL; AMENDING SECTION
 9 40-4-224, MCA;--AND PROVIDING AN IMMEDIATE--EFFECTIVE--DATE."
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 18 clear--and--convincing--evidence--that--the--child--is--in--danger--of
 19 serious--emotional--or--physical--harm--if--left--in--the--joint
 20 custody--of--both--parents THE COURT FINDS, UNDER THE FACTORS
 21 SET FORTH IN 40-4-212 BY CLEAR AND CONVINCING EVIDENCE, THAT
 22 JOINT CUSTODY IS NOT IN THE BEST INTERESTS OF THE MINOR
 23 CHILD. If the court declines to enter an order awarding
 24 joint custody, the court shall state in its decision the
 25 reasons for denial of an award of joint custody. OBJECTION

1 TO JOINT CUSTODY BY A PARENT SEEKING SOLE CUSTODY IS NOT A
 2 SUFFICIENT BASIS FOR A FINDING THAT JOINT CUSTODY IS NOT IN
 3 THE BEST INTERESTS OF A CHILD, NOR IS A FINDING THAT THE
 4 PARENTS ARE HOSTILE TO EACH OTHER.
 5 (2) For the purposes of this section, "joint custody"
 6 means an order awarding custody of the minor child to both
 7 parents and providing that the residency of the child shall
 8 be shared by the parents in such a way as to assure the
 9 child frequent and continuing (but--not--necessarilly--equally)
 10 contact with both parents. When--practically--this--time
 11 allotment--must--be--equal; THE ALLOTMENT OF TIME BETWEEN
 12 PARTIES SHALL BE AS EQUAL AS POSSIBLE; HOWEVER, EACH CASE
 13 SHALL BE DETERMINED ACCORDING TO ITS OWN PRACTICALITIES WITH
 14 THE BEST INTERESTS OF THE CHILD AS THE PRIMARY
 15 CONSIDERATION.
 16 (3) Any order for joint custody may be modified
 17 pursuant to 40-4-219 to terminate the joint custody.
 18 (4) The court may with the consent of both parties, at
 19 any time, direct the parties to consult with appropriate
 20 professionals for the purpose of assisting the parties to
 21 formulate a plan for implementation of the custody order or
 22 to resolve any controversy that has arisen in the
 23 implementation of a plan for custody."
 24 NEW-SECTION:--Section-2.--Effective-date:--This-act--is
 25 effective-on-passage-and-approval;

-End-

-2-



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21 formulate a plan for implementation of the custody order or
22 to resolve any controversy that has arisen in the
23 implementation of a plan for custody."

24 ~~NEW SECTION: Section 2. Effective date: This act is~~
25 ~~effective on passage and approval.~~

-End-

-2-

STANDING COMMITTEE REPORT

HOUSE

March 22 19 85

MR. Speaker

We, your committee on Judiciary

having had under consideration Senate Bill No. 152

Third reading copy (Blue color)

PRESUMPTION IN FAVOR OF JOINT CUSTODY EQUAL RESIDENCY TIME

Respectfully report as follows: That Senate Bill No. 152

be amended as follows:

- 1. Page 1, line 21.
Following: "40-4-212"
Strike: "BY" through "EVIDENCE" on line 22.
- 2. Page 2, line 7.
Following: "that the"
Insert: "physical custody and"
- 3. Page 2, line 8.
Following: "be"
Strike: "shared by"
Insert: "allotted between"
- 4. Page 2, line 18.
Following: "may"
Strike: "with" through "parties"

~~DO PASS~~
AND AS AMENDED,
BE CONCURRED IN

AMA 3-22-85

KMK

Tom Hannah
REP. TOM HANNAH, Chairman.

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(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 PHYSICAL CUSTODY AND residency of the child shall be shared by ALLOTTED BETWEEN the parents in such a way as to assure the child frequent and continuing (but not necessarily equal) contact with both parents. When practical, this time allotment must be equal. 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.

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NEW SECTION. Section 2. Effective date. This act is effective on passage and approval.

REFERENCE BILL

SB 152



SB 0152/04

-End-