

SENATE BILL NO. 153

1/18 Introduced
1/18 Referred to Judiciary
1/30 Hearing
2/11 Tabled in Committee

1 Senate BILL NO. 153
 2 INTRODUCED BY Bob Brown
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT IF A
 5 CUSTODY ORDER HAS NOT PREVIOUSLY BEEN MADE, A PARTY SEEKING
 6 TEMPORARY CUSTODY SHALL PROVIDE EVIDENCE THAT THE CHILD IS
 7 IN DANGER OF SERIOUS EMOTIONAL OR PHYSICAL HARM IF LEFT IN
 8 THE JOINT CUSTODY OF BOTH PARENTS BEFORE A TEMPORARY
 9 ASSIGNMENT OF SOLE CUSTODY MAY BE MADE; AMENDING SECTION
 10 40-4-220, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
 11

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

13 Section 1. Section 40-4-220, MCA, is amended to read:

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

25 (2) (a) A party seeking a temporary custody order may

1 ~~request that the court grant a~~ temporary assignment of sole
 2 ~~custody ex parte. He shall so request in his moving papers~~
 3 ~~and shall submit an affidavit showing that:~~

4 (i) if no previous determination of custody has been
 5 made by a court, ~~and it would be in the child's best~~
 6 ~~interest under the standards of 40-4-212 if temporary~~
 7 ~~custody were placed with the person designated by the moving~~
 8 ~~party shall show by clear and convincing evidence that the~~
 9 ~~child is in danger of serious emotional or physical harm if~~
 10 ~~left in the joint custody of both parents before a temporary~~
 11 ~~assignment of sole custody is made; or~~

12 (ii) ~~although if~~ a previous determination of custody
 13 has been made, shall show by clear and convincing evidence
 14 that the child's present environment seriously endangers his
 15 physical or emotional health and an immediate change of
 16 custody would serve to protect the child's physical or
 17 emotional health.

18 (b) If the court finds from the affidavits submitted
 19 ~~by the moving party that a temporary assignment of custody~~
 20 ~~would be in the child's best interest under the standards of~~
 21 ~~40-4-212 or that the child's physical or emotional health is~~
 22 seriously endangered and would be protected by a temporary
 23 assignment of sole custody, the court shall make an order
 24 placing temporary custody with the person designated by the
 25 moving party or with some other person designated by the

1 court and shall require all parties to appear and show cause
2 within 20 days from the execution of the order why, in the
3 case of a temporary order issued under this subsection
4 (2)(a)(i), the temporary order should not remain in effect
5 until further order of court ~~or, in the case of a temporary~~
6 ~~order issued under subsection (2)(a)(i), the court should~~
7 ~~not restore the child to the custodian from whom the child~~
8 ~~was removed by the temporary order."~~

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

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