

HOUSE BILL NO. 566

INTRODUCED BY KEENAN, MILES, MENAHAN, BULGER,
DARKO, RANEY, NISBET, CODY, SCHYE, LORY,
REGAN, ECK, JACOBSON, VAN VALKENBURG, B. BROWN

IN THE HOUSE

FEBRUARY 2, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FEBRUARY 21, 1987 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 23, 1987 PRINTING REPORT.

FEBRUARY 24, 1987 SECOND READING, DO PASS.

ON MOTION, RULES SUSPENDED AND BILL
PLACED ON THIRD READING THIS DAY.

THIRD READING, PASSED.
AYES, 99; NOES, 0.

TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 2, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

MARCH 18, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 21, 1987 SECOND READING, CONCURRED IN.

MARCH 24, 1987 THIRD READING, CONCURRED IN.
AYES, 49; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 26, 1987

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 27, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 House BILL NO. 566
 2 INTRODUCED BY Keenan Miles Morrison Julian
 3 Slarko Randy Nisbet Chris Lehy Logan Est.
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT AN
 5 AWARD OF JOINT CUSTODY IN A SEPARATION OR DISSOLUTION OF Jacobs
 6 MARRIAGE PROCEEDING IS NOT IN THE BEST INTEREST OF THE CHILD
 7 IF THERE IS A FINDING BY THE COURT OF SPOUSE ABUSE OR CHILD
 8 ABUSE BY ONE OF THE PARENTS; AND AMENDING SECTIONS 40-4-212
 9 AND 40-4-224, MCA."

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

12 Section 1. Section 40-4-212, MCA, is amended to read:

13 "40-4-212. Best interest of child. The court shall
14 determine custody in accordance with the best interest of
15 the child. The court shall consider all relevant factors
16 including:

- 17 (1) the wishes of the child's parent or parents as to
- 18 his custody;
- 19 (2) the wishes of the child as to his custodian;
- 20 (3) the interaction and interrelationship of the child
- 21 with his parent or parents, his siblings, and any other
- 22 person who may significantly affect the child's best
- 23 interest;
- 24 (4) the child's adjustment to his home, school, and
- 25 community; and

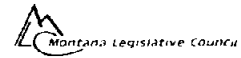
1 (5) the mental and physical health of all individuals
2 involved; and

3 (6) physical abuse or threat of physical abuse by one
4 parent against the other parent or the child."

5 Section 2. Section 40-4-224, MCA, is amended to read:

6 "40-4-224. Joint custody -- modification --
 7 consultation with professionals. (1) Upon application of
 8 either parent or both parents for joint custody, the court
 9 shall presume joint custody is in the best ~~interests~~
 10 interest of a minor child unless the court finds, under the
 11 factors set forth in 40-4-212, that joint custody is not in
 12 the best ~~interests~~ interest of the minor child. If the court
 13 declines to enter an order awarding joint custody, the court
 14 shall state in its decision the reasons for denial of an
 15 award of joint custody. Objection to joint custody by a
 16 parent seeking sole custody is not a sufficient basis for a
 17 finding that joint custody is not in the best ~~interests~~
 18 interest of a child, nor is a finding that the parents are
 19 hostile to each other. A finding that one parent physically
 20 abused or threatened to physically abuse the other parent or
 21 the child is a sufficient basis for finding that joint
 22 custody is not in the best interest of the child.

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 physical custody and



1 residency of the child shall be allotted between the parents
2 in such a way as to assure the child frequent and continuing
3 contact with both parents. The allotment of time between
4 parties shall be as equal as possible; however, each case
5 shall be determined according to its own practicalities with
6 the best ~~interests~~ interest of the child as the primary
7 consideration.

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

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

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 566

INTRODUCED BY KEENAN, MILES, MENAHAN, BULGER,
DARKO, RANEY, NISBET, CODY, SCHYE, LORY,
REGAN, ECK, JACOBSON, VAN VALKENBURG, B. BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT AN
AWARD OF JOINT CUSTODY IN A SEPARATION OR DISSOLUTION OF
MARRIAGE PROCEEDING IS NOT IN THE BEST INTEREST OF THE CHILD
IF THERE IS A FINDING BY THE COURT OF SPOUSE ABUSE OR CHILD
ABUSE BY ONE OF THE PARENTS; TO ADD CHEMICAL DEPENDENCY OR
ABUSE BY ONE OF THE PARENTS TO THE RELEVANT FACTORS THE
COURT MUST CONSIDER; AND AMENDING SECTIONS 40-4-212 AND
40-4-224, MCA."

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

Section 1. Section 40-4-212, MCA, is amended to read:

"40-4-212. Best interest of child. The court shall
determine custody in accordance with the best interest of
the child. The court shall consider all relevant factors
including:

- (1) the wishes of the child's parent or parents as to his custody;
- (2) the wishes of the child as to his custodian;
- (3) the interaction and interrelationship of the child with his parent or parents, his siblings, and any other

person who may significantly affect the child's best interest;

(4) the child's adjustment to his home, school, and community; and

(5) the mental and physical health of all individuals involved; and

(6) physical abuse or threat of physical abuse by one parent against the other parent or the child; AND

(7) CHEMICAL DEPENDENCY, AS DEFINED IN 53-24-103, OR CHEMICAL ABUSE ON THE PART OF EITHER PARENT."

Section 2. Section 40-4-224, MCA, is amended to read:

"40-4-224. Joint custody -- modification -- consultation with professionals. (1) Upon application of either parent or both parents for joint custody, the court shall presume joint custody is in the best interests interest of a minor child unless the court finds, under the factors set forth in 40-4-212, that joint custody is not in the best interests interest of the 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. Objection to joint custody by a parent seeking sole custody is not a sufficient basis for a finding that joint custody is not in the best interests interest of a child, nor is a finding that the parents are hostile to each other. A HOWEVER, A finding that one parent



1 physically abused or--threatened--to--physically--abuse the
2 other parent or the child is a sufficient basis for finding
3 that joint custody is not in the best interest of the child.

4 (2) For the purposes of this section, "joint custody"
5 means an order awarding custody of the minor child to both
6 parents and providing that the physical custody and
7 residency of the child shall be allotted between the parents
8 in such a way as to assure the child frequent and continuing
9 contact with both parents. The allotment of time between
10 parties shall be as equal as possible; however, each case
11 shall be determined according to its own practicalities with
12 the best interests interest of the child as the primary
13 consideration.

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

16 (4) 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."

-End-

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3 DARKO, RANEY, NISBET, CODY, SCHYE, LORY,
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9 IF THERE IS A FINDING BY THE COURT OF SPOUSE ABUSE OR CHILD
10 ABUSE BY ONE OF THE PARENTS; TO ADD CHEMICAL DEPENDENCY OR
11 ABUSE BY ONE OF THE PARENTS TO THE RELEVANT FACTORS THE
12 COURT MUST CONSIDER; AND AMENDING SECTIONS 40-4-212 AND
13 40-4-224, MCA."

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16 Section 1. Section 40-4-212, MCA, is amended to read:

17 "40-4-212. Best interest of child. The court shall
18 determine custody in accordance with the best interest of
19 the child. The court shall consider all relevant factors
20 including:

- 21 (1) the wishes of the child's parent or parents as to
22 his custody;
- 23 (2) the wishes of the child as to his custodian;
- 24 (3) the interaction and interrelationship of the child
25 with his parent or parents, his siblings, and any other

1 person who may significantly affect the child's best
2 interest;

3 (4) the child's adjustment to his home, school, and
4 community; and

5 (5) the mental and physical health of all individuals
6 involved; and

7 (6) physical abuse or threat of physical abuse by one
8 parent against the other parent or the child; AND

9 (7) CHEMICAL DEPENDENCY, AS DEFINED IN 53-24-103, OR
10 CHEMICAL ABUSE ON THE PART OF EITHER PARENT."

11 Section 2. 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 presume joint custody is in the best interests
16 interest of a minor child unless the court finds, under the
17 factors set forth in 40-4-212, that joint custody is not in
18 the best interests interest of the minor child. If the court
19 declines to enter an order awarding joint custody, the court
20 shall state in its decision the reasons for denial of an
21 award of joint custody. Objection to joint custody by a
22 parent seeking sole custody is not a sufficient basis for a
23 finding that joint custody is not in the best interests
24 interest of a child, nor is a finding that the parents are
25 hostile to each other. A HOWEVER, A finding that one parent

1 physically abused or--threatened--to--physically--abuse the
2 other parent or the child is a sufficient basis for finding
3 that joint custody is not in the best interest of the child.

4 (2) For the purposes of this section, "joint custody"
5 means an order awarding custody of the minor child to both
6 parents and providing that the physical custody and
7 residency of the child shall be allotted between the parents
8 in such a way as to assure the child frequent and continuing
9 contact with both parents. The allotment of time between
10 parties shall be as equal as possible; however, each case
11 shall be determined according to its own practicalities with
12 the best interests interest of the child as the primary
13 consideration.

14 (3) Any order for joint custody may be modified
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17 consult with appropriate professionals for the purpose of
18 assisting the parties to formulate a plan for implementation
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20 arisen in the implementation of a plan for custody."

-End-

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12 COURT MUST CONSIDER; AND AMENDING SECTIONS 40-4-212 AND
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16 Section 1. Section 40-4-212, MCA, is amended to read:

17 "40-4-212. Best interest of child. The court shall
18 determine custody in accordance with the best interest of
19 the child. The court shall consider all relevant factors
20 including, BUT NOT LIMITED TO:

21 (1) the wishes of the child's parent or parents as to
22 his custody;

23 (2) the wishes of the child as to his custodian;

24 (3) the interaction and interrelationship of the child
25 with his parent or parents, his siblings, and any other

1 person who may significantly affect the child's best
2 interest;

3 (4) the child's adjustment to his home, school, and
4 community; and

5 (5) the mental and physical health of all individuals
6 involved; and

7 (6) physical abuse or threat of physical abuse by one
8 parent against the other parent or the child; AND

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17 factors set forth in 40-4-212, that joint custody is not in
18 the best ~~interests~~ interest of the minor child. If the court
19 declines to enter an order awarding joint custody, the court
20 shall state in its decision the reasons for denial of an
21 award of joint custody. Objection to joint custody by a
22 parent seeking sole custody is not a sufficient basis for a
23 finding that joint custody is not in the best ~~interests~~
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25 hostile to each other. A HOWEVER, A finding that one parent

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2 other parent or the child is a sufficient basis for finding
3 that joint custody is not in the best interest of the child.

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5 means an order awarding custody of the minor child to both
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7 residency of the child shall be allotted between the parents
8 in such a way as to assure the child frequent and continuing
9 contact with both parents. The allotment of time between
10 parties shall be as equal as possible; however, each case
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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."

-End-

SENATE

March 17 19 87

MR. PRESIDENT

We, your committee on.....SENATE JUDICIARY.....

having had under consideration.....HOUSE BILL.....~~HR~~.....No. 566.....

.....Third reading copy (blue)
color

Child or spouse abuse to preclude joint custody.
Keenan (Brown)

Respectfully report as follows: That.....HOUSE BILL.....566.....No.....

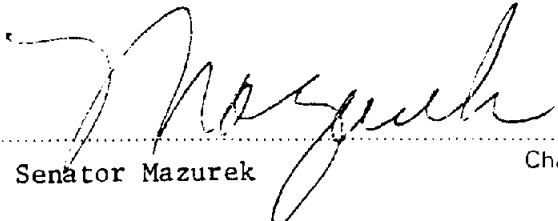
be amended as follows:

- 1. Page 1, line 20.
- Following: "including"
- Insert: ", but not limited to"

~~XXXXXX~~

~~XXXXXXXXXX~~

AND AS AMENDED
BE CONCURRED IN


.....
Senator Mazurek Chairman.

3-17
4
4:0