

HOUSE BILL 134

Introduced by Brown, J.

1/12	Introduced
1/13	Referred to Judiciary
1/25	Hearing
1/25	Tabled in Committee

1 HOUSE BILL NO. 134
2 INTRODUCED BY J. Brown
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT IN AN
5 AWARD OF JOINT CUSTODY, ONE PARENT MAY NOT TAKE A CHILD
6 UNDER 14 YEARS OF AGE TO A FOREIGN COUNTRY WITHOUT THE
7 PERMISSION OF THE OTHER PARENT; AND AMENDING SECTIONS
8 40-4-212, 40-4-219, AND 40-4-223, MCA."
9

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

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

12 "40-4-212. Best interest of child. The court shall
13 determine custody in accordance with the best interest of
14 the child. The court shall consider all relevant factors,
15 including but not limited to:

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

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

19 (3) the interaction and interrelationship of the child
20 with his parent or parents, his siblings, and any other
21 person who may significantly affect the child's best
22 interest;

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

25 (5) the mental and physical health of all individuals

1 involved;

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

4 (7) chemical dependency, as defined in 53-24-103, or
5 chemical abuse on the part of either parent; and

6 (8) the intention of either parent to travel to a
7 foreign country with a child who is under 14 years of age."

8 **Section 2.** Section 40-4-219, MCA, is amended to read:

9 "40-4-219. Modification. (1) The court may in its
10 discretion modify a prior custody decree if it finds, upon
11 the basis of facts that have arisen since the prior decree
12 or that were unknown to the court at the time of entry of
13 the prior decree, that a change has occurred in the
14 circumstances of the child or his custodian and that the
15 modification is necessary to serve the best interest of the
16 child and if it further finds that:

17 (a) the custodian agrees to the modification;

18 (b) the child has been integrated into the family of
19 the petitioner with consent of the custodian;

20 (c) the child's present environment endangers
21 seriously his physical, mental, moral, or emotional health
22 and the harm likely to be caused by a change of environment
23 is outweighed by its advantages to him;

24 (d) the child is 14 years of age or older and desires
25 the modification;

(e) the custodian willfully and consistently:

(i) refuses to allow the child to have any contact with the noncustodial parent; or

(ii) attempts to frustrate or deny the noncustodial parent's exercise of visitation rights; or

(f) the custodial parent has changed or intends to change the child's residence to another state; or

(g) in a joint custody decree, one parent takes a child under the age of 14 to a foreign country without the permission of the other parent.

(2) The court shall presume the custodian is not acting in the child's best interest if the custodian does any of the acts specified in subsection (1)(e).

(3) The court may modify the prior decree based on subsection (1)(f) to provide a new visitation schedule and to apportion transportation costs between the parents.

(4) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

(5) A custody decree may be modified upon the death of the custodial parent, pursuant to 40-4-221."

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

"40-4-223. Award of joint or separate custody. (1) In custody disputes involving both parents of a minor child, the court shall award custody according to the best

interests of the child as set out in 40-4-212:

(a) to both parents jointly; the court shall inquire whether a joint custody agreement was made knowingly and voluntarily; or

(b) 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.

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

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

(4) In making an award of joint custody, the court shall specify that one parent cannot take a child under 14 years of age to a foreign country without the permission of the other parent."

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