

HOUSE BILL NO. 312

INTRODUCED BY CONNELLY, LEE, B. BROWN, BROOKE, COHEN

IN THE HOUSE

JANUARY 19, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 20, 1989	FIRST READING.
JANUARY 31, 1989	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 1, 1989	PRINTING REPORT.
FEBRUARY 2, 1989	SECOND READING, DO PASS.
FEBRUARY 3, 1989	ENGROSSING REPORT.
FEBRUARY 4, 1989	THIRD READING, PASSED. AYES, 96; NOES, 0.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 6, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 9, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 10, 1989	SECOND READING, CONCURRED IN.
MARCH 13, 1989	THIRD READING, CONCURRED IN. AYES, 49; NOES, 0.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 14, 1989	RECEIVED FROM SENATE.
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SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 362  
 2 INTRODUCED BY Senately Lee Bob Brown  
 3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE LAW  
 5 RELATING TO MODIFICATION OF CHILD CUSTODY DECREES BY  
 6 DEFINING "PRIOR CUSTODY DECREE" TO MEAN A JUDICIAL  
 7 DETERMINATION OF CUSTODY; AND AMENDING SECTIONS 40-4-212 AND  
 8 40-4-219, 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.** (1) 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)(a) the wishes of the child's parent or parents as  
 17 to his custody;

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

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

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

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

1 individuals involved;

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

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

6 (2) A de facto custody arrangement, in the absence of  
 7 a prior custody decree, does not require the child's parent  
 8 or parents to prove the factors set forth in 40-4-219."

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

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

18 (a) the custodian agrees to the modification;

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

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

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

1 the modification;

2 (e) the custodian willfully and consistently:

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

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

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

9 (2) A court may modify a de facto custody arrangement  
10 in accordance with the factors set forth in 40-4-212.

11 ~~†2†~~(3) The court shall presume the custodian is not  
12 acting in the child's best interest if the custodian does  
13 any of the acts specified in subsection (1)(e).

14 ~~†3†~~(4) The court may modify the prior decree based on  
15 subsection (1)(f) to provide a new visitation schedule and  
16 to apportion transportation costs between the parents.

17 ~~†4†~~(5) Attorney fees and costs shall be assessed  
18 against a party seeking modification if the court finds that  
19 the modification action is vexatious and constitutes  
20 harassment.

21 ~~†5†~~(6) A custody decree may be modified upon the death  
22 of the custodial parent pursuant to 40-4-221.

23 (7) As used in this section, "prior custody decree"  
24 means a custody determination contained in a judicial decree  
25 or order made in a custody proceeding."

-End-

APPROVED BY COMMITTEE  
ON JUDICIARY

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