# HOUSE BILL NO. 491

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# INTRODUCED BY SPAETH, BRADLEY

# IN THE HOUSE

ON JUDICIARY. JANUARY 30, 1989 FIRST READING. FEBRUARY 11, 1989 COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED. FEBRUARY 13, 1989 PRINTING REPORT. FEBRUARY 14, 1989 SECOND READING, DO PASS. FEBRUARY 15, 1989 ENGROSSING REPORT. FEBRUARY 16, 1989 THIRD READING, PASSED. AYES, 92; NOES, 6. TRANSMITTED TO SENATE. IN THE SENATE FEBRUARY 17, 1989 INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY. FIRST READING. MARCH 14, 1989 COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED. MARCH 15, 1989 SECOND READING, CONCURRED IN.		•
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MARCH 17, 1989 THIRD READING, CONCURRED IN.	MARCH 14, 1989	
•	MARCH 15, 1989	SECOND READING, CONCURRED IN.
	MARCH 17, 1989	-

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 18, 1989

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RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

LC 1468/01

Hacesie BILL NO. 491 INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE THAT THE
COURT CONSIDER THE EFFECT ON THE STABILITY AND CONTINUITY OF
A CHILD'S EDUCATION IN ADDITION TO FACTORS RELEVANT TO THE
BEST INTEREST OF THE CHILD WHEN THE COURT ALLOTS TIME
BETWEEN PARENTS WITH JOINT CUSTODY; AND AMENDING SECTION
40-4-224, MCA."

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

Section 1. Section 40-4-224, MCA, is amended to read: 12 13 "40-4-224. Joint custody --modification -consultation with professionals. (1) Upon application of 14 either parent or both parents for joint custody, the court 15 16 shall presume joint custody is in the best interest of a minor child unless the court finds, under the factors set 17 18 forth in 40-4-212, that joint custody is not in the best 19 interest of the minor child. If the court declines to enter 20 an order awarding joint custody, the court shall state in 21 its decision the reasons for denial of an award of joint custody. Objection to joint custody by a parent seeking sole 22 custody is not a sufficient basis for a finding that joint 23 24 custody is not in the best interest of a child, nor is a 25 finding that the parents are hostile to each other. However,

tana Legislative Council

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

(2) For the purposes of this section, "joint custody" 4 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 q contact with both parents. The--allotment--of--time--between 1.0 parties--shall--be--as-equal-as-possible;-however;-each-case 11 shall-be-determined-according-to-its-own-practicalities-with 12 the-best-interest-of-the-child-as-the-primary-consideration-13 When allotting time between the parents, the court shall consider, in addition to the factors set forth in 40-4-212, 14 15 the effect of the time allotment on the stability and 16 continuity of the child's education.

17 (3) Any order for joint custody may be modified18 pursuant to 40-4-219 to terminate the joint custody.

19 (4) The court may, at any time, direct the parties to 20 consult with appropriate professionals for the purpose of 21 assisting the parties to formulate a plan for implementation 22 of the custody order or to resolve any controversy that has 23 arisen in the implementation of a plan for custody."

-End-

# -2- INTRODUCED BILL HB 49/

#### 51st Legislature

### HB 0491/02

#### APPROVED BY COMMITTEE ON JUDICIARY

HOUSE BILL NO. 491 1 INTRODUCED BY SPAETH, BRADLEY 2 3 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE THAT THE 4 COURT CONSIDER THE EFFECT ON THE STABILITY AND CONTINUITY OF 5 A CHILD'S EDUCATION IN ADDITION TO FACTORS RELEVANT TO THE 6 BEST INTEREST OF THE CHILD WHEN THE COURT ALLOTS TIME 7 BETWEEN PARENTS WITH JOINT CUSTODY: AND AMENDING SECTION 8 40-4-224, MCA." 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 modification --"40-4-224. Joint custody ----13 consultation with professionals. (1) Upon application of 14 15 either parent or both parents for joint custody, the court shall presume joint custody is in the best interest of a 16 minor child unless the court finds, under the factors set 17 forth in 40-4-212, that joint custody is not in the best 18 interest of the minor child. If the court declines to enter 19 an order awarding joint custody, the court shall state in 20 its decision the reasons for denial of an award of joint 21 custody. Objection to joint custody by a parent seeking sole 22 23 custody is not a sufficient basis for a finding that joint custody is not in the best interest of a child, nor is a 24 finding that the parents are hostile to each other. However, 25

a finding that one parent physically abused the other parent
 or the child is a sufficient basis for finding that joint
 custody is not in the best interest of the child.
 4 (2) For the purposes of this section, "joint custody"

means an order awarding custody of the minor child to both 5 6 parents and providing that the physical custody and 7 residency of the child shall be allotted between the parents in such a way as to assure the child frequent and continuing 8 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-interest-of-the-child-as-the-primary-consideration-13 When THE ALLOTMENT OF TIME BETWEEN THE PARENTS MUST BE AS 14 EQUAL AS POSSIBLE; HOWEVER: 15 (A) EACH CASE SHALL BE DETERMINED ACCORDING TO ITS OWN 16 PRACTICALITIES, WITH THE BEST INTEREST OF THE CHILD AS THE PRIMARY CONSIDERATION; AND 17 18 (B) WHEN allotting time between the parents, the court 19 shall consider--in-addition-to--the--factors--set--forth--in 40-4-2127 the effect of the time allotment on the stability 20 21 and continuity of the child's education. 22 (3) Any order for joint custody may be modified 23 pursuant to 40-4-219 to terminate the joint custody. 24 (4) The court may, at any time, direct the parties to 25 consult with appropriate professionals for the purpose of

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SECOND READING

HB 491

Montana Legislative Council

HB 0491/02

### HB 0491/02

- assisting the parties to formulate a plan for implementation
- 2 of the custody order or to resolve any controversy that has
- 3 arisen in the implementation of a plan for custody."

-End-

1 INTRODUCED BY SPAETH, BRADLEY 2 3 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE THAT THE 4 COURT CONSIDER THE EFFECT ON THE STABILITY AND CONTINUITY OF 5 A CHILD'S EDUCATION IN ADDITION TO FACTORS RELEVANT TO THE б BEST INTEREST OF THE CHILD WHEN THE COURT ALLOTS TIME 7

HOUSE BILL NO. 491

BETWEEN PARENTS WITH JOINT CUSTODY; AND AMENDING SECTION 8 ģ 40-4-224, MCA."

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



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

(2) For the purposes of this section, "joint custody" 4 means an order awarding custody of the minor child to both 5 б 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;-howevery-each-case 11 shall-be-determined-according-to-its-own-practicalities-with 12 the-best-interest-of-the-child-as-the-primary-consideration-13 When THE ALLOTMENT OF TIME BETWEEN THE PARENTS MUST BE AS EQUAL AS POSSIBLE; HOWEVER: 14 15 (A) EACH CASE SHALL BE DETERMINED ACCORDING TO ITS OWN PRACTICALITIES, WITH THE BEST INTEREST OF THE CHILD AS THE 16 17 PRIMARY CONSIDERATION; AND 18 (B) WHEN allotting time between the parents, the court 19 shall consider, -in-addition-to--the--factors--set--forth--in 20 40-4-2127 the effect of the time allotment on the stability 21 and continuity of the child's education. 22 (3) Any order for joint custody may be modified 23 pursuant to 40-4-219 to terminate the joint custody. 24 (4) The court may, at any time, direct the parties to 25 consult with appropriate professionals for the purpose of

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HB 491

THIRD READING

## HB 0491/02

- assisting the parties to formulate a plan for implementation 1
- 2 of the custody order or to resolve any controversy that has
- arisen in the implementation of a plan for custody." 3

-End-

## HB 491

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#### 51st Legislature

HB 0491/02

HOUSE BILL NO. 491 1 INTRODUCED BY SPAETH, BRADLEY 2 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE THAT THE COURT CONSIDER THE EFFECT ON THE STABILITY AND CONTINUITY OF 5 A CHILD'S EDUCATION IN ADDITION TO FACTORS RELEVANT TO THE 6 BEST INTEREST OF THE CHILD WHEN THE COURT ALLOTS TIME 7 BETWEEN PARENTS WITH JOINT CUSTODY; AND AMENDING SECTION 8 9 40-4-224, MCA." 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 modification --"40-4-224. Joint custody 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 interest of a 16 minor child unless the court finds, under the factors set 17 forth in 40-4-212, that joint custody is not in the best 18 19 interest of the minor child. If the court declines to enter an order awarding joint custody, the court shall state in 20 21 its decision the reasons for denial of an award of joint 22 custody. Objection to joint custody by a parent seeking sole 23 custody is not a sufficient basis for a finding that joint 24 custody is not in the best interest of a child, nor is a 25 finding that the parents are hostile to each other. However,



HB 0491/02

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

4 (2) For the purposes of this section, "joint custody" means an order awarding custody of the minor child to both 5 parents and providing that the physical custody and 6 residency of the child shall be allotted between the parents 7 8 in such a way as to assure the child frequent and continuing contact with both parents. The--allotment--of--time--between 9 10 parties--shall--be--as-equal-as-possible;-however;-each-case 11 shall-be-determined-according-to-its-own-practicalities-with 12 the-best-interest-of-the-child-as-the-primary-consideration-When THE ALLOTMENT OF TIME BETWEEN THE PARENTS MUST BE AS 13 14 EQUAL AS POSSIBLE; HOWEVER: 15 (A) EACH CASE SHALL BE DETERMINED ACCORDING TO ITS OWN PRACTICALITIES, WITH THE BEST INTEREST OF THE CHILD AS THE 16 PRIMARY CONSIDERATION; AND 17 18 (B) WHEN allotting time between the parents, the court 19 shall consider,-in-addition-to--the--factors--set--forth--in 20 40-4-2127 the effect of the time allotment on the stability and continuity of the child's education. 21 22 (3) Any order for joint custody may be modified 23 pursuant to 40-4-219 to terminate the joint custody. 24 (4) The court may, at any time, direct the parties to 25 consult with appropriate professionals for the purpose of

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HB 491

REFERENCE BILL

## HB 0491/02

- 1 assisting the parties to formulate a plan for implementation
- 2 of the custody order or to resolve any controversy that has
- 3 arisen in the implementation of a plan for custody."

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-End-

#### -3-HB 491

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