

HOUSE BILL NO. 491

INTRODUCED BY SPAETH, BRADLEY

IN THE HOUSE

JANUARY 28, 1989	INTRODUCED AND REFERRED TO COMMITTEE 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.
MARCH 17, 1989	THIRD READING, CONCURRED IN. AYES, 46; NOES, 1.
	RETURNED TO HOUSE.

MARCH 18, 1989

IN THE HOUSE

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 491
 2 INTRODUCED BY [Signature]
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE THAT THE
 5 COURT CONSIDER THE EFFECT ON THE STABILITY AND CONTINUITY OF
 6 A CHILD'S EDUCATION IN ADDITION TO FACTORS RELEVANT TO THE
 7 BEST INTEREST OF THE CHILD WHEN THE COURT ALLOTS TIME
 8 BETWEEN PARENTS WITH JOINT CUSTODY; AND AMENDING SECTION
 9 40-4-224, MCA."

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

12 **Section 1.** Section 40-4-224, MCA, is amended to read:

13 "40-4-224. Joint custody -- modification --
 14 consultation with professionals. (1) Upon application of
 15 either parent or both parents for joint custody, the court
 16 shall presume joint custody is in the best interest of a
 17 minor child unless the court finds, under the factors set
 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
 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,

1 a finding that one parent physically abused the other parent
 2 or the child is a sufficient basis for finding that joint
 3 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--interest--of--the--child--as--the--primary--consideration--~~
 13 When allotting time between the parents, the court shall
 14 consider, in addition to the factors set forth in 40-4-212,
 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 modified
 18 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-

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 491

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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."

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

Section 1. 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 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 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 interest of a child, nor is a finding that the parents are hostile to each other. However,

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" means an order awarding custody of the minor child to both parents and providing that the physical custody and residency of the child shall be allotted between the parents in such a way as to assure the child frequent and continuing contact with both parents. ~~The allotment of time between parties shall be as equal as possible; however, each case shall be determined according to its own practicalities with the best interest of the child as the primary consideration.~~ When THE ALLOTMENT OF TIME BETWEEN THE PARENTS MUST BE AS EQUAL AS POSSIBLE; HOWEVER:

(A) EACH CASE SHALL BE DETERMINED ACCORDING TO ITS OWN PRACTICALITIES, WITH THE BEST INTEREST OF THE CHILD AS THE PRIMARY CONSIDERATION; AND

(B) WHEN allotting time between the parents, the court shall consider, in addition to the factors set forth in 40-4-212, the effect of the time allotment on the stability and continuity of the child's education.

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

(4) The court may, at any time, direct the parties to consult with appropriate professionals for the purpose of

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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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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" means an order awarding custody of the minor child to both parents and providing that the physical custody and residency of the child shall be allotted between the parents in such a way as to assure the child frequent and continuing contact with both parents. ~~The allotment of time between parties shall be as equal as possible; however, each case shall be determined according to its own practicalities with the best interest of the child as the primary consideration.~~ When THE ALLOTMENT OF TIME BETWEEN THE PARENTS MUST BE AS EQUAL AS POSSIBLE; HOWEVER:

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