

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 197

BY WAYS AND MEANS COMMITTEE

AN ACT

RELATING TO DIVORCE ACTIONS; PROVIDING LEGISLATIVE INTENT; AMENDING SECTION 32-717, IDAHO CODE, TO PROVIDE FOR A CERTAIN REBUTTABLE PRESUMPTION, TO PROVIDE THAT A COURT SHALL ENTER CERTAIN WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW, TO PROVIDE FOR A CERTAIN FACTOR IN AN ACTION FOR DIVORCE, AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 32-717B, IDAHO CODE, TO REVISE A DEFINITION, TO REVISE A PROVISION REGARDING JOINT PHYSICAL CUSTODY, TO REVISE A PROVISION REGARDING A CERTAIN PRESUMPTION, TO PROVIDE FOR CERTAIN ISSUES RELEVANT TO THE SAFETY AND BEST INTERESTS OF A CHILD, AND TO MAKE A TECHNICAL CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. LEGISLATIVE INTENT. It is the intent of the Legislature to put children's need for equal time with both parents first when adjudicating divorce or custody modification; to presume parents are fit unless a preponderance of evidence demonstrates otherwise; to presume that fit parents do not need to prove worthiness to parent during a divorce or when modifying custody; to adopt the equal, shared parenting mind-set to improve stability and relationships between children and both their parents; to remove any actual or perceived gender discrimination or bias regarding parents; and to provide an emphasis in the court's decision-making to be placed upon a presumption that a determination of custody and support should emphasize equally shared responsibilities and rights.

SECTION 2. That Section 32-717, Idaho Code, be, and the same is hereby amended to read as follows:

32-717. CUSTODY OF CHILDREN -- BEST INTERESTS. (1) In an action for divorce, the court may, before and after judgment, give such direction for the custody, care and education of the children of the marriage as may seem necessary or proper in the best interests of the children. There shall be a rebuttable presumption that an award of equal, shared parenting time to each parent is in the best interests of the child. Such presumption is rebuttable only by a preponderance of the evidence in accordance with all relevant factors that the court shall consider. The court shall consider all relevant factors which may include enter written findings of fact and conclusions of law including, but not limited to, the following:

- (a) The wishes of the child's parent or parents as to his or her custody;
- (b) The wishes of the child as to his or her custodian;
- (c) The interaction and interrelationship of the child with his or her parent or parents, and his or her siblings;
- (d) The child's adjustment to his or her home, school, and community;
- (e) The character and circumstances of all individuals involved;

1 (f) The need to promote continuity and stability in the life of the
2 child; ~~and~~

3 (g) Domestic violence as defined in section 39-6303, Idaho Code,
4 whether or not in the presence of the child; and

5 (h) The need of the child for a frequent, regular, continuing, stable,
6 and meaningful relationship with each parent and the ability and will-
7 ingness of the parents to actively perform their functions for the needs
8 of the child.

9 (2) If the parent has a disability as defined in this section, the par-
10 ent shall have the right to provide evidence and information regarding the
11 manner in which the use of adaptive equipment or supportive services will en-
12 able the parent to carry out the responsibilities of parenting the child.
13 The court shall advise the parent of such right. Evaluations of parental
14 fitness shall take into account the use of adaptive equipment and support-
15 ive services for parents with disabilities and shall be conducted by, or with
16 the assistance of, a person who has expertise concerning such equipment and
17 services. Nothing in this section shall be construed to create any new or
18 additional obligations on state or local governments to purchase or provide
19 adaptive equipment or supportive services for parents with disabilities.

20 (3) In any case where the child is actually residing with a grandparent
21 in a stable relationship, the court may recognize the grandparent as having
22 the same standing as a parent for evaluating what custody arrangements are in
23 the best interests of the child.

24 (4) As used in this chapter:

25 (a) "Adaptive equipment" means any piece of equipment or any item that
26 is used to increase, maintain or improve the parenting capabilities of a
27 parent with a disability.

28 (b) "Disability" means, with respect to an individual, any mental or
29 physical impairment ~~which~~ that substantially limits one (1) or more
30 major life activities of the individual including, but not limited to,
31 self-care, manual tasks, walking, seeing, hearing, speaking, learn-
32 ing, or working, or a record of such an impairment, or being regarded as
33 having such an impairment. Disability shall not include transvestism,
34 transsexualism, pedophilia, exhibitionism, voyeurism, other sexual
35 behavior disorders, substance use disorders, compulsive gambling,
36 kleptomania or pyromania. Sexual preference or orientation is not
37 considered an impairment or disability. Whether an impairment sub-
38 stantially limits a major life activity shall be determined without
39 consideration of the effect of corrective or mitigating measures used
40 to reduce the effects of the impairment.

41 (c) "Supportive services" means services ~~which~~ that assist a parent
42 with a disability to compensate for those aspects of their disabili-
43 ty which affect their ability to care for their child and which will
44 enable them to discharge their parental responsibilities. The term
45 includes specialized or adapted training, evaluations, or assistance
46 with effective use of adaptive equipment, and accommodations ~~which~~ that
47 allow a parent with a disability to benefit from other services, such as
48 ~~b~~Braille texts or sign language interpreters.

49 (5) Nothing in this chapter shall be construed to allow discrimination
50 on the basis of disability. In any case where the disability of a parent is

found by the court to be relevant to an award of custody of a child, the court shall make specific findings concerning the disability and what effect, if any, the court finds the disability has on the best interests of the child.

(6) With reference to this section, when an active member of the Idaho national guard has been ordered or called to duty as defined in section 46-409, Idaho Code, or when a member of the military reserve is ordered to active federal service under ~~title 10, United States Code~~ 10 U.S.C., such military service thereunder shall not be a substantial or material and permanent change in circumstance to modify by reducing the member's previously decreed child custody and visitation privileges.

SECTION 3. That Section 32-717B, Idaho Code, be, and the same is hereby amended to read as follows:

32-717B. JOINT CUSTODY. (1) "Joint custody" means an order awarding custody of the minor child or children to both parents and providing that ~~physical~~ custody shall be equally shared by the parents in such a way as to assure the child or children of frequent, regular, and continuing contact with both parents with consideration given to the factors listed in section 32-717(1), Idaho Code. The court may award either joint physical custody or joint legal custody or both as between the parents or parties as the court determines is for the best interests of the minor child or children. 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 and shall include findings of fact and conclusions of law.

(2) "Joint physical custody" means an order awarding each of the parents significant periods of time in which a child resides with or is under the care and supervision of each of the parents or parties.

Joint physical custody shall be shared by the parents in such a way to assure the child a frequent, regular, and continuing contact with both parents ~~but does not necessarily mean the child's time with each parent should be exactly the same in length nor does it necessarily mean the child should be alternating back and forth over certain periods of time between each parent consisting of equal parenting time~~.

The actual amount of time with each parent shall be determined by the court and shall be explained in the order that includes findings of fact and conclusions of law.

(3) "Joint legal custody" means a judicial determination that the parents or parties are required to share the decision-making rights, responsibilities and authority relating to the health, education and general welfare of a child or children.

(4) Except as provided in subsection (5), of this section, absent a preponderance of the evidence to the contrary, there shall be a presumption that joint custody based on equal, shared parenting is in the best interests of a minor child or children.

(5) There shall be a presumption that joint custody is not in the best interests of a minor child if the court finds that any of the following special issues are relevant to the safety and best interests of the child:

(a) One (1) of the parents is found by the court to be a habitual perpetrator of domestic violence as defined in section 39-6303, Idaho Code;

1 (b) One of the parents is found by the court to have habitually abused,
2 abandoned, or neglected a child or there are aggravated circumstances
3 as defined in section 16-1602, Idaho Code; or

4 (c) One of the parents is found by the court to have committed child cus-
5 tody interference as defined in section 18-4506, Idaho Code.