

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 197

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO DIVORCE ACTIONS; PROVIDING LEGISLATIVE INTENT; AMENDING SECTION  
2 32-717, IDAHO CODE, TO PROVIDE FOR A CERTAIN REBUTTABLE PRESUMPTION, TO  
3 PROVIDE THAT A COURT SHALL ENTER CERTAIN WRITTEN FINDINGS OF FACT AND  
4 CONCLUSIONS OF LAW, TO PROVIDE FOR A CERTAIN FACTOR IN AN ACTION FOR DI-  
5 VORCE, AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 32-717B,  
6 IDAHO CODE, TO REVISE A DEFINITION, TO REVISE A PROVISION REGARDING  
7 JOINT PHYSICAL CUSTODY, TO REVISE A PROVISION REGARDING A CERTAIN PRE-  
8 SUMPTION, TO PROVIDE FOR CERTAIN ISSUES RELEVANT TO THE SAFETY AND BEST  
9 INTERESTS OF A CHILD, AND TO MAKE A TECHNICAL CORRECTION.  
10

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

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

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

25 32-717. CUSTODY OF CHILDREN -- BEST INTERESTS. (1) In an action for di-  
26 vorce, the court may, before and after judgment, give such direction for the  
27 custody, care and education of the children of the marriage as may seem nec-  
28 essary or proper in the best interests of the children. There shall be a re-  
29 buttable presumption that an award of equal, shared parenting time to each  
30 parent is in the best interests of the child. Such presumption is rebuttable  
31 only by a preponderance of the evidence in accordance with all relevant fac-  
32 tors that the court shall consider. The court shall consider all relevant  
33 factors which may include enter written findings of fact and conclusions of  
34 law including, but not limited to, the following:

- 35 (a) The wishes of the child's parent or parents as to his or her custody;  
36 (b) The wishes of the child as to his or her custodian;  
37 (c) The interaction and interrelationship of the child with his or her  
38 parent or parents, and his or her siblings;  
39 (d) The child's adjustment to his or her home, school, and community;  
40 (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 ~~Braille~~ 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

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

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

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

13 32-717B. JOINT CUSTODY. (1) "Joint custody" means an order awarding  
14 custody of the minor child or children to both parents and providing that  
15 ~~physical~~ custody shall be equally shared by the parents in such a way as to  
16 assure the child or children of frequent, regular, and continuing contact  
17 with both parents with consideration given to the factors listed in section  
18 32-717(1), Idaho Code. The court may award either joint physical custody or  
19 joint legal custody or both as between the parents or parties as the court  
20 determines is for the best interests of the minor child or children. If the  
21 court declines to enter an order awarding joint custody, the court shall  
22 state in its decision the reasons for denial of an award of joint custody and  
23 shall include findings of fact and conclusions of law.

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

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

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

36 (3) "Joint legal custody" means a judicial determination that the par-  
37 ents or parties are required to share the decision-making rights, responsi-  
38 bilities and authority relating to the health, education and general welfare  
39 of a child or children.

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

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

47 (a) ~~One~~ (1) of the parents is found by the court to be a habitual peper-  
48 trator 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.