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Legislature:

Madam Chairman, Members of the Committee. I'm Mars Scott. I've been practicing family law in Missoula for over 33 years. Thank you so much for the opportunity to be part of this process. Time is short so I will get my points.

In 1995, a group of Montana family law practitioners recognized that there were problems with how family law was practiced in the State of Montana when it came to court ordered custody awards, the tremendous expense involved in discovery and finding out information about assets and liabilities in a marital estate, and in general, just basic guiding principles on how issues should be resolved in a divorce; so they got together and reviewed Montana's dissolution laws to see if it were possible to make the divorce process more

efficient, understandable and cost effective. The group was sanctioned by the Montana State Bar Association and was known as the Montana Domestic Relations Study Commission. I was the Co-Chairperson of this group along with Corbin Howard from Billings. The group reviewed the laws in the other 49 states to see what ideas and processes they might have to help us achieve our goals. After much study and deliberation, we narrowed the issues and presented four bills to the legislature and all four passed and became law in 1997. Those bills included:

1) the automatic property and economic restraining order that is automatically included in the subpoena issued with the petition for dissolution which now gives the court control over all of the assets and expenditures in marital estate thus reducing the necessity of parties to file temporary motions with the court;

2) Provided for advances for professional fees from the marital estate while the case is pending to give both parties access to marital funds to pay for experts and court costs.

3) Imposed an affirmative duty for the parties to fully disclose all assets and liabilities thus reducing the cost of discovery and finding out the value of the marital estate,

and most importantly,

4) a bill that eliminated the term custody from our divorce statutes and replaced that term with parenting. This one simple act reduced appeals on parenting/custody cases to the Montana Supreme Court by 93% over the next 5 years and reduced the so called custody battles in district courts to relatively benign arguments over scheduling time with children.

I want to specifically address one of the “Whereas” clauses in the enabling resolution where it states that contested parenting cases are based on a win loss adversarial court system. This statement should not be a truism in Montana at this time. This is exactly the concept that we were trying to extinguish in passing the parenting legislation in 1996. I do think for the most part in Montana that we are not involving children in a win/lose proposition, but to the extent we are, then I would submit that there are at least three problems.

One would be a lack of understanding and education about how the Montana parenting statutes are supposed to actually work, and second would be a lack of information about the developmental needs of children in general, and specifically the developmental needs of children going through divorce. The concepts and principles about child development were fairly well known at the time we passed the parenting bill in 1996, but they are even more developed and refined now. It may seem like a trite statement to say that a child's needs at age 2 are different than child's needs at age 8 or 14, but actually it is a very powerful statement because it sets up the real issues to be addressed in a parenting plan and it causes the

decision maker to focus on the best interests of the child, not the best interests of the parents. It's like ones and zeros in computer language. To have a custody fight over a one year old is simply unwarranted if the child has a primary attachment figure who should be involved in the child's life to ensure the child's continuity and stability of care which has been proven to be an essential developmental need for healthy people. Ensuring that a one year old is never away from their primary attachment figure for too long of period time until they are older has nothing to do with "good parenting" or "bad parenting." It has to do with the best interests of the child and what is important to that child at a specific moment in time. In my opinion, maybe some judges allow parties to assert their rights more than they require the parties to focus on their child's best interests. How many times have you heard a parent say I want 50/50 time? When those statements are made, it is clear to me that the person is not thinking about their child, but is thinking about themselves and that their only concern is exercising their "parental rights" against their soon to be ex-spouse. Proper and responsible parenting is not summed up by a mathematical equations and calculations. Or how about the contrary statement that they think time with the child's mother or father should be restricted and they come up with vague reasons that have more to do with why the marriage is breaking up than about what's in the child's best interests. Generally those statements indicate a spouse who doesn't like their soon to be ex-spouse and they are only mouthing their displeasure with the soon to be ex-spouse's personal traits.

They want nothing less than to punish the other spouse through the children.

The third possible problem is self-represented litigants do not have an understanding or appreciation of what their rights are in the legal system, or what the parameters may be on any particular issue, especially parenting plans. In other words, they don't even know what to ask for. They are waiting for someone to tell them what to do, and that's not the way our legal system is designed. Our legal system is based on an adversarial approach to problem solving, not an evaluative approach based on informal discussions with the decision maker. The legal systems' rules need to be followed for it to work properly.

Solutions: More education is one. It's hard to argue with the psychological studies and determinations about what children need at certain ages in their development. I don't know how you might get a judge to become more generally knowledgeable about child development, but one way would be to get attorneys to better understand these concepts so they could present proper evidence to the court so that a better, informed decision could be made by judges about parenting issues.

Again, I see many judges who "get it" but obviously there are judges still caught in the win/loss mentality over children.

However, the best solution I think is to see if we could somehow implement standardized state wide parenting

guidelines that would provide the base lines for Courts to follow in deliberating about parenting issues because the same principles regarding child development are at play whether the child lives in Missoula County, Yellowstone County, Garfield County or any other county in Montana. In general, the concepts are the same for all children at certain ages no matter where they live and those concepts should be applied uniformly unless there is a good reason not to in a particular case.

In Missoula County, we have actually some pretty good parenting guidelines that we use in parenting cases. The Missoula County parenting guidelines discuss child developmental needs at different ages of a child's life and discuss issues such as sharing clothing and toys and respecting privacy. I brought copies of our guidelines for anyone who would like to look at them.

I used the term "pretty good" intentionally. The Missoula County guidelines are good, but like anything, they could be better. I also brought with me the Spokane County parenting guidelines which are 41 pages long. These guidelines discuss in very clear language concepts like primary attachment, parent alienation, the trauma of divorce, and how to create a child centered parenting plan. It's obvious that these people in Spokane spent a lot of time thinking about the various parenting issues that come into play when parents' divorce.

For example, in my opinion, one of the biggest voids we have in Montana law is any concept on how we deal with teenagers

when their parents are divorcing. Montana law states that the courts must take into consideration what a child at 14 or older wants for a parenting arrangement, and I must say, without too many exceptions, the courts simply follow what the teenager wants. I think this may be a mistake in some cases. There are studies drawing a correlation between teenagers of divorce and criminal behavior, or maybe between divorce and just utterly irresponsible behavior, but it seems to me we are neglecting an important segment of our community when we choose not to deal with teenage issues in parenting plans. If a teenager starts down a wrong path of addicting drugs or pregnancy or criminal behavior, some of this behavior is irreversible, or at least two steps backwards thus putting the child at risk and at a disadvantage with their peers due to no other fact than they were a child a divorce and subjected to parental conflict that they had no control over. I think we need to develop a better understanding in this state about what teenagers are experiencing when their parents' divorce. As an example, the Spokane county parenting guidelines address teenage issues.

Again, I would recommend that the Committee look at somehow implementing statewide parenting guidelines. I don't know any other state that has done that. By having guidelines that are applicable in all jurisdictions, we would start having uniformity in how we deal with parenting issues across the state thus reducing the amount of time people need to litigate these cases and thereby reducing the stress on the judges to have to make decisions on how to raise somebody else's children.

The guidelines would be presumptions that could be overcome by real evidence. They would help self-represented litigants know the rules about their kids and therefore maybe cut down on the number of unnecessary issues that they bring before the court.

In closing, I think there is merit in having statewide parenting guidelines not only to appropriately and professionally deal with children of divorce, but also to set forth the parameters for developing appropriate parenting plans so everyone knows the base lines pertaining to child development, and parents have a better understanding of what their divorce is doing to their children. Standardized parenting guidelines could give everyone a road map on how to best deal with parenting their children in the context of the divorce.