

## 1 HOUSE BILL NO. 316

2 INTRODUCED BY D. GALLIK

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE CHANGE FOUND BY THE COURT MUST  
5 BE A SUBSTANTIAL CHANGE WHEN A COURT FINDS THAT A PARENTING PLAN SHOULD BE AMENDED  
6 BECAUSE A CHANGE HAS OCCURRED IN THE CIRCUMSTANCES OF THE CHILD AND THE AMENDMENT  
7 IS NECESSARY TO SERVE THE BEST INTEREST OF THE CHILD; AND AMENDING SECTION 40-4-219,  
8 MCA."

9

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

11

12 **Section 1.** Section 40-4-219, MCA, is amended to read:

13 **"40-4-219. Amendment of parenting plan -- mediation.** (1) The court may in its discretion amend  
14 a prior parenting plan if it finds, upon the basis of facts that have arisen since the prior plan or that were  
15 unknown to the court at the time of entry of the prior plan, that a substantial change has occurred in the  
16 circumstances of the child and that the amendment is necessary to serve the best interest of the child.  
17 In determining the child's best interest under this section, the court may, in addition to the criteria in  
18 40-4-212, also consider whether:

- 19 (a) the parents agree to the amendment;
- 20 (b) the child has been integrated into the family of the petitioner with consent of the parents;
- 21 (c) the child is 14 years of age or older and desires the amendment;
- 22 (d) one parent has willfully and consistently:
- 23 (i) refused to allow the child to have any contact with the other parent; or
- 24 (ii) attempted to frustrate or deny contact with the child by the other parent; or
- 25 (e) one parent has changed or intends to change the child's residence in a manner that  
26 significantly affects the child's contact with the other parent.

27 (2) A court may modify a de facto parenting arrangement in accordance with the factors set forth  
28 in 40-4-212.

29 (3) The court shall presume a parent is not acting in the child's best interest if the parent does any  
30 of the acts specified in subsection (1)(d) or (8).

1 (4) The court may amend the prior parenting plan based on subsection (1)(e) to provide a new  
2 residential schedule for parental contact with the child and to apportion transportation costs between the  
3 parents.

4 (5) Attorney fees and costs must be assessed against a party seeking frivolous or repeated  
5 amendment if the court finds that the amendment action is vexatious and constitutes harassment.

6 (6) A parenting plan may be amended upon the death of one parent pursuant to 40-4-221.

7 (7) As used in this section, "prior parenting plan" means a parenting determination contained in  
8 a judicial decree or order made in a parenting proceeding. In proceedings for amendment under this section,  
9 a proposed amended parenting plan must be filed and served with the motion for amendment and with the  
10 response to the motion for amendment. Preference must be given to carrying out the parenting plan.

11 (8) (a) If a parent or other person residing in that parent's household has been convicted of any  
12 of the crimes listed in subsection (8)(b), the other parent or any other person who has been granted rights  
13 to the child pursuant to court order may file an objection to the current parenting order with the court. The  
14 parent or other person having rights to the child pursuant to court order shall give notice to the other  
15 parent of the objection as provided by the Montana Rules of Civil Procedure, and the other parent has 20  
16 days from the notice to respond. If the parent who receives notice of objection fails to respond within 20  
17 days, the parenting rights of that parent are suspended until further order of the court. If that parent  
18 responds and objects, a hearing must be held within 30 days of the response.

19 (b) This subsection (8) applies to the following crimes:

20 (i) deliberate homicide, as described in 45-5-102;

21 (ii) mitigated deliberate homicide, as described in 45-5-103;

22 (iii) sexual assault, as described in 45-5-502;

23 (iv) sexual intercourse without consent, as described in 45-5-503;

24 (v) deviate sexual conduct with an animal, as described in 45-2-101 and prohibited under  
25 45-5-505;

26 (vi) incest, as described in 45-5-507;

27 (vii) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

28 (viii) endangering the welfare of children, as described in 45-5-622;

29 (ix) partner or family member assault of the type described in 45-5-206(1)(a);

30 (x) sexual abuse of children, as described in 45-5-625.

