

## SENATE BILL NO. 17

INTRODUCED BY J. O'NEIL

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A BILL FOR AN ACT ENTITLED: "AN ACT ~~PROVIDING~~ REVISING THE FACTORS THAT A COURT SHALL  
 CONSIDER ~~WHEN~~ CREATING A PARENTING PLAN PURSUANT TO A DISSOLUTION OF MARRIAGE SHALL  
 CONSIDER A PARENT'S RECKLESS DISREGARD FOR THE STABILITY OF THE HOME OF THE CHILD;  
 REVISING THE FACTORS RELATING TO A PARENT'S ABILITY TO FINANCIALLY SUPPORT AND HISTORY  
 OF FINANCIALLY SUPPORTING THE CHILD; AND AMENDING SECTION 40-4-212, MCA."

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

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**Section 1.** Section 40-4-212, MCA, is amended to read:

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**"40-4-212. Best interest of child.** (1) The court shall determine the parenting plan in accordance  
 with the best interest of the child. The court shall consider all relevant parenting factors, which may  
 include but are not limited to:

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(a) the wishes of the child's parent or parents;

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(b) the wishes of the child;

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(c) the interaction and interrelationship of the child with the child's parent or parents and siblings  
 and with any other person who significantly affects the child's best interest;

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(d) the child's adjustment to home, school, and community;

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(e) the mental and physical health of all individuals involved;

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(f) physical abuse or threat of physical abuse by one parent against the other parent or the child;

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(g) chemical dependency, as defined in 53-24-103, or chemical abuse on the part of either parent;

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(h) continuity and stability of care, ~~including a parent's reckless disregard for the stability of the~~

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~~child's home;~~

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(i) developmental needs of the child;

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(j) whether a parent has knowingly failed to pay birth-related costs that the parent is able to pay,  
 which is considered not to be ~~not~~ in the child's best interests;

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~~(k) whether a parent has knowingly failed to financially support a child that the parent is able to  
 support, which each parent's ability to financially support and history of financially supporting the child.~~

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1 ~~Financially supporting the child, when able to support the child, is considered to be in the child's best~~  
 2 ~~interests. Not financially supporting the child, when able to support the child, is considered to be not to~~  
 3 ~~be in the child's best interests;~~

4 (K) WHETHER A PARENT HAS KNOWINGLY FAILED TO FINANCIALLY SUPPORT A CHILD THAT THE PARENT IS ABLE  
 5 TO SUPPORT, WHICH IS CONSIDERED NOT TO BE IN THE CHILD'S BEST INTEREST;

6 (l) whether the child has frequent and continuing contact with both parents, which is considered  
 7 to be in the child's best interests unless the court determines, after a hearing, that contact with a parent  
 8 would be detrimental to the child's best interests. In making that determination, the court shall consider  
 9 evidence of physical abuse or threat of physical abuse by one parent against the other parent or the child,  
 10 including but not limited to whether a parent or other person residing in that parent's household has been  
 11 convicted of any of the crimes enumerated in 40-4-219(8)(b).

12 (m) adverse effects on the child resulting from continuous and vexatious parenting plan  
 13 amendment actions;

14 (N) THE LOVE, AFFECTION, AND OTHER EMOTIONAL TIES EXISTING BETWEEN THE CHILD AND THE PARENT;

15 (O) THE PARENT'S CAPACITY TO GIVE THE CHILD LOVE, AFFECTION, GUIDANCE, SHELTER, AND PERMANENT CARE;

16 (P) THE PARENT'S CAPACITY AND DISPOSITION TO PROVIDE THE CHILD WITH FOOD, CLOTHING, MEDICAL CARE  
 17 OR OTHER REMEDIAL CARE RECOGNIZED AND PERMITTED UNDER THE LAWS OF THIS STATE IN PLACE OF MEDICAL CARE, AND  
 18 OTHER MATERIAL NEEDS;

19 (Q) THE PERMANENCE, AS A FAMILY UNIT, OF THE EXISTING OR PROPOSED CUSTODIAL HOME;

20 (R) THE PARENT'S MORAL FITNESS;

21 (S) THE PARENT'S MENTAL AND PHYSICAL HEALTH;

22 (T) WHETHER THE PARENT HAS A HISTORY OF DOMESTIC VIOLENCE;

23 (U) IF THE PARENT IS NOT THE PARENT WHO HAD CUSTODY OF THE CHILD, THE OPPORTUNITY THAT THE PARENT  
 24 HAD TO PROVIDE APPROPRIATE CARE OF THE CHILD BEFORE THE HEARING DETERMINING CUSTODY;

25 (V) ANY OTHER FACTOR CONSIDERED BY THE COURT TO BE RELEVANT TO THE DETERMINATION OF THE CHILD'S  
 26 BEST INTEREST.

27 (2) A de facto parenting arrangement, in the absence of a prior parenting decree, does not require  
 28 the child's parent or parents to prove the factors set forth in 40-4-219.

29 (3) The following are rebuttable presumptions and apply unless contrary to the best interest of  
 30 the child:

