

HOUSE BILL NO. 545

INTRODUCED BY D. GALLIK

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PROCEDURE FOR AN AMENDMENT OF A PARENTING PLAN; REQUIRING SUPPORTING AND OPPOSING AFFIDAVITS; PROVIDING A TEST FOR GRANTING THE PETITION FOR AMENDMENT; AND AMENDING SECTIONS 40-4-103, 40-4-219, AND 40-4-220, MCA."

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

Section 1. Section 40-4-103, MCA, is amended to read:

"40-4-103. Application of Montana Rules of Civil Procedure. (1) Except for proceedings under the Uniform Child Custody Jurisdiction and Enforcement Act, the Montana Rules of Civil Procedure apply to all proceedings under this chapter, except as otherwise provided in this chapter.

(2) A proceeding for dissolution of marriage or legal separation must be entitled, "In re the Marriage of..... and.....".

(3) A parenting or support proceeding, including one for amendment of a final parenting plan or for modification of child support, must be entitled, "In re the (parenting) (support) of.....". A party seeking an amendment of a final parenting plan shall submit and serve with the petition an affidavit setting forth facts supporting the requested amendment. A party opposing an amendment of a final parenting plan shall submit and serve with the response opposing affidavits. The court shall deny the petition unless the court finds that adequate cause for hearing the petition is established by the affidavits, based on the best interest of the child. A proposed amended parenting plan must be filed and served with the petition for amendment and with the response to the petition for amendment, as required by 40-4-219(7).

~~(3)~~(4) The initial pleading in all proceedings under this chapter must be denominated a petition and must be served according to Rule 4 of the Montana Rules of Civil Procedure. A responsive pleading must be denominated a response and must be served according to Rule 12 of the Montana Rules of Civil Procedure. Other pleadings, and all pleadings in other matters under this chapter, must be denominated as provided in the Montana Rules of Civil Procedure.

~~(4)~~(5) In this chapter, "decree" includes "judgment".



1 ~~(5)~~(6) A decree of dissolution or of legal separation, if made, may not be awarded to one of the
2 parties but must provide that it affects the status previously existing between the parties in the manner
3 decreed."

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5 **Section 2.** Section 40-4-219, MCA, is amended to read:

6 **"40-4-219. Amendment of parenting plan -- mediation.** (1) The court may, in its discretion, amend
7 a prior parenting plan if it finds, upon the basis of facts that have arisen since the prior parenting plan or
8 that were unknown to the court at the time of entry of the prior parenting plan, that a change has occurred
9 in the circumstances of the child and that the amendment is necessary to serve the best interest of the
10 child. In determining the child's best interest under this section, the court may, in addition to the criteria
11 in 40-4-212, also consider whether:

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

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

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

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

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

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

30 (7) As used in this section, "prior parenting plan" means a parenting determination contained in

1 a judicial decree or order made in a parenting proceeding. In proceedings for amendment under this section,
2 a proposed amended parenting plan must be filed and served with the ~~motion~~ petition for amendment and
3 with the response to the ~~motion~~ petition for amendment. Preference must be given to carrying out the prior
4 parenting plan.

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

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

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

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

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

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

18 (v) deviate sexual conduct with an animal, as described in 45-2-101 and prohibited under
19 45-5-505;

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

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

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

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

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

25 (9) Except in cases of physical abuse or threat of physical abuse by one parent against the other
26 parent or the child, or when a parent has been convicted of a crime enumerated in subsection (8)(b), the
27 court may, in its discretion, order the parties to participate in a dispute resolution process to assist in
28 resolving any conflicts between the parties regarding amendment of the prior parenting plan. The dispute
29 resolution process may include counseling or mediation by a specified person or agency and court action."
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