

1 HOUSE BILL NO. 555

2 INTRODUCED BY E. HILL

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING MEDIATION LAWS; CLARIFYING THE
5 CIRCUMSTANCES IN WHICH A COURT MAY ORDER MEDIATION TO RESOLVE AMENDED PARENTING
6 PLAN DISPUTES; REQUIRING PARTIES TO PROVIDE INFORMED CONSENT BEFORE A COURT CAN
7 AUTHORIZE MEDIATION WHEN THE COURT SUSPECTS PHYSICAL, SEXUAL, OR EMOTIONAL ABUSE;
8 REQUIRING A MEDIATOR TRAINED IN MEDIATING DOMESTIC VIOLENCE CASES TO CONDUCT
9 MEDIATIONS IN CERTAIN CASES; DEFINING "INFORMED CONSENT"; ALLOWING PERSONS WHO ARE
10 NOT ATTORNEYS TO BE PRESENT DURING CERTAIN MEDIATIONS; REQUIRING MEDIATORS TO HAVE
11 KNOWLEDGE IN THE AREA OF DOMESTIC VIOLENCE; AND AMENDING SECTIONS 40-4-219, 40-4-301,
12 40-4-302, AND 40-4-307, MCA."

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

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

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

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

30 (2) A court may modify a de facto parenting arrangement in accordance with the factors set forth in

1 40-4-212.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 (9) Except in cases of physical, sexual, or emotional abuse or threat of physical, sexual, or emotional
3 abuse by one parent against the other parent or the child; or when a parent has been convicted of a crime
4 enumerated in subsection (8)(b), the court may, in its discretion, order the parties to participate in a dispute
5 resolution process to assist in resolving any conflicts between the parties regarding amendment of the parenting
6 plan. The dispute resolution process may include counseling or mediation by a specified person or agency, and
7 court action.

8 (10) (a) Except as provided in subsection (10)(b), a court-ordered or de facto modification of a parenting
9 plan based in whole or in part on military service orders of a parent is temporary and reverts to the previous
10 parenting plan at the end of the military service. If a motion for an amendment of a parenting plan is filed after
11 a parent returns from military service, the court may not consider a parent's absence due to that military service
12 in its determination of the best interest of the child.

13 (b) A parent who has performed or is performing military service, as defined in 10-1-1003, may consent
14 to a temporary or permanent modification of a parenting plan:

15 (i) for the duration of the military service; or

16 (ii) that continues past the end of the military service."
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18 **Section 2.** Section 40-4-301, MCA, is amended to read:

19 **"40-4-301. Family law mediation -- exception.** (1) The district court may at any time consider the
20 advisability of requiring the parties to a proceeding under this chapter to participate in the mediation of the case.
21 Any party may request the court to order mediation. If the parties agree to mediation, the court may require the
22 attendance of the parties or the representatives of the parties with authority to settle the case at the mediation
23 sessions.

24 (2) ~~The~~ Unless each of the parties provides written, informed consent, the court may not authorize or
25 permit continuation of mediated negotiations if the court has reason to suspect that one of the parties or a child
26 of a party has been physically, sexually, or emotionally abused by the other party. A mediation conducted under
27 this subsection must be conducted by a mediator who is trained in mediating domestic violence cases.

28 (3) The court shall appoint a mediator from the list maintained pursuant to 40-4-306. By agreement of
29 all parties, mediators not on the list may be appointed.

30 (4) The court may adopt rules to implement this part.

1 (5) For purposes of this section, "informed consent" means an educated, competent, and voluntary
 2 choice to enter into mediation."

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4 **Section 3.** Section 40-4-302, MCA, is amended to read:

5 **"40-4-302. Mediation proceeding -- tolling of statute of limitations.** (1) The purpose of a mediation
 6 proceeding is to reduce the acrimony that may exist between the parties and to develop an agreement that is
 7 supportive of the best interests of a child involved in the proceeding.

8 (2) The mediator shall attempt to effect a settlement of the parenting, child support, parental contact with
 9 the child, maintenance, or property settlement dispute. The mediator may not use coercive measures to effect
 10 the settlement. The mediator may recommend that a party obtain assistance from other resources in the
 11 community.

12 (3) Subject to 40-4-301(1) and except in cases involving domestic violence, the mediator may exclude
 13 attorneys from the mediation sessions. The parties' attorneys may confer with the mediator prior to the mediation
 14 session and may review and approve any agreement. In cases involving domestic violence, a victim may elect
 15 to have advocates and support persons who are not attorneys present during the mediation.

16 (4) An applicable statute of limitations is tolled as to the participants during the period of mediation. The
 17 tolling commences on the date the parties agree in writing to participate in the mediation or when the court orders
 18 mediation, whichever is later, and ends on the date the mediation is officially terminated by the mediator."

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20 **Section 4.** Section 40-4-307, MCA, is amended to read:

21 **"40-4-307. Mediator qualifications.** A mediator must meet the following minimum qualifications:

22 (1) knowledge of the court system and the procedures used in family law matters;

23 (2) knowledge of other resources in the community to which the parties may be referred for assistance;

24 (3) knowledge in the area of domestic violence;

25 ~~(3)~~(4) if applicable, knowledge of child development, clinical issues relating to children, the effects of
 26 marriage dissolution on children, and parenting research; and

27 ~~(4)~~(5) knowledge of the mediation process."

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