

HOUSE BILL NO. 165

INTRODUCED BY K. REGIER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING GRANDPARENT-GRANDCHILD CONTACT LAWS TO ALLOW FOR THE APPOINTMENT OF A GUARDIAN AD LITEM; AND AMENDING SECTION 40-9-102, MCA."

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

Section 1. Section 40-9-102, MCA, is amended to read:

"40-9-102. Grandparent-grandchild contact. (1) Except as provided in subsection ~~(7)~~ (8), the district court may grant to a grandparent of a child reasonable rights to contact with the child, including but not limited to rights regarding a child who is the subject of, or as to whom a disposition has been made during, an administrative or court proceeding under Title 41 or this title. The department of public health and human services must be given notice of a petition for grandparent-grandchild contact regarding a child who is the subject of, or as to whom a disposition has been made during, an administrative or court proceeding under Title 41 or this title.

(2) Before a court may grant a petition brought pursuant to this section for grandparent-grandchild contact over the objection of a parent whose parental rights have not been terminated, the court shall make a determination as to whether the objecting parent is a fit parent. A determination of fitness and granting of the petition may be made only after a hearing, upon notice as determined by the court. Fitness must be determined on the basis of whether the parent adequately cares for the parent's child.

(3) Grandparent-grandchild contact may be granted over the objection of a parent determined by the court pursuant to subsection (2) to be unfit only if the court also determines by clear and convincing evidence that the contact is in the best interest of the child.

(4) Grandparent-grandchild contact granted under this section over the objections of a fit parent may be granted only upon a finding by the court, based upon clear and convincing evidence, that the contact with the grandparent would be in the best interest of the child and that the presumption in favor of the parent's wishes has been rebutted.

(5) A person may not petition the court under this section more often than once every 2 years unless there has been a significant change in the circumstances of:

(a) the child;

1 (b) the child's parent, guardian, or custodian; or

2 (c) the child's grandparent.

3 (6) The court may appoint an attorney to represent the interests of a child with respect to
4 grandparent-grandchild contact when the interests are not adequately represented by the parties to the
5 proceeding.

6 (7) The court may appoint a guardian ad litem to represent the best interests of a child with respect to
7 grandparent-grandchild contact.

8 ~~(7)~~(8) This section does not apply if the child has been adopted by a person other than a stepparent or
9 a grandparent. Grandparent-grandchild contact granted under this section terminates upon the adoption of the
10 child by a person other than a stepparent or a grandparent.

11 ~~(8)~~(9) A determination pursuant to subsection (2) that a parent is unfit has no effect upon the rights of
12 a parent, other than with regard to grandparent-grandchild contact if a petition pursuant to this section is granted,
13 unless otherwise ordered by the court."

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