

## 1 HOUSE BILL NO. 399

2 INTRODUCED BY D. ZOLNIKOV

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CHILD CUSTODY LAWS PERTAINING TO THE BEST  
5 INTEREST OF A CHILD; CREATING A REBUTTABLE PRESUMPTION THAT JOINT PHYSICAL CUSTODY  
6 IS IN THE BEST INTEREST OF A CHILD; PROVIDING THAT A COURT MAY NOT PREFER ONE PARENT  
7 OVER THE OTHER BASED ON THE PARENT'S STATUS AS MOTHER OR FATHER; AND AMENDING  
8 SECTION 40-4-212, MCA."

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

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

13 **"40-4-212. Best interest of child.** (1) The court shall determine the parenting plan in accordance with  
14 the best interest of the child. The court shall consider all relevant parenting factors, which may include but are  
15 not limited to:

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

17 (b) the wishes of the child;

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

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

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

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

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

24 (h) continuity and stability of care;

25 (i) developmental needs of the child;

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

28 (k) whether a parent has knowingly failed to financially support a child that the parent is able to support,  
29 which is considered to be not in the child's best interests;

30 (l) whether the child has frequent and continuing contact with both parents, which is considered to be

1 in the child's best interests unless the court determines, after a hearing, that contact with a parent would be  
2 detrimental to the child's best interests. In making that determination, the court shall consider evidence of physical  
3 abuse or threat of physical abuse by one parent against the other parent or the child, including but not limited to  
4 whether a parent or other person residing in that parent's household has been convicted of any of the crimes  
5 enumerated in 40-4-219(8)(b).

6 (m) adverse effects on the child resulting from continuous and vexatious parenting plan amendment  
7 actions.

8 (2) When determining the best interest of the child of a parent in military service, the court shall consider  
9 all relevant parenting factors provided in subsection (1) and may not determine the best interest of the child based  
10 only upon the parent's military service.

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

13 (4) The following are rebuttable presumptions and apply unless contrary to the best interest of the child:

14 (a) A parenting plan action brought by a parent within 6 months after a child support action against that  
15 parent is vexatious.

16 (b) A motion to amend a final parenting plan pursuant to 40-4-219 is vexatious if a parent seeks to  
17 amend a final parenting plan without making a good faith effort to comply with the provisions of the parenting plan  
18 or with dispute resolution provisions of the final parenting plan.

19 (5) When the court is making a determination regarding the physical custody of the child, there is a  
20 rebuttable presumption that joint physical custody would be in the best interest of the child if:

21 (a) the parents have agreed to an award of joint physical custody or agree in open court at a hearing for  
22 the purpose of determining the physical custody of the child; or

23 (b) a parent has demonstrated, or has attempted to demonstrate but has had the parent's efforts  
24 frustrated by the other parent, an intent to establish a meaningful relationship with the child.

25 (6) The court may not give preference to a parent for the sole reason that the parent is the mother or the  
26 father of the child."

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