

HOUSE BILL NO. 335

INTRODUCED BY C. KEOGH, S. GREEF

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO PARENTING PLANS;
5 REQUIRING AN AFFIDAVIT TO BE FILED IN SUPPORT OF AN AMENDMENT TO A PARENTING PLAN
6 REQUIRED WHEN ONE PARENT CHANGES RESIDENCE; CLARIFYING THE THRESHOLD FOR
7 ESTABLISHING CHANGED CIRCUMSTANCES; PROVIDING RULEMAKING AUTHORITY; REVISING
8 PROCEDURES OF AFFIDAVIT PRACTICE; AMENDING SECTIONS 40-4-212, 40-4-217, 40-4-219, AND
9 40-4-220, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

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

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

- 17 (a) the wishes of the child's parent or parents;
- 18 (b) the wishes of the child;
- 19 (c) the interaction and interrelationship of the child with the child's parent or parents and siblings and with
20 any other person who significantly affects the child's best interest;
- 21 (d) the child's adjustment to home, school, and community;
- 22 (e) the mental and physical health of all individuals involved;
- 23 (f) physical abuse or threat of physical abuse by one parent against the other parent or the child;
- 24 (g) chemical dependency, as defined in 53-24-103, or chemical abuse on the part of either parent;
- 25 (h) continuity and stability of care;
- 26 (i) developmental needs of the child;
- 27 (j) whether a parent has knowingly failed to pay birth-related costs that the parent is able to pay, which
28 is considered to be not in the child's best interests;
- 29 (k) whether a parent has knowingly failed to financially support a child that the parent is able to support,
30 which is considered to be not in the child's best interests;

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

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

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

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

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

15 (a) ~~A Any action to determine or modify a parenting plan action brought by a parent within 6 months after~~
 16 ~~a child support action against that parent is vexatious. A child support action includes all administrative or district~~
 17 ~~court actions to determine or modify child support.~~

18 (b) A motion to amend a final parenting plan pursuant to 40-4-219 is vexatious if a parent seeks to
 19 amend a final parenting plan without making a good faith effort to comply with the provisions of the parenting plan
 20 or with dispute resolution provisions of the final parenting plan."
 21

22 **Section 2.** Section 40-4-217, MCA, is amended to read:

23 **"40-4-217. Notice of intent to move.** (1) A parent who intends to change residence shall, unless
 24 precluded under 40-4-234, provide written notice to the other parent.

25 (2) (a) If a parent's change in residence will significantly affect the child's contact with the other parent,
 26 the parent who intends to change residence shall, pursuant to 40-4-219, file a motion for amendment of the
 27 residential schedule, an affidavit in support of the motion, and a proposed revised residential schedule with the
 28 court that adopted the residential schedule or the court to which jurisdiction or venue over the child has been
 29 transferred. The motion, affidavit, and proposed revised residential schedule must be served personally or by
 30 certified mail on the other parent and served pursuant to the Montana Rules of Civil Procedure on the parent's

1 attorney of record, if the parent has an attorney of record, not less than 30 days before the proposed change in
2 residence.

3 (b) The notice pursuant to this subsection (2) is not sufficient unless it contains the following statement:
4 "The relocation of the child may be permitted and the proposed revised residential schedule may be ordered by
5 the court without further proceedings unless within 21 days you file a response supported by an affidavit and
6 alternate revised residential schedule with the court and serve your response, affidavit, and alternate revised
7 residential schedule on the person proposing the move and all other persons entitled by the court order to
8 residential time or visitation with the child."

9 (3) The parent who receives service of a motion to amend the parenting plan pursuant to this section
10 has 21 days after service of the motion to file a response. If the parent receiving notice objects to the proposed
11 revised residential schedule, the responding parent shall include an alternate proposed revised residential
12 schedule with the response. The response must be served as provided for by the Montana Rules of Civil
13 Procedure on the parent proposing to change residence or on the parent's attorney of record if the parent has
14 an attorney of record.

15 (4) If a parent is properly served with a motion to amend the parenting plan pursuant to this section,
16 failure to file a response, affidavit, and alternate revised residential schedule within the 21-day period constitutes
17 acceptance of the proposed revised residential schedule.

18 (5) A person entitled to file an objection to the proposed relocation of the child may file the objection
19 regardless of whether the person has received proper notice."
20

21 **Section 3.** Section 40-4-219, MCA, is amended to read:

22 **"40-4-219. Amendment of parenting plan--mediation.** (1) The court may in its discretion amend a
23 ~~prior~~ an existing parenting plan that is a parenting determination contained in a judicial decree or order made in
24 a parenting proceeding if it finds, ~~upon the basis of facts that have arisen since the prior plan or that were~~
25 ~~unknown to the court at the time of entry of the prior plan, that a change has occurred in the circumstances of~~
26 ~~the child and that the amendment is necessary to serve the best interest of the child. In determining the child's~~
27 ~~best interest under this section, the court may, in addition to the criteria in 40-4-212, also consider whether:~~

28 (a) the parents agree to the amendment;

29 (b) the parents have agreed to a specific time or event for periodic review of the parenting plan pursuant
30 to 40-4-234;

- 1 ~~(b)~~(c) the child has been integrated into the family of the petitioner with consent of the parents;
- 2 ~~(c)~~(d) the child is 14 years of age or older and desires the amendment;
- 3 ~~(d)~~(e) one parent has willfully and consistently:
- 4 (i) refused to allow the child to have any contact with the other parent; or
- 5 (ii) attempted to frustrate or deny contact with the child by the other parent; ~~or~~
- 6 ~~(e)~~(f) one parent has changed or intends to change the child's residence in a manner that significantly
- 7 affects the child's contact with the other parent;
- 8 (g) there has been a change in the child's developmental level, including but not limited to the child
- 9 transitioning to kindergarten, middle school, or high school, or another event is impacting the child's life;
- 10 (h) facts that affect the child have arisen since the prior plan or existed at the time of the entry of the prior
- 11 plan but were unknown to the court; or
- 12 (i) a change that significantly affects the child has occurred in the circumstances of the child or the
- 13 parent.
- 14 (2) Upon a determination by the court that one or more of the circumstances set forth in subsection (1)
- 15 exist, the court shall amend a parenting plan if the court determines that amendment of the parenting plan is in
- 16 the best interest of the child in accordance with the factors set forth in 40-4-212.
- 17 ~~(2) A court may modify a de facto parenting arrangement in accordance with the factors set forth in~~
- 18 ~~40-4-212.~~
- 19 (3) The court shall presume a parent is not acting in the child's best interest if the parent or a person
- 20 residing in that parent's household does any of the acts specified in subsection ~~(1)(d)~~ (1)(e) or ~~(8)~~ (7).
- 21 ~~(4) The court may amend the prior parenting plan based on subsection (1)(e) to provide a new residential~~
- 22 ~~schedule for parental contact with the child and to apportion transportation costs between the parents.~~
- 23 ~~(5) Attorney fees and costs must be assessed against a party seeking frivolous or repeated amendment~~
- 24 ~~if the court finds that the amendment action is vexatious and constitutes harassment.~~
- 25 ~~(6) A parenting plan may be amended pursuant to 40-4-221 upon the death of one parent.~~
- 26 ~~(7) As used in this section, "prior parenting plan" means a parenting determination contained in a judicial~~
- 27 ~~decree or order made in a parenting proceeding. In proceedings for amendment under this section, a proposed~~
- 28 ~~amended parenting plan must be filed and served with the motion for amendment and with the response to the~~
- 29 ~~motion for amendment. Preference must be given to carrying out the parenting plan.~~
- 30 (4) A court may amend a de facto parenting arrangement in accordance with the factors set forth in

1 40-4-212.

2 (5) The court shall award fees and costs against a party if:

3 (a) the party filed a motion to amend the parenting plan that was vexatious; or

4 (b) the party knew or should have known after inquiry reasonable under the circumstances that the
5 party's allegations made in support of the motion lacked a basis in fact.

6 (6) A party filing a motion to amend a parenting plan shall simultaneously file and serve a proposed
7 parenting plan.

8 ~~(8)(7)~~ (a) If a parent or other person residing in that parent's household has been convicted of a crime
9 against the child, another child, or any other person, including but not limited to any of the crimes listed in
10 subsection ~~(8)(b)~~ (7)(b), the other parent or any other person who has been granted rights to the child pursuant
11 to court order may file ~~an objection to~~ a motion to amend the current parenting order with the court. The motion
12 may be filed ex parte consistent with the criteria set forth in 40-4-220. ~~The parent or other person having rights~~
13 ~~to the child pursuant to court order shall give notice to the other parent of the objection as provided by the~~
14 ~~Montana Rules of Civil Procedure, and the other parent has 21 days from the notice to respond. If the parent who~~
15 ~~receives notice of objection fails to respond within 21 days, the parenting rights of that parent are suspended until~~
16 ~~further order of the court. If that parent responds and objects, a hearing must be held within 30 days of the~~
17 ~~response.~~ If the court determines that the conviction is relevant to the best interest of the child, it may take
18 appropriate action, including but not limited to amending the parenting plan or suspending parenting rights.

19 (b) This subsection ~~(8)~~ (7) applies to the following crimes:

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

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

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

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

24 (v) deviate sexual conduct with an animal, as described in 45-2-101 and prohibited under 45-8-218;

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

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

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

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

29 (x) sexual abuse of children, as described in 45-5-625; and

30 (xi) strangulation of a partner or family member, as described in 45-5-215.

1 ~~(9)(8)~~ Except in cases of physical, sexual, or emotional abuse or threat of physical, sexual, or emotional
 2 abuse by one parent against the other parent or the child or when a parent has been convicted of a crime
 3 enumerated in subsection ~~(8)(b)~~ (7)(b), the court may, in its discretion, order the parties to participate in a dispute
 4 resolution process to assist in resolving any conflicts between the parties regarding amendment of the parenting
 5 plan. ~~The dispute resolution process may include counseling or mediation by a specified person or agency, and~~
 6 ~~court action.~~

7 ~~(10)(9)~~ (a) Except as provided in subsection ~~(10)(b)~~ (9)(b), a court-ordered or de facto modification of a
 8 parenting plan based in whole or in part on military service orders of a parent is temporary and reverts to the
 9 previous parenting plan at the end of the military service. If a motion for an amendment of a parenting plan is filed
 10 after a parent returns from military service, the court may not consider a parent's absence due to that military
 11 service in its determination of the best interest of the child.

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

- 14 (i) for the duration of the military service; or
 15 (ii) that continues past the end of the military service."

16
 17 **Section 4.** Section 40-4-220, MCA, is amended to read:

18 **"40-4-220. Affidavit practice.** (1) Unless the parties agree to an interim parenting plan or an amended
 19 parenting plan, the moving party seeking an interim parenting plan or amendment of a final parenting plan shall
 20 submit, together with the moving papers, an affidavit setting forth facts supporting the requested plan or
 21 amendment and shall give notice, together with a copy of the affidavit, to other parties to the proceeding, who may
 22 file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion
 23 is established by the affidavits, based on the best interests of the child, in which case it shall set a date for hearing
 24 on an order to show cause why the requested plan or amendment should not be granted.

25 (2) (a) A party seeking an interim parenting plan may request that the court grant a temporary order
 26 providing for living arrangements for the child ex parte. The party shall make the request in the moving papers
 27 and shall submit an affidavit showing that:

28 ~~(i) no previous parenting plan has been ordered by a court and it would be in the child's best interest~~
 29 ~~under the standards of 40-4-212 if temporary living arrangements for the child were as proposed by the moving~~
 30 ~~party, or~~

1 ~~_____ (ii) although a previous parenting plan has been ordered, an emergency situation has arisen in the child's~~
2 ~~present environment that endangers the child's physical, mental, or emotional health and an immediate change~~
3 ~~in the parenting plan is necessary to protect the child.~~

4 (i) an emergency situation has arisen in the child's present environment that endangers the child's
5 physical, mental, or emotional health and an immediate order approving an interim parenting plan is necessary
6 to protect the child;

7 (ii) in the event a previous parenting plan has been ordered, the previous parenting plan is inadequate
8 to protect the child;

9 (iii) the party's proposed interim parenting plan will protect the child;

10 (iv) the party's proposed interim parenting plan is in the best interest of the child under the standards of
11 40-4-212; and

12 (v) notwithstanding the notice requirements otherwise provided by rule or statute, the applicant or the
13 applicant's attorney certifies to the court in writing the efforts, if any, that have been made to give notice to the
14 opposing party and the reasons supporting the applicant's claim that notice should not be required.

15 ~~(b) If the court finds from the affidavits submitted by the moving party that the interim parenting plan~~
16 ~~proposed by the moving party would be in the child's best interest under the standards of 40-4-212 and that the~~
17 ~~child's present environment endangers the child's physical, mental, or emotional health and the child would be~~
18 ~~protected by the interim parenting plan, the court shall make an order implementing the interim parenting plan~~
19 ~~proposed by the moving party. The court shall require all parties to appear and show cause within 21 days from~~
20 ~~the execution of the interim parenting plan why the interim parenting plan should not remain in effect until further~~
21 ~~order of court.~~

22 (b) The court shall make an order implementing an interim parenting plan if the court finds from the
23 affidavits submitted by the moving party that:

24 (i) an emergency situation has arisen in the child's present environment that endangers the child's
25 physical, mental, or emotional health and an immediate order approving an interim parenting plan is necessary
26 to protect the child;

27 (ii) in the event a previous parenting plan has been ordered, the previous parenting plan is inadequate
28 to protect the child;

29 (iii) the party's proposed interim parenting plan will protect the child;

30 (iv) the party's proposed interim parenting plan is in the best interest of the child under the standards of

1 40-4-212; and

2 (v) notwithstanding the notice requirements otherwise provided by rule or statute, the applicant or the
3 applicant's attorney has satisfactorily certified to the court in writing the efforts, if any, that have been made to
4 give notice to the opposing party and provided the court satisfactory reasons supporting the applicant's claim that
5 notice should not be required.

6 (c) If the court issues an ex parte order as set forth in subsection (2)(b), the court shall hold a hearing
7 within 21 days from the execution of the interim parenting plan and allow the parties to show cause why the
8 interim parenting plan should not remain in effect until further order by the court."

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10 NEW SECTION. Section 5. Effective date. [This act] is effective October 1, 2019.

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