



AN ACT PROVIDING THAT TITLE 40, CHAPTER 9, MCA, IS NOT AN EXCLUSIVE REMEDY AND A GRANDPARENT IS NOT PRECLUDED FROM SEEKING RELIEF UNDER OTHER STATUTES RELATING TO CHILD CUSTODY AND WELFARE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislature recognizes that the rights of parents to the custody and control of a child are based on liberties secured by the United States and Montana constitutions and that a parent's rights to custody and control of a child are therefore normally superior to the interests of other persons; and

WHEREAS, the Legislature also recognizes the Montana Constitution affords a child the same fundamental rights as a parent, including, at a minimum, the inalienable right to a clean and healthful environment, the right to pursue life's basic necessities, the right to enjoy a safe, healthy, and happy life, and the right to basic human dignity as provided in Article II, sections 3, 4, and 15, of the Montana Constitution, and that in appropriate circumstances, a parent's rights should yield to the child's; and

WHEREAS, the Legislature recognized in 1997 the importance of a child's contact with grandparents and subsequently in 2007 with the passage of section 40-6-501, MCA, a growing phenomenon in which absent or otherwise unavailable parents have temporarily surrendered the custody and care of their children to a grandparent or other relative for lengthy periods of time; and

WHEREAS, the Legislature acknowledges that the federal Supporting Grandparents Raising Grandchildren Act (Public Law 115-196, adopted July 7, 2018) establishes an advisory council to support grandparents raising grandchildren, and the legislation further establishes a number of federal agencies having responsibilities or administering programs related to grandparents or other older relatives raising children, with particular emphasis on those impacted by the opioid epidemic; and

WHEREAS, most importantly, the Legislature acknowledges the Montana Supreme Court's recent decision in *In re Parenting of L.R.S.*, 2018 MT 48, in which the court held that a grandparent seeking contact with a child could do so only through an action brought under Title 40, chapter 9, MCA, precluding a grandparent who met the necessary prerequisites from seeking visitation under section 40-4-228, MCA.

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

**Section 1. Purpose -- legislative intent.** The legislature finds and declares that a grandparent is not precluded from seeking relief in lieu of or in addition to relief available under this chapter, including relief under Title 40, chapter 4 or 6, Title 41, chapter 3, Title 42, or Title 72, chapter 5, if the grandparent otherwise meets the necessary prerequisites of these statutes.

**Section 2. Nonexclusive remedy.** In addition to or in lieu of seeking reasonable rights to contact with a child under this chapter, a grandparent retains the following rights:

- (1) to seek a parental interest, visitation, or parenting plan under Title 40, chapter 4;
- (2) to seek authority as a caretaker relative, including authority to consent to medical care, for a child under Title 40, chapter 6;
- (3) to seek custody of a child as an extended family member under Title 41, chapter 3;
- (4) to seek adoption of a child under Title 42; and
- (5) to seek guardianship of a child under Title 72, chapter 5.

**Section 3. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 40, chapter 9, and the provisions of Title 40, chapter 9, apply to [sections 1 and 2].

**Section 4. Effective date.** [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,  
HB 0347, originated in the House.

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2019.

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Chief Clerk of the House

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2019.

HOUSE BILL NO. 347

INTRODUCED BY S. GREEF, D. BEDEY, D. DUNN, P. WEBB, J. WINDY BOY

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