

## HOUSE BILL NO. 393

INTRODUCED BY J. GILLETTE

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE COURT TO CONSIDER ADDITIONAL FACTORS WHEN ONE PARENT REQUESTS TO AMEND A PARENTING PLAN DUE TO A CHANGE IN RESIDENCE; AND AMENDING SECTION 40-4-219, MCA."

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

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

**"40-4-219. Amendment of parenting plan -- mediation.** (1) The court may in its discretion amend a prior parenting plan if it finds, upon the basis of facts that have arisen since the prior plan or that were unknown to the court at the time of entry of the prior plan, that a change has occurred in the circumstances of the child and that the amendment is necessary to serve the best interest of the child.

(a) In determining the child's best interest under this section, the court may, in addition to how a proposed change will affect the child, the court shall consider the potential impact of the change on the criteria in 40-4-212, also consider 40-4-212 and whether:

~~(a)~~(i) the parents agree to the amendment;

~~(b)~~(ii) the child has been integrated into the family of the petitioner with consent of the parents;

~~(c)~~(iii) the child is 14 years of age or older and desires the amendment; or

~~(d)~~(iv) one parent has willfully and consistently:

~~(i)~~(A) refused to allow the child to have any contact with the other parent; or

~~(ii)~~(B) attempted to frustrate or deny contact with the child by the other parent; ~~or~~

~~(e)~~(b) If one parent has changed or intends to change the child's residence in a manner that significantly affects the child's contact with the other parent, the court shall consider, in addition to all the criteria in 40-4-212 and subsection (1)(a):

(i) the feasibility of preserving the relationship between the nonrelocating parent and the child through suitable visitation arrangements, considering the logistics and financial circumstances of the parties;

- 1           (ii) the reasons of each parent for seeking or opposing the change of residence;  
2           (iii) whether the parent seeking to change the child's residence has demonstrated a willingness to  
3 promote the relationship between the child and the nonrelocating parent; and  
4           (iv) whether reasonable alternatives to the proposed change of residence are available to the parent  
5 seeking to relocate.

6           (2) A court may modify a de facto parenting arrangement in accordance with the factors set forth in  
7 40-4-212.

8           (3) The court shall presume a parent is not acting in the child's best interest if the parent does any of  
9 the acts specified in subsection ~~(4)(d)~~ (1)(a)(iv) or (8).

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

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

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

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

20           (8) (a) If a parent or other person residing in that parent's household has been convicted of any of the  
21 crimes listed in subsection (8)(b), the other parent or any other person who has been granted rights to the child  
22 pursuant to court order may file an objection to the current parenting order with the court. The parent or other  
23 person having rights to the child pursuant to court order shall give notice to the other parent of the objection as  
24 provided by the Montana Rules of Civil Procedure, and the other parent has 21 days from the notice to  
25 respond. If the parent who receives notice of objection fails to respond within 21 days, the parenting rights of  
26 that parent are suspended until further order of the court. If that parent responds and objects, a hearing must be  
27 held within 30 days of the response.

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

- 1 (i) deliberate homicide, as described in 45-5-102;
- 2 (ii) mitigated deliberate homicide, as described in 45-5-103;
- 3 (iii) sexual assault, as described in 45-5-502;
- 4 (iv) sexual intercourse without consent, as described in 45-5-503;
- 5 (v) deviate sexual conduct with an animal, as described in 45-2-101 and prohibited under 45-8-218;
- 6 (vi) incest, as described in 45-5-507;
- 7 (vii) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);
- 8 (viii) endangering the welfare of children, as described in 45-5-622;
- 9 (ix) partner or family member assault of the type described in 45-5-206(1)(a);
- 10 (x) sexual abuse of children, as described in 45-5-625; and
- 11 (xi) strangulation of a partner or family member, as described in 45-5-215.
- 12 (9) Except in cases of physical, sexual, or emotional abuse or threat of physical, sexual, or emotional
- 13 abuse by one parent against the other parent or the child or when a parent has been convicted of a crime
- 14 enumerated in subsection (8)(b), the court may, in its discretion, order the parties to participate in a dispute
- 15 resolution process to assist in resolving any conflicts between the parties regarding amendment of the
- 16 parenting plan. The dispute resolution process may include counseling or mediation by a specified person or
- 17 agency, and court action.
- 18 (10) (a) Except as provided in subsection (10)(b), a court-ordered or de facto modification of a
- 19 parenting plan based in whole or in part on military service orders of a parent is temporary and reverts to the
- 20 previous parenting plan at the end of the military service. If a motion for an amendment of a parenting plan is
- 21 filed after a parent returns from military service, the court may not consider a parent's absence due to that
- 22 military service in its determination of the best interest of the child.
- 23 (b) A parent who has performed or is performing military service, as defined in 10-1-1003, may
- 24 consent to a temporary or permanent modification of a parenting plan:
- 25 (i) for the duration of the military service; or
- 26 (ii) that continues past the end of the military service."
- 27 - END -