

HOUSE BILL NO. 762

INTRODUCED BY C. HINKLE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS CONCERNING THE BEST INTEREST OF A CHILD IN DETERMINING A PARENTING PLAN; REQUIRING THAT COURTS DETERMINE PARENTING PLANS IN ACCORDANCE WITH THE CONSTITUTIONALLY PROTECTED RIGHTS OF PARENTS; PROVIDING THAT COURTS CONSIDER EVALUATIONS BY PHYSICIANS WHEN CONSIDERING CERTAIN PARENTING FACTORS; PROVIDING A DEFINITION; AND AMENDING SECTION 40-4-212, MCA."

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

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

"40-4-212. Best interest of child. (1) The court shall determine the parenting plan in accordance with the best interest of the child and in accordance with the constitutionally protected rights of parents and the integrity of the family unit as described in 40-4-227 and 40-6-701. The court shall consider all relevant parenting factors, which may include but are not limited to:

- (a) the wishes of the child's parent or parents;
- (b) the wishes of the child;
- (c) the interaction and interrelationship of the child with the child's parent or parents and siblings and with any other person who significantly affects the child's best interest;
- (d) the child's adjustment to home, school, and community;
- (e) the mental and physical health of all individuals involved, as evaluated by a physician;
- (f) physical abuse or threat of physical abuse by one parent against the other parent or the child, as evaluated by a physician;
- (g) chemical dependency, as defined in 53-24-103, or chemical abuse on the part of either parent, as evaluated by a physician;
- (h) continuity and stability of care;
- (i) developmental needs of the child, as evaluated by a physician;

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

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

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

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

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

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

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

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

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

25 (5) As used in this section, "physician" has the meaning provided in 37-3-102.

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