

HOUSE BILL NO. 330

INTRODUCED BY S. FITZPATRICK

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO DISSOLUTION PROCEEDINGS; REQUIRING THAT CERTAIN SENSITIVE DATA PRODUCED IN A DISSOLUTION PROCEEDING BE SEALED FROM PUBLIC ACCESS; REVISING CERTAIN DEADLINES; AMENDING SECTIONS 40-4-105, 40-4-121, 40-4-201, 40-4-202, 40-4-203, 40-4-204, 40-4-205, 40-4-214, 40-4-215, 40-4-219, AND 40-4-220, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

**Section 1.** Section 40-4-105, MCA, is amended to read:

**"40-4-105. Procedure -- commencement -- pleadings -- abolition of existing defenses.** (1) The verified petition in a proceeding for dissolution of marriage or legal separation must allege that the marriage is irretrievably broken and must set forth:

(a) the age, occupation, and residence of each party and the party's length of residence in this state;

(b) the date of the marriage and the place at which it was registered;

(c) that the jurisdictional requirements of 40-4-104 exist and that the marriage is irretrievably broken in that either:

(i) the parties have lived separate and apart for a period of more than 180 days preceding the commencement of this proceeding; or

(ii) there is serious marital discord that adversely affects the attitude of one or both of the parties towards the marriage, and there is no reasonable prospect of reconciliation;

(d) the names, ages, and addresses of all living children of the marriage and whether the wife is pregnant;

(e) any arrangements as to support of the children and maintenance of a spouse;

(f) a proposed parenting plan, if applicable; and

(g) the relief sought.

(2) Either or both parties to the marriage may initiate the proceeding.

(3) If a proceeding is commenced by one of the parties, the other party must be served in the manner

1 provided by the Montana Rules of Civil Procedure and may within ~~20~~ 21 days after the date of service file a  
 2 verified response. A decree may not be entered until ~~20~~ 21 days after the date of service.

3 (4) Previously existing defenses to divorce and legal separation, including but not limited to condonation,  
 4 connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

5 (5) The court may join additional parties proper for the exercise of its authority to implement this chapter.

6 ~~[(6) The social security number, if known, of a person subject to a decree of dissolution or a support  
 7 order must be recorded in the records relating to the matter. At the request of a person subject to a decree of  
 8 dissolution or a support order, the recordkeeper shall keep the social security number from this source  
 9 confidential, except that the number may be provided to the department of public health and human services for  
 10 use in administering Title IV-D of the Social Security Act.]~~

11 (6) Documents filed before the court containing financial account information must comply with the  
 12 privacy protection requirements of Rule 5.2 of the Montana Rules of Civil Procedure. ~~(Bracketed language~~  
 13 ~~terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)"~~

14  
 15 **Section 2.** Section 40-4-121, MCA, is amended to read:

16 **"40-4-121. Temporary order for maintenance or support, temporary injunction, or temporary**  
 17 **restraining order.** (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding for  
 18 disposition of property or for maintenance or support following dissolution of the marriage by a court that lacked  
 19 personal jurisdiction over the absent spouse, either party may move for temporary maintenance, temporary  
 20 support of a child of the marriage entitled to support, or a temporary family support order. When a party is  
 21 receiving public assistance, as defined in 40-5-201, for the minor children at issue or when a party receives public  
 22 assistance during the life of a temporary family support order, the temporary family support order must designate  
 23 separately the amounts of temporary child support and temporary maintenance, if any. The temporary child  
 24 support order or the designated child support portion of the family support order must be determined as required  
 25 in 40-4-204. The motion must be accompanied by an affidavit setting forth the factual basis for the motion, the  
 26 amounts requested, a list of marital estate liabilities, a statement of sources of income of the parties and of a child  
 27 of the marriage entitled to support, and, in the case of a motion for a temporary family support order, a proposal  
 28 designating the party responsible for paying each liability. If ordered by a court, a temporary family support order  
 29 must, without prejudice, direct one or both parties to pay, out of certain income sources, liabilities of the marital  
 30 estate during the pendency of the action, including maintenance liabilities for a party or support of a child of the

1 marriage entitled to support. If income sources are insufficient to meet the marital estate periodic liabilities, the  
2 temporary family support order may direct that certain liabilities be paid from assets of the marital estate. At any  
3 time during the proceedings, the court may order any temporary family support payments to be designated as  
4 temporary maintenance, temporary child support, or partial property distribution, retroactive to the date of the  
5 motion for a temporary family support order. When a party obtains public assistance, as defined in 40-5-201, or  
6 applies for services under Title IV-D of the Social Security Act, after the court has issued a temporary family  
7 support order, the petitioner shall promptly move the court for designation of the parts, if any, of the temporary  
8 family support order that are maintenance and child support and the court shall promptly so designate,  
9 determining the child support obligation as required in 40-4-204.

10 (2) As a part of a motion for temporary maintenance, temporary support of a child, or a temporary family  
11 support order or by independent motion accompanied by affidavit, either party may request that the court issue  
12 a temporary injunction for any of the following relief:

13 (a) restraining a person from transferring, encumbering, concealing, or otherwise disposing of any  
14 property, except in the usual course of business or for the necessities of life, and if so restrained, requiring the  
15 person to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

16 (b) restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or  
17 changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability  
18 coverage held for the benefit of a party or a child of a party for whom support may be ordered;

19 (c) enjoining a party from molesting or disturbing the peace of the other party or of any family member  
20 or from stalking, as defined in 45-5-220;

21 (d) excluding a party from the family home or from the home of the other party upon a showing that  
22 physical or emotional harm would otherwise result;

23 (e) enjoining a party from removing a child from the jurisdiction of the court;

24 (f) ordering a party to complete counseling, including alcohol or chemical dependency counseling or  
25 treatment;

26 (g) providing other injunctive relief proper in the circumstances; and

27 (h) providing additional relief available under Title 40, chapter 15.

28 (3) When the clerk of the district court issues a summons pursuant to this chapter, the clerk shall issue  
29 and include with the summons a temporary restraining order:

30 (a) restraining both parties from transferring, encumbering, hypothecating, concealing, or in any way

1 disposing of any property, real or personal, whether jointly or separately held, without either the consent of the  
2 other party or an order of the court, except in the usual course of business or for the necessities of life. The  
3 restraining order must require each party to notify the other party of any proposed extraordinary expenditures at  
4 least 5 business days before incurring the expenditures and to account to the court for all extraordinary  
5 expenditures made after service of the summons. However, the restraining order may not preclude either party  
6 from using any property to pay reasonable attorney fees in order to retain counsel in the proceeding.

7 (b) restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or  
8 changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability  
9 coverage held for the benefit of a party or a child of a party for whom support may be ordered. However, nothing  
10 in this subsection (3) adversely affects the rights, title, or interest of a purchaser, encumbrancer, or lessee for  
11 value if the purchaser, encumbrancer, or lessee does not have actual knowledge of the restraining order.

12 (4) A person may seek the relief provided for in subsection (2) without filing a petition under this part for  
13 a dissolution of marriage or legal separation by filing a verified petition requesting relief under Title 27, chapter  
14 19, part 3. Any temporary injunction entered under this subsection must be for a fixed period of time, not to  
15 exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208, as appropriate.

16 (5) The court may issue a temporary restraining order for a period not to exceed ~~20~~ 21 days without  
17 requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that  
18 irreparable injury will result to the moving party if an order is not issued until the time for responding has elapsed.

19 (6) The party against whom a temporary injunction is sought must be served with notice and a copy of  
20 the motion and is entitled to a hearing on the motion. A response may be filed within ~~20~~ 21 days after service of  
21 notice of motion or at the time specified in the temporary restraining order.

22 (7) At the time of the hearing, the court shall:

23 (a) inform both parties that the temporary injunction may contain a provision or provisions that limit the  
24 rights of one or both parties relating to firearms under state law or a provision or provisions that may subject one  
25 or both parties to state or federal laws that limit their rights relating to firearms; and

26 (b) determine whether good cause exists for the injunction to continue for 1 year.

27 (8) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue  
28 a temporary injunction and an order for temporary maintenance, temporary child support, or temporary family  
29 support in amounts and on terms just and proper in the circumstance.

30 (9) A temporary order or injunction, entered pursuant to Title 40, chapter 15, or this section:

1 (a) may be revoked or modified on a showing by affidavit of the facts necessary to revocation or  
2 modification of a final decree under 40-4-208;

3 (b) terminates upon order of the court or when the petition is voluntarily dismissed and, in the case of  
4 a temporary family support order, upon entry of the decree of dissolution; and

5 (c) when issued under this section, must conspicuously bear the following: "Violation of this order is a  
6 criminal offense under 45-5-220 or 45-5-626."

7 (10) When the petitioner has fled the parties' residence, notice of the petitioner's new residence must be  
8 withheld except by order of the court for good cause shown.

9 (11) The court shall seal any qualified domestic relations order, as defined in section 414(p) of the  
10 Internal Revenue Code, 26 U.S.C. 414(p), that is issued under this part except for access by the pension plan  
11 administrator of the plan for which benefits are being distributed by the order, the parties, and each party's  
12 counsel of record."

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14 **Section 3.** Section 40-4-201, MCA, is amended to read:

15 **"40-4-201. Separation agreement.** (1) To promote amicable settlement of disputes between parties to  
16 a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written  
17 separation agreement containing provisions for disposition of any property owned by either of them, maintenance  
18 of either of them, and support, parenting, and parental contact with their children. In cases in which children are  
19 involved, the separation agreement may contain a parenting plan as required in 40-4-234.

20 (2) Subject to subsection (7), in a proceeding for dissolution of marriage or for legal separation, the terms  
21 of the separation agreement, except those providing for the support, parenting, and parental contact with children,  
22 are binding upon the court unless it finds, after considering the economic circumstances of the parties and any  
23 other relevant evidence produced by the parties, on their own motion or on request of the court, that the  
24 separation agreement is unconscionable.

25 (3) If the court finds the separation agreement unconscionable, it may request that the parties submit  
26 a revised separation agreement or it may make orders for the disposition of property, maintenance, and support.

27 (4) If the court finds that the separation agreement is not unconscionable as to disposition of property  
28 or maintenance and not unsatisfactory as to support:

29 (a) unless the separation agreement provides to the contrary, its terms must be set forth in the decree  
30 of dissolution or legal separation and the parties ordered to perform them; or

1 (b) if the separation agreement provides that its terms may not be set forth in the decree, the decree  
2 must identify the separation agreement and state that the court has found the terms not unconscionable.

3 (5) Terms of the agreement set forth in the decree are enforceable by all remedies available for  
4 enforcement of a judgment, including contempt, and are enforceable as contract terms.

5 (6) Except as provided in subsection (7) and except for terms concerning the support, parenting, or  
6 parental contact with the children, the decree may expressly preclude or limit modification of terms set forth in  
7 the decree if provided for in the separation agreement. Otherwise, terms of a separation agreement set forth in  
8 the decree are automatically modified by modification of the decree.

9 (7) The decree may be modified, as provided in 40-4-251 through 40-4-258, for failure to disclose assets  
10 and liabilities.

11 (8) The court shall seal any qualified domestic relations order, as defined in section 414(p) of the Internal  
12 Revenue Code, 26 U.S.C. 414(p), that is issued under this part except for access by the pension plan  
13 administrator of the plan for which benefits are being distributed by the order, the parties, and each party's  
14 counsel of record."

15

16 **Section 4.** Section 40-4-202, MCA, is amended to read:

17 **"40-4-202. Division of property.** (1) In a proceeding for dissolution of a marriage, legal separation, or  
18 division of property following a decree of dissolution of marriage or legal separation by a court ~~which~~ that lacked  
19 personal jurisdiction over the absent spouse or lacked jurisdiction to divide the property, the court, without regard  
20 to marital misconduct, shall, and in a proceeding for legal separation may, finally equitably apportion between  
21 the parties the property and assets belonging to either or both, however and whenever acquired and whether the  
22 title ~~thereto~~ to the property and assets is in the name of the husband or wife or both. In making apportionment,  
23 the court shall consider the duration of the marriage and prior marriage of either party; the age, health, station,  
24 occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each  
25 of the parties; custodial provisions; whether the apportionment is in lieu of or in addition to maintenance; and  
26 the opportunity of each for future acquisition of capital assets and income. The court shall also consider the  
27 contribution or dissipation of value of the respective estates and the contribution of a spouse as a homemaker  
28 or to the family unit. In dividing property acquired prior to the marriage; property acquired by gift, bequest, devise,  
29 or descent; property acquired in exchange for property acquired before the marriage or in exchange for property  
30 acquired by gift, bequest, devise, or descent; the increased value of property acquired prior to marriage; and

1 property acquired by a spouse after a decree of legal separation, the court shall consider those contributions of  
2 the other spouse to the marriage, including:

- 3 (a) the nonmonetary contribution of a homemaker;
- 4 (b) the extent to which ~~such~~ the contributions have facilitated the maintenance of ~~this~~ the property; and
- 5 (c) whether or not the property division serves as an alternative to maintenance arrangements.

6 (2) In a proceeding, the court may protect and promote the best interests of the children by setting aside  
7 a portion of the jointly and separately held estates of the parties in a separate fund or trust for the support,  
8 maintenance, education, and general welfare of any minor, dependent, or incompetent children of the parties.

9 (3) Each spouse is considered to have a common ownership in marital property that vests immediately  
10 preceding the entry of the decree of dissolution or declaration of invalidity. The extent of the vested interest must  
11 be determined and made final by the court pursuant to this section.

12 (4) The division and apportionment of marital property caused by or incident to a decree of dissolution,  
13 a decree of legal separation, or a declaration of invalidity is not a sale, exchange, transfer, or disposition of or  
14 dealing in property but is a division of the common ownership of the parties for purposes of:

- 15 (a) the property laws of this state;
- 16 (b) the income tax laws of this state; and
- 17 (c) the federal income tax laws.

18 (5) Premarital agreements must be enforced as provided in Title 40, chapter 2, part 6.

19 (6) The court shall seal any qualified domestic relations order, as defined in section 414(p) of the Internal  
20 Revenue Code, 26 U.S.C. 414(p), that is issued under this part except for access by the pension plan  
21 administrator of the plan for which benefits are being distributed by the order, the parties, and each party's  
22 counsel of record."

23

24 **Section 5.** Section 40-4-203, MCA, is amended to read:

25 **"40-4-203. Maintenance.** (1) In a proceeding for dissolution of marriage or legal separation or a  
26 proceeding for maintenance following dissolution of the marriage by a court that lacked personal jurisdiction over  
27 the absent spouse, the court may grant a maintenance order for either spouse only if it finds that the spouse  
28 seeking maintenance:

- 29 (a) lacks sufficient property to provide for the spouse's reasonable needs; and
- 30 (b) is unable to be self-supporting through appropriate employment or is the custodian of a child whose

1 condition or circumstances make it appropriate that the custodian not be required to seek employment outside  
2 the home.

3 (2) The maintenance order must be in amounts and for periods of time that the court considers just,  
4 without regard to marital misconduct, and after considering all relevant facts, including:

5 (a) the financial resources of the party seeking maintenance, including marital property apportioned to  
6 that party, and the party's ability to meet the party's needs independently, including the extent to which a provision  
7 for support of a child living with the party includes a sum for that party as custodian;

8 (b) the time necessary to acquire sufficient education or training to enable the party seeking maintenance  
9 to find appropriate employment;

10 (c) the standard of living established during the marriage;

11 (d) the duration of the marriage;

12 (e) the age and the physical and emotional condition of the spouse seeking maintenance; and

13 (f) the ability of the spouse from whom maintenance is sought to meet the spouse's own needs while  
14 meeting those of the spouse seeking maintenance.

15 (3) The court shall seal any qualified domestic relations order, as defined in section 414(p) of the Internal  
16 Revenue Code, 26 U.S.C. 414(p), that is issued under this part except for access by the pension plan  
17 administrator of the plan for which benefits are being distributed by the order, the parties, and each party's  
18 counsel of record."

19

20 **Section 6.** Section 40-4-204, MCA, is amended to read:

21 **"40-4-204. Child support -- orders to address health insurance -- withholding of child support.**

22 (1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall  
23 order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for the  
24 child's support, without regard to marital misconduct.

25 (2) The court shall consider all relevant factors, including:

26 (a) the financial resources of the child;

27 (b) the financial resources of the parents;

28 (c) the standard of living that the child would have enjoyed had the marriage not been dissolved;

29 (d) the physical and emotional condition of the child and the child's educational and medical needs;

30 (e) the age of the child;



1 (f) the cost of day care for the child;

2 (g) any parenting plan that is ordered or decided upon; and

3 (h) the needs of any person, other than the child, whom either parent is legally obligated to support.

4 (3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine  
5 the child support obligation by applying the standards in this section and the uniform child support guidelines  
6 adopted by the department of public health and human services pursuant to 40-5-209. The guidelines must be  
7 used in all cases, including cases in which the order is entered upon the default of a party and those in which the  
8 parties have entered into an agreement regarding the support amount. A verified representation of the defaulting  
9 parent's income, based on the best information available, may be used when a parent fails to provide financial  
10 information for use in applying the guidelines. The amount determined under the guidelines is presumed to be  
11 an adequate and reasonable support award, unless the court finds by clear and convincing evidence that the  
12 application of the standards and guidelines is unjust to the child or to any of the parties or that it is inappropriate  
13 in that particular case.

14 (b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state  
15 its reasons for that finding. Similar reasons must also be stated in a case in which the parties have agreed to a  
16 support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must  
17 include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

18 (c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's  
19 support, the court shall state its reasons for not ordering child support.

20 (d) Child support obligations established under this section are subject to the registration and processing  
21 provisions of Title 40, chapter 5, part 9.

22 (4) Each temporary or final district court judgment, decree, or order establishing a child support obligation  
23 under this title and each modification of a final order for child support must include a medical support order as  
24 provided for in Title 40, chapter 5, part 8.

25 (5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception is  
26 included in the support order, a support obligation established by judgment, decree, or order under this section,  
27 whether temporary or final, and each modification of an existing support obligation under 40-4-208 must be  
28 enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A  
29 support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides for a payment  
30 arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support

1 without need for an amendment to the support order or for any further action by the court.

2 (b) If an obligor is exempt from immediate income withholding, the district court judgment or order must  
3 include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may  
4 be subject to income-withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning  
5 statement in a judgment or order does not preclude the use of withholding procedures.

6 (c) If a support order subject to income withholding is expressed in terms of a monthly obligation, the  
7 order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay  
8 period. When an order is annualized and withheld on a weekly or biweekly basis under this section, the support  
9 withheld from the obligor may be retained by the obligee when it exceeds the obligor's monthly support obligation  
10 if the excess support is a result of annualized withholding.

11 (d) If an obligor is exempted from paying support through income withholding, the support order must  
12 include a requirement that whenever the case is receiving services under Title IV-D of the Social Security Act,  
13 support payments must be paid through the department of public health and human services as provided in  
14 40-5-909.

15 (6) (a) Each district court judgment, decree, or order that establishes paternity or establishes or modifies  
16 a child support obligation must include a provision requiring the parties to promptly file with the court and to  
17 update, as necessary, information on:

18 (i) the party's identity, residential and mailing addresses, telephone number, [social security number,]  
19 and driver's license number;

20 (ii) the name, address, and telephone number of the party's employer; and

21 (iii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or  
22 health benefit plan, the policy identification number, the names of the persons covered, and any other pertinent  
23 information regarding coverage or, if the child is not covered, information as to the availability of coverage for the  
24 child through the party's employer.

25 (b) The court shall keep the information provided under subsection (6)(a) confidential except that the  
26 information may be provided to the department of public health and human services for use in administering Title  
27 IV-D of the Social Security Act, to the parties, and to each party's counsel of record.

28 (c) The order must also require that in any subsequent child support enforcement action, upon sufficient  
29 showing that diligent effort has been made to ascertain the location of the party, the district court or the  
30 department of public health and human services, if the department is providing services under Title IV-D of the

1 Social Security Act, may consider due process requirements for notice and service of process met with respect  
2 to the party upon delivery of written notice by regular mail to the most recent address of the party or the party's  
3 employer's address reported to the court.

4 (7) A judgment, decree, or order establishing a child support obligation under this part may be modified  
5 or adjusted as provided in 40-4-208 or, if the department of public health and human services is providing  
6 services under Title IV-D of the Social Security Act, may be modified or adjusted by the department as provided  
7 for in 40-5-271 through 40-5-273, 40-5-277, and 40-5-278.

8 (8) (a) A district court judgment, decree, or order that establishes or modifies a child support obligation  
9 must include a provision requiring the child support obligation to be paid, without need for further court order:

10 (i) to the person with whom the child resides by legal order;

11 (ii) if the person with whom the child legally resides voluntarily or involuntarily relinquishes physical care  
12 and control of the child to another person, organization, or agency, to the person, organization, or agency to  
13 whom physical custody has been relinquished;

14 (iii) if any other person, organization, or agency is entitled by law, assignment, or similar reason to receive  
15 or collect the child support obligation, to the person, organization, or agency having the right to receive or collect  
16 the payment; or

17 (iv) to the court for the benefit of the minor child.

18 (b) When the department of public health and human services is providing services under Title IV-D of  
19 the Social Security Act, payment of support must be made through the department for distribution to the person,  
20 organization, or agency entitled to the payment.

21 (c) A judgment, decree, or order that omits the provision required by subsection (8)(a) is subject to the  
22 requirements of subsection (8)(a) without need for an amendment to the judgment, decree, or order or for any  
23 further action by the court.

24 (9) A judgment, decree, or order that establishes or modifies a child support obligation must include a  
25 provision that if a parent or guardian is the obligee under a child support order and is obligated to pay a  
26 contribution for the same child under 41-3-438, 41-5-1304, or 41-5-1512, the parent or guardian assigns and  
27 transfers to the department of public health and human services all rights that the parent or guardian may have  
28 to child support that are not otherwise assigned under 53-2-613.

29 (10) The court shall seal any qualified domestic relations order, as defined in section 414(p) of the  
30 Internal Revenue Code, 26 U.S.C. 414(p), that is issued under this part except for access by the pension plan

1 administrator of the plan for which benefits are being distributed by the order, the child support enforcement  
2 division, the parties, and each party's counsel of record. (Bracketed language terminates on occurrence of  
3 contingency--sec. 1, Ch. 27, L. 1999.)"

4

5 **Section 7.** Section 40-4-205, MCA, is amended to read:

6 **"40-4-205. Guardian ad litem.** (1) The court may appoint a guardian ad litem to represent the interests  
7 of a minor dependent child with respect to the child's support, parenting, and parental contact. The guardian ad  
8 litem may be an attorney. The county attorney, a deputy county attorney, if any, or the department of public health  
9 and human services or any of its staff may not be appointed for this purpose.

10 (2) The guardian ad litem has the following general duties:

11 (a) to conduct investigations that the guardian ad litem considers necessary to ascertain the facts related  
12 to the child's support, parenting, and parental contact;

13 (b) to interview or observe the child who is the subject of the proceeding;

14 (c) to make written reports to the court concerning the child's support, parenting, and parental contact;

15 (d) to appear and participate in all proceedings to the degree necessary to adequately represent the child  
16 and make recommendations to the court concerning the child's support, parenting, and parental contact; and

17 (e) to perform other duties as directed by the court.

18 (3) The guardian ad litem has access to court, medical, psychological, law enforcement, social services,  
19 and school records pertaining to the child and the child's siblings and parents or caretakers.

20 (4) The court shall enter an order for costs and fees in favor of the child's guardian ad litem. The order  
21 must be made against either or both parents, except that if the responsible party is indigent, the costs must be  
22 waived.

23 (5) The guardian ad litem shall mail the report to counsel and to any party not represented by counsel  
24 at least 10 days prior to the hearing. When consistent with state and federal law, the guardian ad litem shall make  
25 available to counsel and to any party not represented by counsel the guardian ad litem's file of underlying data  
26 and reports, complete texts of reports made to the guardian ad litem pursuant to the provisions of subsection (3),  
27 and the names and addresses of all persons whom the guardian ad litem has consulted. The guardian ad litem's  
28 report must be included in the court record and must be sealed except for access by the parties and each party's  
29 counsel of record. "

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1           **Section 8.** Section 40-4-214, MCA, is amended to read:

2           **"40-4-214. Interviews.** (1) The court may interview the child in chambers to ascertain the child's wishes  
3 as to residence and parental contact. The court may permit counsel to be present at the interview. The court shall  
4 cause a record of the interview to be made and to be part of the record in the case. The court shall seal the record  
5 of the interview except for access by the parents, guardian, or other person having custody of the child.

6           (2) The court may seek the advice of professional personnel, whether or not employed by the court on  
7 a regular basis. The advice given must be in writing and made available by the court to counsel upon request.  
8 The court shall seal any written advice provided by the professional personnel except for access by the parents,  
9 guardian, or other person having custody of the child. Counsel may examine as a witness any professional  
10 personnel consulted by the court."  
11

12           **Section 9.** Section 40-4-215, MCA, is amended to read:

13           **"40-4-215. Investigations and reports.** (1) If a parent or a court-appointed third party requests, or if  
14 the court finds that a parenting proceeding is contested, the court may order an investigation and report  
15 concerning parenting arrangements for the child. The investigator may be the child's guardian ad litem or other  
16 professional considered appropriate by the court. The department of public health and human services may not  
17 be ordered to conduct the investigation or draft a report unless the person requesting the investigation is a  
18 recipient of financial assistance, as defined in 53-4-201, or a participant in the food stamp program, as defined  
19 in 53-2-902, and all reasonable options for payment of the investigation, if conducted by a person not employed  
20 by the department, are exhausted. The department may consult with any investigator and share information  
21 relevant to the child's best interests. The cost of the investigation and report must be paid according to the final  
22 order. The cost of the educational evaluation under subsection (2)(a) must be paid by the state as provided in  
23 3-5-901.

24           (2) The court shall determine, if appropriate, the level of evaluation necessary for adequate investigation  
25 and preparation of the report, which may include one or more of the following:

- 26           (a) parenting education;  
27           (b) mediation pursuant to 40-4-301;  
28           (c) factfinding by the investigator; and  
29           (d) psychological evaluation of the parties.

30           (3) In preparing a report concerning a child, the investigator may consult any person who has information

1 about the child and the child's potential parenting arrangements. Upon order of the court, the investigator may  
2 refer the child to professional personnel for diagnosis. Except as required for children 16 years of age or older,  
3 the investigator may consult with and obtain information from medical, psychiatric, or other expert persons who  
4 have served the child in the past without obtaining the consent of the persons or entities authorized by law to  
5 grant or withhold access to the records. The child's consent must be obtained if the child is 16 years of age or  
6 older unless the court finds that the child lacks mental capacity to consent. If the requirements of subsection (4)  
7 are fulfilled, the investigator's report may be received in evidence at the hearing.

8 (4) The ~~court~~ investigator shall mail the investigator's report to counsel and to any party not represented  
9 by counsel at least 10 days prior to the hearing. When consistent with state and federal law, the investigator shall  
10 make available to counsel and to any party not represented by counsel the investigator's file of underlying data  
11 and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection  
12 (3), and the names and addresses of all persons whom the investigator has consulted. Any party to the  
13 proceeding may call the investigator and any person the investigator has consulted for cross-examination. A party  
14 may not waive the right of cross-examination prior to the hearing. The results of the investigation must be included  
15 in the court record and may, without objection, be sealed."

16

17 **Section 10.** Section 40-4-219, MCA, is amended to read:

18 **"40-4-219. Amendment of parenting plan -- mediation.** (1) The court may in its discretion amend a  
19 prior parenting plan if it finds, upon the basis of facts that have arisen since the prior plan or that were unknown  
20 to the court at the time of entry of the prior plan, that a change has occurred in the circumstances of the child and  
21 that the amendment is necessary to serve the best interest of the child. In determining the child's best interest  
22 under this section, the court may, in addition to the criteria in 40-4-212, also consider whether:

- 23 (a) the parents agree to the amendment;
- 24 (b) the child has been integrated into the family of the petitioner with consent of the parents;
- 25 (c) the child is 14 years of age or older and desires the amendment;
- 26 (d) one parent has willfully and consistently:
- 27 (i) refused to allow the child to have any contact with the other parent; or
- 28 (ii) attempted to frustrate or deny contact with the child by the other parent; or
- 29 (e) one parent has changed or intends to change the child's residence in a manner that significantly  
30 affects the child's contact with the other parent.

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

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

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

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

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

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

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

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

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

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

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

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

27 (v) deviate sexual conduct with an animal, as described in 45-2-101 and prohibited under 45-5-505;

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

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

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

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

2 (x) sexual abuse of children, as described in 45-5-625.

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

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

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

15 (i) for the duration of the military service; or

16 (ii) that continues past the end of the military service."  
17

18 **Section 11.** Section 40-4-220, MCA, is amended to read:

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

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

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



1 party; or

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

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

12

13 NEW SECTION. **Section 12. Applicability.** [This act] applies to proceedings filed after [the effective  
14 date of this act].

15

- END -