

1 HOUSE BILL NO. 728  
2 INTRODUCED BY M. CAFERRO

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR CHILD SUPPORT DURING PREGNANCY;  
5 ALLOWING A MOTHER TO OBJECT TO PATERNITY GENETIC TESTING DURING PREGNANCY; AND  
6 AMENDING SECTIONS 40-4-204, 40-5-225, 40-5-226, 40-5-232, 40-5-233, 40-6-107, 40-6-112, AND 40-6-  
7 116, MCA."

8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10  
11 Section 1. Section 40-4-204, MCA, is amended to read:

12 "40-4-204. Child support -- orders to address health insurance -- withholding of child support.

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

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

- 17 (a) the financial resources of the child;
- 18 (b) the financial resources of the parents;
- 19 (c) the standard of living that the child would have enjoyed had the marriage not been dissolved;
- 20 (d) the physical and emotional condition of the child and the child's educational and medical  
21 needs;
- 22 (e) the age of the child;
- 23 (f) the cost of day care for the child;
- 24 (g) any parenting plan that is ordered or decided upon; and
- 25 (h) the needs of any person, other than the child, whom either parent is legally obligated to  
26 support.

27 (3) (a) Whenever a court issues or modifies an order concerning child support, the court shall  
28 determine the child support obligation by applying the standards in this section and the uniform child support

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

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

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

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

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

21 (5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception  
22 is included in the support order, a support obligation established by judgment, decree, or order under this  
23 section, whether temporary or final, and each modification of an existing support obligation under 40-4-208  
24 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or  
25 4. A support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides for a  
26 payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of  
27 support without need for an amendment to the support order or for any further action by the court.

28 (b) If an obligor is exempt from immediate income withholding, the district court judgment or order

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

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

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

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

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

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

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

23 (b) The court shall keep the information provided under subsection (6)(a) confidential except that  
24 the information may be provided to the department of public health and human services for use in administering  
25 Title IV-D of the Social Security Act, to the parties, and to each party's counsel of record. The information  
26 provided under subsection (6)(a) may be included on the case registry and vital statistics reporting form filed  
27 with the court pursuant to 40-5-908(1).

28 (c) The order must also require that in any subsequent child support enforcement action, upon

1 sufficient showing that diligent effort has been made to ascertain the location of the party, the district court or  
 2 the department of public health and human services, if the department is providing services under Title IV-D of  
 3 the Social Security Act, may consider due process requirements for notice and service of process met with  
 4 respect to the party upon delivery of written notice by regular mail to the most recent address of the party or the  
 5 party's employer's address reported to the court.

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

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

- 13 (i) to the person with whom the child resides by legal order;
- 14 (ii) if the person with whom the child legally resides voluntarily or involuntarily relinquishes physical  
 15 care and control of the child to another person, organization, or agency, to the person, organization, or agency  
 16 to whom physical custody has been relinquished;
- 17 (iii) if any other person, organization, or agency is entitled by law, assignment, or similar reason to  
 18 receive or collect the child support obligation, to the person, organization, or agency having the right to receive  
 19 or collect the payment; or
- 20 (iv) to the court for the benefit of the minor child.

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

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

27 (9) A judgment, decree, or order that establishes or modifies a child support obligation must  
 28 include a provision that if a parent or guardian is the obligee under a child support order and is obligated to pay

1 a contribution for the same child under 41-3-438, 41-5-1304, or 41-5-1512, the parent or guardian assigns and  
2 transfers to the department of public health and human services all rights that the parent or guardian may have  
3 to child support that are not otherwise assigned under 53-2-613.

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

8 (11) A proceeding for child support may be commenced before the birth of the child and an order or  
9 judgment awarding support from the month of the child's conception, as determined by a physician, may be  
10 entered before or after the child's birth. (Bracketed language terminates on occurrence of contingency--sec. 1,  
11 Ch. 27, L. 1999.)"

12

13 **Section 2.** Section 40-5-225, MCA, is amended to read:

14 **"40-5-225. Notice of financial responsibility -- temporary and final support obligations --**  
15 **administrative procedure.** (1) In the absence of an existing support order, when the requirements of this  
16 section are met, the department may enter an order requiring a child's parent or parents to pay an amount each  
17 month for the support of the child. An order issued under this section must include a medical support order as  
18 required by 40-5-208.

19 (2) The department shall begin an action to establish a support order by serving a notice of  
20 financial responsibility on the parent or parents. The notice must include a statement:

21 (a) of the names of the child or the projected date of birth if the child has not yet been born, the  
22 obligee, and, if different than the obligee, the child's guardian or caretaker relative;

23 (b) of the dollar amount of the support obligation to be paid each month for the child, if any;

24 (c) that the monthly support obligation, if any, is effective on the date of service of the notice,  
25 unless an objection is made and a hearing is requested, and may be collected during the proceeding that  
26 establishes the support obligation by any remedy available to the department for the enforcement of child  
27 support obligations;

28 (d) that in addition to or independent of child support, the parent or parents may be ordered to

1 provide for the child's medical support needs;

2 (e) that any party may request a hearing to contest the amount of child support shown in the notice  
3 or to contest the establishment of a medical support order;

4 (f) that if a party does not file a request for a hearing in a timely manner, support, including  
5 medical support, will be ordered as declared in the notice or in accordance with the child support guidelines  
6 adopted under 40-5-209;

7 (g) that if a party does request a hearing, the other parties may refuse to participate in the  
8 proceedings and that the child support and medical support order will be determined using the information  
9 available to the department or provided at the hearing;

10 (h) that a party's refusal to participate is equivalent to consenting to entry of a child support and  
11 medical support order consistent with the department's determination; and

12 (i) that the parties are entitled to a fair hearing under 40-5-226.

13 (3) (a) The department may enter an order requiring a child's parent or parents to pay an amount  
14 each month for the temporary support of the child pending entry of a support order by the district court if:

15 (i) a support action is pending in district court and a temporary or permanent support obligation  
16 has not been ordered; or

17 (ii) a paternity action is pending and there is clear and convincing evidence of paternity based on  
18 paternity genetic tests or other evidence.

19 (b) The temporary support order must include a medical support order as required by 40-5-208.

20 (c) A temporary support order may be modified by the department as provided in 40-5-272, 40-5-  
21 273, 40-5-277, and 40-5-278 but remains a temporary support order subject to the provisions of this section.

22 (4) The department shall begin an action to establish a temporary support order by serving a  
23 notice of temporary support obligation on the parent or parents. In addition to the statements required in  
24 subsection (2), the notice must include a statement that:

25 (a) a party may request a hearing to show that a temporary support obligation is inappropriate  
26 under the circumstances; and

27 (b) the temporary support order will terminate upon the entry of a final support order or an order of  
28 nonpaternity. If the final order is retroactive, any amount paid for a particular period under the temporary

1 support order must be credited against the amounts due under the final order for the same period, but excess  
2 amounts may not be refunded. If an order of nonpaternity is issued or if the final support order states that  
3 periodic support obligation is not proper, the obligee shall refund to the obligor any improper amounts paid  
4 under the temporary support order, plus any costs that the obligor incurs in recovering the amount to be  
5 refunded.

6 (5) (a) If a temporary support order is entered or if proceedings are commenced under this section  
7 for a married obligor, the department shall vacate any support order or dismiss any proceeding under this part if  
8 it finds that the parties to the marriage have:

- 9 (i) reconciled without the marriage having been dissolved;  
10 (ii) made joint application to the department to vacate the order or dismiss the proceeding; and  
11 (iii) provided proof that the marriage has been resumed.

12 (b) The department may not vacate a support order or dismiss a proceeding under this subsection  
13 (5) if it determines that the rights of a third person or the child are affected. The department may issue a new  
14 notice of temporary support obligation under this section if the parties subsequently separate.

15 (6) A notice of financial responsibility and the notice of temporary support obligation may be  
16 served either by certified mail or in the manner prescribed for the service of a summons in a civil action in  
17 accordance with the Montana Rules of Civil Procedure.

18 (7) If prior to service of a notice under this section the department has sufficient financial  
19 information, the department's allegation of the obligor's monthly support responsibility, whether temporary or  
20 final, must be based on the child support guidelines established under 40-5-214. If the information is unknown  
21 to the department, the allegations of the parent's or parents' monthly support responsibility must be based on  
22 the greater of:

23 (a) the maximum amount of public assistance that could be payable to the child under Title 53 if  
24 the child was otherwise eligible for assistance; or

25 (b) the child's actual need as alleged by the custodial parent, guardian, or caretaker of the child.

26 (8) (a) A party who objects to a notice of financial responsibility or notice of temporary support  
27 obligation may file a written request for a hearing with the department:

28 (i) within 20 days from the date of service of a notice of financial responsibility; and

1 (ii) within 10 days from the date of service of a notice of temporary support obligation.

2 (b) If the department receives a timely request for a hearing, it shall conduct one under 40-5-226.

3 (c) If the department does not receive a timely request for a hearing, it shall order the parent or  
4 parents to pay child support, if any, and to provide for the child's medical needs as stated in the notice. The  
5 child support obligation must be the amount stated in the notice or determined in accordance with the child  
6 support guidelines adopted under 40-5-209.

7 (9) If the department is unable to enter an obligation in accordance with the child support  
8 guidelines because of default of a party, the department may, upon notice to the parties to the original order,  
9 substitute a support order made in accordance with the guidelines for the defaulted order.

10 (10) After establishment of an order under this section, the department may initiate a subsequent  
11 action on the original order to establish a child support or medical support obligation for another child of the  
12 same parents.

13 (11) A child support and medical support order under subsection (1) is effective as of the date of  
14 service of a notice of financial responsibility on the parent or parents and may be collected by any remedy  
15 available to the department for the enforcement of child support obligations. A final order is retroactive to the  
16 date of service of the notice of financial responsibility as provided in this subsection, except that the final order  
17 may also determine child support for a prior period as provided in 40-5-226(3).

18 (12) A child support and medical support order under subsection (1) continues until the child  
19 reaches 18 years of age or until the child's graduation from high school, whichever occurs later, but not later  
20 than the child's 19th birthday unless the child is emancipated by court order at an earlier time. A temporary  
21 support obligation established under subsection (3) continues until terminated as provided in subsection (5) or  
22 until the temporary support order is superseded by a final order, judgment, or decree."  
23

24 **Section 3.** Section 40-5-226, MCA, is amended to read:

25 **"40-5-226. Administrative hearing -- nature -- place -- time -- determinations -- failure to appear**  
26 **-- entry of final decision and order.** (1) The administrative hearing is defined as a "contested case".

27 (2) If a hearing is requested, it must initially be conducted by teleconference methods and is  
28 subject to the Montana Administrative Procedure Act. At the request of a party or upon a showing that the



1 party's case was substantially prejudiced by the lack of an in-person hearing, the hearings officer shall grant a  
2 de novo in-person hearing.

3 (3) The hearings officer shall determine the liability and responsibility, if any, of the parent or  
4 parents under the notice and shall enter a final decision and order in accordance with the determination. The  
5 order may award support from the ~~date of~~:

6 (a) month of the child's birth conception, as determined by a physician, if paternity was established  
7 under 40-5-231 through 40-5-238 or under Title 40, chapter 6, part 1, subject to the limitation in 40-6-108(3)(b);

8 (b) date of the parties' separation if support is initially established under 40-5-225; or

9 (c) date of notice to the parties of a support modification request under 40-5-273.

10 (4) (a) Except as provided in subsection (4)(b), if the parent or parents fail to appear at the hearing  
11 or to timely file a request for a hearing, the hearings officer, upon a showing of valid service, shall enter a  
12 default decision and order declaring the amount stated in the notice to be final.

13 (b) In a multiple party proceeding under 40-5-225, if one party files a timely request for hearing, the  
14 matter must be set for hearing. Notice of the hearing must be served on the parties. If a party refuses to appear  
15 for the hearing or participate in the proceedings, the hearings officer shall determine child support and medical  
16 support orders based on the notice, information available to the department, and evidence provided at the  
17 hearing by the appearing parties. A party's refusal to appear is a consent to entry of child and medical support  
18 orders consistent with the hearings officer's determination. However, the default order may not be for more than  
19 the support requested in the notice unless the hearings officer finds that the evidence requires a larger amount.

20 (5) In a hearing to determine financial responsibility, whether temporary or final, and in any  
21 proceeding to modify support under 40-5-272, 40-5-273, 40-5-277, and 40-5-278, the monthly support  
22 responsibility must be determined in accordance with the evidence presented and with reference to the uniform  
23 child support guidelines adopted by the department under 40-5-209. The hearings officer is not limited to the  
24 amounts stated in the notice. The guidelines must be used in all cases, including cases in which the order is  
25 entered upon the default of a party and those in which the order is entered upon the parties' consent. A verified  
26 representation of a defaulting parent's income, based on the best information available, may be used when a  
27 parent fails to provide financial information for use in applying the guidelines. The amount determined under the  
28 guidelines is presumed to be an adequate and reasonable support award, unless the hearings officer finds by

1 clear and convincing evidence that the application of the guidelines is unjust to the child or to any of the parties  
2 or is inappropriate in a particular case. If the hearings officer finds that the guideline amount is unjust or  
3 inappropriate in a particular case, the hearings officer shall state the reasons for finding that the application of  
4 the guidelines is unjust to the child or a party or is inappropriate in that particular case. Similar findings must  
5 also be made in a case in which the parties have agreed to a support amount that varies from the guideline  
6 amount. The hearings officer may vary the application of the guidelines to limit the obligor's liability for past  
7 support to the proportion of expenses already incurred that the hearings officer considers just. Findings that  
8 rebut and vary the guideline amount must include a statement of the amount of support that would have  
9 ordinarily been ordered under the guidelines.

10 (6) In a hearing to enforce a support order or to establish paternity under this chapter, the  
11 department shall send a copy of the notice of hearing to the obligee by regular mail addressed to the obligee's  
12 last-known address. The obligee may attend and observe the hearing as a nonparty. This subsection does not  
13 limit participation of an obligee who is a party to the proceedings or who is called as a witness to testify.

14 (7) (a) Within 60 days after the hearing has been concluded, any posthearing briefs are received,  
15 and all the evidence submitted, except for good cause, the hearings officer shall enter a final decision and  
16 order. The determination of the hearings officer constitutes a final agency decision, subject to judicial review  
17 under 40-5-253 and the provisions of the Montana Administrative Procedure Act. A copy of the final decision  
18 must be delivered or mailed to each party, each party's attorney, and the obligee if the obligee is not a party.

19 (b) A child support or medical support obligation established under this section is subject to the  
20 registration and processing provisions of part 9 of this chapter.

21 (8) A child support or medical support order entered under this part must contain a statement that  
22 the order is subject to review and modification by the department upon the request of the department or a party  
23 under 40-5-272, 40-5-273, 40-5-277, and 40-5-278 when the department is providing services under IV-D for  
24 the enforcement of the order.

25 (9) A support debt determined pursuant to this section is subject to collection action without further  
26 necessity of action by the hearings officer.

27 (10) A child support or medical support obligation determined under this part by reason of the  
28 obligor's failure to request a hearing under this part or failure to appear at a scheduled hearing may be vacated,

1 upon the motion of an obligor, by the hearings officer within the time provided and upon a showing of any of the  
2 grounds enumerated in the Montana Rules of Civil Procedure. When issuing a support order, the department  
3 shall consider whether any of the exceptions to immediate income withholding found in 40-5-411 apply, and, if  
4 an exception is applicable, the department shall include the exception in the support order.

5 (11) (a) Unless the hearings officer makes a written exception under 40-5-315 or 40-5-411 and the  
6 exception is included in the support order, each order establishing a child support obligation, whether temporary  
7 or final, and each modification of an existing child support order under this part is enforceable by immediate or  
8 delinquency income withholding, or both, under Title 40, chapter 5, part 4. A support order that omits that  
9 provision or that provides for a payment arrangement inconsistent with this section is nevertheless subject to  
10 withholding for the payment of support without need for an amendment of the support order or for any further  
11 action by the hearings officer.

12 (b) If an obligor is excepted from paying support through income withholding, the support order  
13 must include a requirement that whenever a party to the case is receiving IV-D services, support payments  
14 must be paid through the department as provided in 40-5-909.

15 (12) (a) If the department establishes paternity or establishes or modifies a child support obligation,  
16 the department's order must include a provision requiring each party other than the department to promptly file  
17 with the department and to update, as necessary, information on:

- 18 (i) identity of the party;  
19 [(ii) social security number;]  
20 (iii) residential and mailing addresses;  
21 (iv) telephone number;  
22 (v) driver's license number;  
23 (vi) name, address, and telephone number of employer; and  
24 (vii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier  
25 or health benefit plan, the policy identification number, the name of the persons covered, and any other  
26 pertinent information regarding coverage or, if the child is not covered, information as to the availability of  
27 coverage for the child through the obligor's and obligee's employer.

28 (b) The order must further direct that in a subsequent child support enforcement action, upon

1 sufficient showing that diligent effort has been made to ascertain the location of the party, the department's due  
2 process requirements for notice and service of process are met with respect to the party upon delivery of  
3 written notice by regular mail to the most recent address of the party or the party's employer's address reported  
4 to the department.

5 (c) The department shall keep the information provided under subsection (12)(a) confidential  
6 except as necessary for purposes of Title IV-D of the Social Security Act.

7 (13) The hearings officer may:

8 (a) compel obedience to the hearings officer's orders, judgments, and process and to subpoenas  
9 and orders issued by the department, including income-withholding orders issued pursuant to 40-5-415;

10 (b) compel the attendance of witnesses at administrative hearings;

11 (c) compel obedience of subpoenas for paternity genetic tests;

12 (d) compel the production of accounts, books, documents, and other evidence;

13 (e) punish for civil contempt. Contempt authority does not prevent the department from proceeding  
14 in accordance with the provisions of 2-4-104.

15 (f) compel the production of information requested by the department or another IV-D agency  
16 under 40-5-443.

17 (14) A contempt occurs whenever:

18 (a) a person acts in disobedience of any lawful order, judgment, or process of the hearings officer  
19 or of the department;

20 (b) a person compelled by subpoena to appear and testify at an administrative hearing or to  
21 appear for genetic paternity tests fails to do so;

22 (c) a person compelled by subpoena duces tecum to produce evidence at an administrative  
23 hearing fails to do so;

24 (d) an obligor or obligee subject to a discovery order issued by the hearings officer fails to comply  
25 with discovery requests;

26 (e) a person or entity compelled by administrative subpoena from the department or another IV-D  
27 agency to produce financial information or other information needed to establish paternity or to establish,  
28 modify, or enforce a support order fails to do so;

1 (f) a payor under an order to withhold issued pursuant to 40-5-415 fails to comply with the  
2 provisions of the order. In the case of a payor under an income-withholding order, a separate contempt occurs  
3 each time that income is required to be withheld and paid to the department and the payor fails to take the  
4 required action.

5 (g) a payor or labor union fails to provide information to the department or another IV-D agency  
6 when requested under 40-5-443[; or]

7 [(h) a financial institution uses information provided by the department pursuant to 40-5-924 for any  
8 other purpose without the authorization of the department].

9 (15) Before initiating a contempt proceeding, the department shall give the alleged contemnor  
10 notice by personal service or certified mail of the alleged infraction and a reasonable opportunity to comply with  
11 the law and to cure the alleged infraction. In order to initiate a contempt proceeding, an affidavit of the facts  
12 constituting a contempt must be submitted to the hearings officer, who shall review it to determine whether  
13 there is cause to believe that a contempt has been committed. If cause is found, the hearings officer shall issue  
14 a citation requiring the alleged contemnor to appear and show cause why the alleged contemnor should not be  
15 determined to be in contempt and required to pay a penalty of not more than \$500 for each count of contempt.  
16 The citation, along with a copy of the affidavit, must be served upon the alleged contemnor either by personal  
17 service or by certified mail. All other interested persons may be served a copy of the citation by first-class mail.

18 (16) At the time and date set for hearing, the hearings officer shall proceed to hear witnesses and  
19 take evidence regarding the alleged contempt and any defenses to the contempt. If the alleged contemnor fails  
20 to appear for the hearing, the hearing may proceed in the alleged contemnor's absence. If the hearings officer  
21 finds the alleged contemnor in contempt, the hearings officer may impose a penalty of not more than \$500 for  
22 each count found. The hearings officer's decision constitutes a final agency decision, subject to judicial review  
23 under 40-5-253 and subject to the provisions of Title 2, chapter 4.

24 (17) An amount imposed as a penalty may be collected by any remedy available to the department  
25 for the enforcement of child support obligations, including warrant for distraint pursuant to 40-5-247, income  
26 withholding pursuant to Title 40, chapter 5, part 4, and state debt offset, pursuant to Title 17, chapter 4, part 1.  
27 The department may retain any penalties collected under this section to offset the costs of administrative  
28 hearings conducted under this chapter.

1           (18)    The penalties charged and collected under this section must be paid into the state treasury to  
2 the credit of the child support enforcement division special revenue fund and must be accompanied by a  
3 detailed statement of the amounts collected. (Bracketed language terminates on occurrence of contingency--  
4 sec. 1, Ch. 27, L. 1999.)"

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6           **Section 4.** Section 40-5-232, MCA, is amended to read:

7           **"40-5-232. Establishment of paternity -- notice of parental responsibility -- contents.** (1) When  
8 the paternity of a child has not been legally established under the provisions of Title 40, chapter 6, part 1, or  
9 otherwise, the department may proceed to establish paternity under the provisions of 40-5-231 through 40-5-  
10 237. An administrative hearing held under the provisions of 40-5-231 through 40-5-237 is a contested case  
11 within the meaning of 2-4-102 and is subject to the provisions of Title 2, chapter 4, except as otherwise  
12 provided in 40-5-231 through 40-5-237.

13           (2)    It is presumed to be in the best interest of a child to legally determine and establish paternity. A  
14 presumption under this subsection may be rebutted by a preponderance of the evidence.

15           (3)    In a proceeding under 40-5-231 through 40-5-237, if an alleged father consents in writing to  
16 entry of an order declaring the alleged father to be the legal father of a child, the department may enter an order  
17 establishing legal paternity. As a part of a consent to entry of an order declaring paternity, the department shall  
18 provide information to the parents regarding the rights and responsibilities of an alleged father consenting to  
19 entry of an order declaring paternity. A consent to entry of an order declaring paternity is binding on a parent  
20 who executes it, whether or not the parent is a minor.

21           (4)    Full faith and credit must be given to a determination of paternity made by any other state,  
22 whether presumed by law, established through voluntary acknowledgment, or established by administrative or  
23 judicial processes.

24           (5)    The department shall commence proceedings before or after the child's birth to establish  
25 paternity by serving on an alleged father a notice of parental responsibility. The department may not serve the  
26 notice unless it has:

27           (a)    a sworn statement claiming that the alleged father is the child's natural father;

28           (b)    evidence of the existence of a presumption of paternity under 40-6-105; or

1 (c) any other reasonable cause to believe that the alleged father is the child's natural father.

2 (6) Regardless of whether the department has grounds to or intends to commence a paternity  
3 proceeding against the alleged father, when the child support enforcement division in a case under Title IV-D of  
4 the Social Security Act receives a written claim from a child's mother that names a person as the alleged  
5 natural father of the child, the department shall promptly take reasonable steps to locate and notify the alleged  
6 father of the existence of the claim. The notification must be given to the alleged father in a manner that places  
7 the demands of individual privacy above the merits of public disclosure. The notification must include the name  
8 of the mother and the date of birth or the projected date of birth if the child has not yet been born.

9 (7) Service on the alleged father of the notice of parental responsibility must be made as provided  
10 in 40-5-231(2). The notice must include:

11 (a) an allegation that the alleged father is the natural father of the child involved;

12 (b) the child's name and place and date of birth or the projected date of birth if the child has not yet  
13 been born;

14 (c) the name of the child's mother and the name of the person or agency having custody of the  
15 child, if other than the mother;

16 (d) the probable time or period of time during which conception took place;

17 (e) a statement that if the alleged father fails to timely deny the allegation of paternity, the question  
18 of paternity may be resolved against the alleged father without further notice;

19 (f) a statement that if the alleged father timely denies the allegation of paternity:

20 (i) the alleged father is subject to compulsory paternity genetic testing;

21 (ii) a paternity genetic test may result in a presumption of paternity; and

22 (iii) upon receipt of the paternity genetic test results, if the alleged father continues to deny  
23 paternity, the alleged father may request the department to refer the matter to district court for a determination  
24 of paternity.

25 (8) The alleged father may file a written denial of paternity with the department within 20 days after  
26 service of the notice of parental responsibility.

27 (9) When there is more than one alleged father of a child, the department may serve a notice of  
28 parental responsibility on each alleged father in the same consolidated proceeding or in separate proceedings.

1 Failure to serve notice on an alleged father does not prevent the department from serving notice on any other  
2 alleged father of the same child."

3

4 **Section 5.** Section 40-5-233, MCA, is amended to read:

5 **"40-5-233. Establishment of paternity -- administrative hearing -- subpoena -- compulsory**  
6 **paternity genetic testing.** (1) (a) Paternity genetic testing may be requested by the alleged father, the mother,  
7 or the child through the child's custodian and may be made in conjunction with or in addition to a notice the  
8 department issues under 40-5-232. The request must be in writing and must be supported by a sworn  
9 statement of the requester that includes:

10 (i) an allegation of paternity and sufficient facts to establish a reasonable probability that the  
11 alleged father engaged in an act with the child's mother during the probable time of the child's conception that  
12 could have resulted in the child's conception; or

13 (ii) a denial of paternity and sufficient facts to establish a reasonable probability of the  
14 nonexistence of contact between the alleged father and the child's mother that could have resulted in the child's  
15 conception.

16 (b) If the department determines after a review of a sworn statement that there are sufficient facts  
17 to establish a reasonable probability of paternity or nonpaternity as claimed by the requesting party, the  
18 department shall issue a subpoena ordering the alleged father, the mother, or the child through the child's  
19 custodian to submit to paternity genetic testing. If the mother objects to testing while pregnant, a test of the  
20 mother or the child must be delayed until after the birth of the child.

21 (c) A pending request for paternity genetic testing under this section does not prevent the  
22 department from issuing a notice of parental responsibility under 40-5-232.

23 (d) Denial of a request for paternity genetic testing under this subsection (1) is not a finding of  
24 nonpaternity and does not prevent the issuance of a notice under 40-5-232. A denial does not affect the  
25 completion of any pending action initiated under 40-5-232.

26 (2) (a) The department may order an alleged father to appear for an administrative hearing when:

27 (i) the department determines that the sworn statement provided in subsection (1) does not  
28 contain sufficient facts to issue a genetic test subpoena and that additional examination of witnesses or



1 evidence is necessary; or

2 (ii) the department receives a timely filed written denial of paternity in response to a notice under  
3 40-5-232.

4 (b) The hearing must initially be conducted by teleconferencing methods and is subject to the  
5 provisions of the Montana Administrative Procedure Act. At the request of a party, the hearings officer shall, at  
6 the close of a teleconference hearing, grant a de novo in-person hearing.

7 (c) The department may issue a subpoena ordering the alleged father to submit to paternity  
8 genetic testing if the testimony and other supplementary evidence demonstrate a reasonable probability:

9 (i) that the alleged father engaged in an act with the child's mother during the probable time of the  
10 child's conception that could have resulted in the child's conception; or

11 (ii) when the alleged father's paternity is presumed under 40-6-105, of the nonexistence of contact  
12 between the alleged father and the child's mother that could have resulted in the child's conception.

13 (d) For the purposes of this subsection (2), a reasonable probability of an act during the possible  
14 time of conception may be established by affidavit of the child's mother without need for the mother to appear at  
15 the hearing.

16 (3) Previous paternity actions under this part that did not result in a subpoena for paternity genetic  
17 testing do not prevent the department from recommencing a paternity action if the department believes it can  
18 establish any of the factors listed in subsection (2)(c) or (2)(d).

19 (4) When there is reasonable cause to suggest that a genetic test sample of a person submitting to  
20 a genetic test was not the sample of the alleged father, mother, or child, an additional hearing may be held. The  
21 scope of the hearing is limited to questions involving the genetic testing or the chain of custody at the genetic  
22 testing site. The hearings officer may order retesting of any party.

23 (5) If the department does not receive a timely filed written denial of paternity or if an alleged father  
24 fails to appear at a scheduled hearing or for a scheduled paternity genetic test, the department may enter an  
25 order declaring the alleged father the legal father of the child. The order will take effect within 10 days after  
26 entry of the default unless the alleged father before the 10th day presents good cause for failure to make a  
27 timely denial or for failure to appear at the hearing or to undergo paternity genetic testing. The department may  
28 not enter an order under this section if there is more than one alleged father unless the default applies to only

1 one of them and all others have been excluded by the results of paternity genetic testing. An order issued under  
2 the provisions of this section may be set aside as provided in 40-5-235(3).

3 (6) If the rights of others and the interests of justice so require, the department may apply to any  
4 district court under the provisions of 2-4-104 for an order compelling an alleged father to submit to paternity  
5 genetic testing. The court shall hear the matter as expeditiously as possible. If the court finds reasonable cause  
6 to believe that the alleged father is the natural or presumed father of the child, the court shall enter an order  
7 compelling the alleged father to submit to a paternity genetic test. Reasonable cause may be established by  
8 affidavit of the child's mother."  
9

10 **Section 6.** Section 40-6-107, MCA, is amended to read:

11 **"40-6-107. Determination of father and child relationship -- who may bring action.** (1) Any  
12 interested party may bring an action for the purpose of determining the existence or nonexistence of the father  
13 and child relationship presumed pursuant to 40-6-105.

14 (2) An action to determine the existence of the father and child relationship with respect to a child  
15 who has no presumed father under 40-6-105 may be brought by the child, the mother or personal  
16 representative of the child, the department of public health and human services or its appropriate local affiliate,  
17 the personal representative or a parent of the mother if the mother has died, a person alleged or alleging to be  
18 the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a  
19 minor.

20 (3) Regardless of its terms, an agreement, other than an agreement approved by the court in  
21 accordance with 40-6-114(2), between an alleged or presumed father and the mother or child does not bar an  
22 action under this section.

23 (4) ~~If an action under this section is brought before the birth of the child, all proceedings must be~~  
24 ~~stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony. A~~  
25 proceeding to adjudicate parentage may be commenced before the birth of the child and an order or judgment  
26 may be entered before birth of the child."  
27

28 **Section 7.** Section 40-6-112, MCA, is amended to read:

1           **"40-6-112. Paternity tests.** (1) The court may, and upon request of a party shall, require the child,  
2 mother, or alleged father to submit to paternity tests. If the mother objects to testing while pregnant, a test of the  
3 mother or the child must be delayed until after the birth of the child. The tests ~~shall~~ must be performed by an  
4 expert qualified as an examiner of blood types, appointed by the court.

5           (2) The court, upon reasonable request by a party, shall order that independent tests be performed  
6 by other experts qualified as examiners of blood types.

7           (3) In all cases the court shall determine the number and qualifications of the experts."  
8

9           **Section 8.** Section 40-6-116, MCA, is amended to read:

10           **"40-6-116. Judgment or order.** (1) The judgment or order of the court determining the existence or  
11 nonexistence of the parent and child relationship is determinative for all purposes.

12           (2) If the judgment or order of the court is at variance with the child's birth certificate, the court shall  
13 order that a substitute birth certificate be issued under 40-6-123.

14           (3) (a) The judgment or order may contain any other provision directed against the appropriate  
15 party to the proceeding concerning the custody and guardianship of the child, visitation privileges with the child,  
16 the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest  
17 of the child.

18           (b) Except when the financial responsibility of a responsible parent is in the process of being  
19 determined pursuant to the administrative procedure provided in 40-5-225, the judgment or order must contain  
20 a provision concerning the duty of child support.

21           (c) The judgment or order may direct the father to pay the reasonable expenses of the mother's  
22 pregnancy and confinement.

23           (4) (a) Support judgments or orders ordinarily must be for periodic payments, which may vary in  
24 amount.

25           (b) In the best interest of the child, a lump-sum payment or the purchase of an annuity may be  
26 ordered in lieu of periodic payments of support.

27           (c) The court may award support from the month of the child's conception, as determined by a  
28 physician, but may limit the father's liability for past support of the child to the proportion of the expenses

1 already incurred that the court considers just.

2 (5) In determining the amount to be paid by a parent for support of the child and the period during  
3 which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts,  
4 including:

- 5 (a) the needs of the child, including medical needs;
- 6 (b) the standard of living and circumstances of the parents;
- 7 (c) the relative financial means of the parents;
- 8 (d) the earning ability of the parents;
- 9 (e) the need and capacity of the child for education, including higher education;
- 10 (f) the age of the child;
- 11 (g) the financial resources and the earning ability of the child;
- 12 (h) the responsibility of the parents for the support of others;
- 13 (i) the value of services contributed by the custodial parent;
- 14 (j) the cost of day care for the child; and
- 15 (k) any custody arrangement that is ordered or decided upon.

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

26 (b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall  
27 state its reasons for finding that the application of the standards and guidelines is unjust to the child or a party  
28 or is inappropriate in that particular case. Similar reasons must also be stated in a case in which the parties

1 have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the  
2 guideline amount must include a statement of the amount of support that would have ordinarily been ordered  
3 under the guidelines.

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

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

8 (7) The judgment or order, whether temporary or final, concerning child support and each  
9 modification of a judgment or order for child support must include a medical support order as defined in 40-5-  
10 804.

11 (8) (a) Unless an exception is found under 40-5-315 or 40-5-411 and the exception is included in  
12 the support order, a support obligation established by judgment, decree, or order under this section, whether  
13 temporary or final, and each modification of an existing support obligation made under 40-6-118 must be  
14 enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A  
15 support order that omits the exception or that provides for a payment arrangement inconsistent with this section  
16 is nevertheless subject to withholding for the payment of support without need for an amendment to the support  
17 order or for any further action by the court.

18 (b) If a support order subject to income withholding is expressed in terms of a monthly obligation,  
19 the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular  
20 pay period.

21 (c) If an obligor is excepted from paying support through income withholding, the support order  
22 must include as part of the order a requirement that whenever the case is receiving services under Title IV-D of  
23 the Social Security Act, support payments must be paid through the department of public health and human  
24 services as provided in 40-5-909.

25 (9) (a) If the district court establishes paternity or establishes or modifies a child support obligation,  
26 the judgment, decree, or order must include a provision requiring the parties to promptly file with the court and  
27 to update, as necessary, information on:

28 (i) identity of the party;

