

1 HOUSE BILL NO. 209

2 INTRODUCED BY J. GILLETTE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING FAMILY LAW PROVISIONS RELATING
5 TO PARENTS AND CHILDREN; REQUIRING THE COURT TO CONSIDER ADDITIONAL FACTORS WHEN A
6 PARENT WISHES TO AMEND A PARENTING PLAN DUE TO A RELOCATION; STANDARDIZING
7 LANGUAGE DESCRIBING MOVING A CHILD; PROVIDING THAT ALLEGED SEXUAL INTERCOURSE
8 WITHOUT CONSENT RESULTING IN THE BIRTH OF A CHILD IS NOT INDEPENDENTLY GROUNDS FOR
9 TERMINATING THE PARENT-CHILD LEGAL RELATIONSHIP WHERE THE PERSON ACCUSED OF THE
10 ACT HAS SUBSEQUENTLY FORMED A PARENTAL RELATIONSHIP WITH THE CHILD; PROVIDING THAT
11 AN EMERGENCY HEARING ON A PROTECTION ORDER MUST BE GRANTED WHEN A CHILD IS
12 INVOLVED; AND AMENDING SECTIONS 40-4-217, 40-4-219, 40-6-1001, 40-6-1003, AND 40-15-202, MCA."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15
16 **Section 1.** Section 40-4-217, MCA, is amended to read:

17 **"40-4-217. Notice of intent to move.** (1) A parent who intends to ~~change residence~~ relocate shall,
18 unless precluded under 40-4-234, provide written notice to the other parent.

19 (2) (a) If a parent's ~~change in residence~~ relocation will significantly affect the child's contact with the
20 other parent, the parent who intends to ~~change residence~~ relocate shall, pursuant to 40-4-219, file a motion for
21 amendment of the residential schedule and a proposed revised residential schedule with the court that adopted
22 the residential schedule or the court to which jurisdiction or venue over the child has been transferred. The
23 motion must be served personally or by certified mail on the other parent and served pursuant to the Montana
24 Rules of Civil Procedure on the parent's attorney of record, if the parent has an attorney of record, not less than
25 30 days before the proposed ~~change in residence~~ relocation.

26 (b) The notice pursuant to this subsection (2) is not sufficient unless it contains the following
27 statement: "The relocation of the child may be permitted and the proposed revised residential schedule may be
28 ordered by the court without further proceedings unless within 21 days you file a response and alternate revised

1 residential schedule with the court and serve your response on the person proposing the move and all other
2 persons entitled by the court order to residential time or visitation with the child."

3 (3) The parent who receives service of a motion to amend the parenting plan pursuant to this section
4 has 21 days after service of the motion to file a response. If the parent receiving notice objects to the proposed
5 revised residential schedule, the responding parent shall include an alternate proposed revised residential
6 schedule with the response. The response must be served as provided for by the Montana Rules of Civil
7 Procedure on the parent proposing to ~~change residence-relocate~~ or on the parent's attorney of record if the
8 parent has an attorney of record.

9 (4) If a parent is properly served with a motion to amend the parenting plan pursuant to this section,
10 failure to file a response within the 21-day period constitutes acceptance of the proposed revised residential
11 schedule.

12 (5) A person entitled to file an objection to the proposed relocation of the child may file the objection
13 regardless of whether the person has received proper notice."
14

15 **Section 2.** Section 40-4-219, MCA, is amended to read:

16 **"40-4-219. Amendment of parenting plan -- mediation.** (1) The court may in its discretion amend a
17 prior parenting plan if it finds, upon the basis of facts that have arisen since the prior plan or that were unknown
18 to the court at the time of entry of the prior plan, that a change has occurred in the circumstances of the child
19 and that the amendment is necessary to serve the best interest of the child.

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

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

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

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

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

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

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

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

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

6 (ii) the reasons of each person for seeking or opposing the relocation;

7 (iii) whether the parent seeking to relocate has demonstrated a willingness to promote the relationship
8 between the child and the nonrelocating parent; and

9 (iv) whether reasonable alternatives to relocation are available to the parent seeking to relocate.

10 (2) A court may modify a de facto parenting arrangement in accordance with the factors set forth in
11 40-4-212.

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

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

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

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

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

24 (8) (a) If a parent or other person residing in that parent's household has been convicted of any of the
25 crimes listed in subsection (8)(b), the other parent or any other person who has been granted rights to the child
26 pursuant to court order may file an objection to the current parenting order with the court. The parent or other
27 person having rights to the child pursuant to court order shall give notice to the other parent of the objection as
28 provided by the Montana Rules of Civil Procedure, and the other parent has 21 days from the notice to

1 respond. If the parent who receives notice of objection fails to respond within 21 days, the parenting rights of
2 that parent are suspended until further order of the court. If that parent responds and objects, a hearing must be
3 held within 30 days of the response.

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

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

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

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

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

9 (v) deviate sexual conduct with an animal, as described in 45-2-101 and prohibited under 45-8-218;

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

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

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

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

14 (x) sexual abuse of children, as described in 45-5-625; and

15 (xi) strangulation of a partner or family member, as described in 45-5-215.

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

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

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

- 1 (i) for the duration of the military service; or
 2 (ii) that continues past the end of the military service."

3

4 **Section 3.** Section 40-6-1001, MCA, is amended to read:

5 **"40-6-1001. Petition for termination -- criteria -- process.** (1) A Except as provided in subsection
 6 (3), a district court may order a termination of the parent-child legal relationship after the filing of a petition
 7 pursuant to this section alleging the factual grounds for termination as provided for in subsection (2).

8 (2) Grounds for termination pursuant to this section exist when the parent of a child:

9 (a) is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent
 10 youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred
 11 and, as a result of the sexual intercourse, the child is born; or

12 (b) at a fact-finding hearing is found by clear and convincing evidence, except as provided in the
 13 federal Indian Child Welfare Act, if applicable, to have committed an act of sexual intercourse without consent,
 14 sexual assault, or incest that caused the child to be conceived.

15 (3) The circumstances described in subsection (2) do not independently constitute grounds for
 16 termination if the petition is filed after the parent of a child has established a bonded and dependent relationship
 17 with the child that is parental in nature.

18 (4) The court shall consider the best interest of the child as provided in 40-4-212 in reaching its
 19 decision and may appoint a guardian ad litem to represent the best interest of the child.

20 ~~(3)~~(5) The court's order must state the reasons for the decision.

21 ~~(4)~~(6) The victim of the crime or act may file a petition pursuant to this section. If the victim is a minor,
 22 the victim's parent or guardian may file a petition on the victim's behalf.

23 ~~(5)~~(7) The respondent to the petition has the right to counsel in all proceedings held pursuant to the
 24 petition.

25 ~~(6)~~(8) Before termination of the parent-child legal relationship may be ordered, the court shall
 26 determine whether the provisions of 40-6-1002 and 40-6-1003 have been followed.

27 ~~(7)~~(9) There is no right to a jury trial at proceedings held to consider the termination of a parent-child
 28 legal relationship.

1 ~~(8)~~(10) (a) An order for the termination of the parent-child legal relationship divests the child and the
2 parent of all legal rights, powers, immunities, duties, and obligations with respect to each other as provided in
3 Title 40, chapter 6, part 2, and Title 41, chapter 3, part 2, except:

4 (i) the right of the child to inherit from the parent; and

5 (ii) that nothing in this section may be construed to relieve the parent whose rights are terminated as
6 provided in this part of any child support obligations as provided in Title 40, chapters 4 and 5.

7 (b) An order or decree entered pursuant to this part may not disentitle a child to any benefit due to the
8 child from a third person, including but not limited to an Indian tribe, an agency, a state, or the United States."

9

10 **Section 4.** Section 40-6-1003, MCA, is amended to read:

11 "**40-6-1003. Service by publication -- summons -- form.** (1) Before service by publication is
12 authorized in a proceeding under this part, the person filing the petition pursuant to 40-6-1001~~(4)~~(6) shall file
13 with the court an affidavit stating that, after due diligence, the parent whose rights are subject to termination
14 cannot be identified or found and stating the diligent efforts made to identify, locate, and serve the person. The
15 affidavit is sufficient evidence of the diligence of any inquiry made by the person filing the petition. The affidavit
16 may be combined with another affidavit filed by the person filing the petition. Upon complying with this
17 subsection, the person filing the petition may obtain an order for the service to be made on the party by
18 publication. The order may be issued by either the judge or the clerk of the court.

19 (2) Service by publication must be made by publishing notice three times, once each week for 3
20 successive weeks:

21 (a) in a newspaper in a community in which the publication can reasonably be calculated to be seen
22 by the person whose parental rights are subject to termination, based on the last-known address or
23 whereabouts, if known, of the person if in the state of Montana; or

24 (b) if no last-known address exists, if the last-known address is outside Montana, or if the identity of
25 the person whose parental rights are subject to termination is unknown, in a newspaper in the county in which
26 the action is pending, if a newspaper is published in the county, or, if a newspaper is not published in the
27 county, in a newspaper published in an adjoining county and having a general circulation in the county.

28 (3) Service by publication is complete on the date of the last publication required by subsection (2).

- 1 (4) A summons required under this part must:
- 2 (a) be directed to the parent whose parental rights are subject to termination; and
- 3 (b) be signed by the clerk of court, be under the seal of the court, and contain:
- 4 (i) the name of the court and the cause number;
- 5 (ii) the initials of the child who is the subject of the proceedings;
- 6 (iii) the name of the person filing the petition pursuant to 40-6-1001~~(4)~~(6);
- 7 (iv) the timeframe within which an interested person shall appear;
- 8 (v) a statement in general terms of the nature of the proceedings, including the date and place of birth
- 9 of the child, the date and place of the hearing, and the phone number of the clerk of the court in which the
- 10 hearing is scheduled; and
- 11 (vi) notification apprising the person served by publication that failure to appear at the hearing will
- 12 constitute a denial of interest in the child, which may result, without further notice of the proceeding or any
- 13 subsequent proceeding, in judgment by default being entered for the relief requested in the petition."
- 14

15 **Section 5.** Section 40-15-202, MCA, is amended to read:

16 **"40-15-202. Order of protection -- hearing -- evidence.** (1) A hearing must be conducted within 20

17 days from the date that the court issues a temporary order of protection. The hearing date may be continued at

18 the request of either party for good cause or by the court. If the hearing date is continued, the temporary order

19 of protection must remain in effect until the court conducts a hearing. At the hearing, the court shall determine

20 whether good cause exists for the temporary order of protection to be continued, amended, or made

21 permanent.

22 (2) The respondent may request an emergency hearing before the end of the 20-day period by filing

23 an affidavit that demonstrates that the respondent has an urgent need for the emergency hearing and must be

24 granted when the respondent is a minor or is the parent or guardian of a minor. An emergency hearing must be

25 set within 3 working days of the filing of the affidavit.

26 (3) The order of protection may not be made mutually effective by the court. The respondent may

27 obtain an order of protection from the petitioner only by filing an application for an order of protection and

28 following the procedure described in this chapter.

1 (4) (a) Except as provided in subsection (4)(b), evidence concerning a victim's sexual conduct is not
2 admissible in a hearing under this section.

3 (b) Evidence of a victim's past sexual conduct with the offender or evidence of specific instances of
4 the victim's sexual activity to show the origin of semen, pregnancy, or disease may be admitted in a hearing
5 under this section only if that sexual conduct is at issue in the hearing.

6 (5) If a respondent proposes to offer evidence subject to subsection (4)(b), the trial judge shall order a
7 separate hearing to determine whether the proposed evidence is admissible under subsection (4)(b)."

8 - END -