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*** Bill No. ***

Introduced By *****

By Request of the Department of Military Affairs

A Bill for an Act entitled: "AN ACT TO PRECLUDE A COURT, EXCEPT UNDER CERTAIN CONDITIONS, FROM CONSIDERING MILITARY SERVICE AS A DETRIMENT TO THE BEST INTEREST OF A CHILD AND TO ESTABLISH CUSTODY, VISITATION, AND EXPEDITED HEARING PROCEDURES WHEN A PARENT RECEIVES MILITARY SERVICE ORDERS, AMENDING SECTIONS 40-4-212, 40-4-216, 40-4-219, 40-4-228, MCA."

Be it enacted by the Legislature of the State of Montana:

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

"40-4-212. Best interest of child. (1) The court shall determine the parenting plan in accordance with the best interest of the child. The court shall consider all relevant parenting factors, which may include but are not limited to:

- (a) the wishes of the child's parent or parents;
- (b) the wishes of the child;

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(c) the interaction and interrelationship of the child with the child's parent or parents and siblings and with any other person who significantly affects the child's best interest;

(d) the child's adjustment to home, school, and community;

(e) the mental and physical health of all individuals involved;

(f) physical abuse or threat of physical abuse by one parent against the other parent or the child;

(g) chemical dependency, as defined in 53-24-103, or chemical abuse on the part of either parent;

(h) continuity and stability of care;

(i) developmental needs of the child;

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

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

(l) whether the child has frequent and continuing contact with both parents, which is considered to be in the

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

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

(2) A court may not construe military service against or to the detriment of a parent performing military service in determining the best interest of the child, unless it relates to conduct resulting in an other than honorable, bad conduct or dishonorable discharge. "Military service" is defined at 10-1-1003.

~~(2)~~(3) A de facto parenting arrangement, in the absence of a prior parenting decree, does not require the child's parent or parents to prove the factors set forth in 40-4-219.

~~(3)~~(4) The following are rebuttable presumptions and apply unless contrary to the best interest of the child:

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

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

{Internal References to 40-4-212:

40-4-213	40-4-213	40-4-219	40-4-219
40-4-220	40-4-220	40-4-233	40-6-412

}

Section 2. Section 40-4-216, MCA, is amended to read:

"40-4-216. Hearings. (1) Parenting plan proceedings shall receive priority in being set for hearing.

(2) Upon motion of a parent who has received military service orders, the court shall, for good cause shown, hold an expedited hearing in custody and visitation matters instituted under this section if the military service of the parent has a material effect on the parent's ability, or anticipated ability, to appear in person at a hearing scheduled in an unexpedited manner. "Military service" is defined at 10-1-1003.

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~~(2)~~(3) The court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court considers necessary to determine the best interest of the child.

~~(3)~~(4) The court, without a jury, shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interest, the court may exclude the public from a parenting hearing but may admit any person who has a direct and legitimate interest in the particular case or a legitimate educational or research interest in the work of the court.

~~(4)~~(5) If the court finds it necessary that the record of any interview, report, investigation, or testimony in a parenting proceeding be kept secret to protect the child's welfare, the court may make an appropriate order sealing the record."

{Internal References to 40-4-216: None }

Section 3. Section 40-4-219, MCA, is amended to read:

"40-4-219. Amendment of parenting plan -- mediation.

(1) The court may in its discretion amend a prior parenting plan if it finds, upon the basis of facts that have arisen since the prior plan or that were unknown to the court at

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the time of entry of the prior plan, that a change has occurred in the circumstances of the child and that the amendment is necessary to serve the best interest of the child. In determining the child's best interest under this section, the court may, in addition to the criteria in 40-4-212, also consider whether:

(a) the parents agree to the amendment;

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

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

(d) one parent has willfully and consistently:

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

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

(e) one parent has changed or intends to change the child's residence in a manner that significantly affects the child's contact with the other parent.

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

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

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

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

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

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

(8) (a) If a parent or other person residing in that parent's household has been convicted of any of the crimes

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) (a) Except as provided in (b), any court-ordered or de facto modification of a parenting plan, based in whole or in part on any military service orders of a parent shall be temporary and shall revert back to the previous

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parenting plan at the end of the military service. If a motion for change of custody is filed after a parent returns from military service, the court shall not consider a parent's absence due to that military service in a best interest of the child determination, unless it relates to conduct resulting in an other than honorable, bad conduct or dishonorable discharge.

(b) A parent who has performed or is performing military service may consent to a permanent modification of a parenting plan that continues past the end of military service.

(c) "Military service" is defined at 10-1-1003."

{*Internal References to 40-4-219:*

40-4-212 40-4-212 40-4-212 40-4-217
}

Section 4. Section 40-4-228, MCA, is amended to read:

"40-4-228. Parenting and visitation matters between natural parent and third party. (1) In cases when a nonparent seeks a parental interest in a child under 40-4-211 or visitation with a child, the provisions of this chapter apply unless a separate action is pending under Title 41, chapter 3.

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(2) A court may award a parental interest to a person other than a natural parent when it is shown by clear and convincing evidence that:

(a) the natural parent has engaged in conduct that is contrary to the child-parent relationship; and

(b) the nonparent has established with the child a child-parent relationship, as defined in 40-4-211, and it is in the best interests of the child to continue that relationship.

(3) For purposes of an award of visitation rights under this section, a court may order visitation based on the best interests of the child.

(4) For purposes of this section, voluntarily permitting a child to remain continuously in the care of others for a significant period of time so that the others stand in loco parentis to the child is conduct that is contrary to the parent-child relationship.

(5) It is not necessary for the court to find a natural parent unfit before awarding a parental interest to a third party under this section.

(6) If the parent with visitation rights receives military service orders that involve moving a substantial distance from the parent's residence or otherwise have a

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material effect on the parent's ability to exercise
visitation rights, the court may delegate the parent's
visitation rights, or a portion thereof, to a family member
with a close and substantial relationship to the minor
child for the duration of the parent's absence, if
delegating visitation rights is in the best interests of
the child. "Military service" is defined at 10-1-1003."

{*Internal References to 40-4-228: None* }

-END-