

SENATE BILL NO. 318

INTRODUCED BY D. LENZ

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CHILD CUSTODY LAWS; ESTABLISHING CHILD ABUSE AND DOMESTIC VIOLENCE TRAINING REQUIREMENTS FOR JUDGES, STANDING MASTERS, AND GUARDIANS AD LITEM IN CHILD CUSTODY PROCEEDINGS; PROVIDING FOR CONSIDERATION OF DOMESTIC VIOLENCE AND CHILD ABUSE IN CHILD CUSTODY PROCEEDINGS; REVISING THE RIGHTS OF CHILDREN IN CHILD CUSTODY PROCEEDINGS; PROVIDING DEFINITIONS; SUPERSEDING THE UNFUNDED MANDATE LAWS; AMENDING SECTIONS 3-1-1501, 3-1-1502, 40-4-205, 40-4-212, 40-4-219, AND 40-4-227, MCA; AND PROVIDING EFFECTIVE DATES."

WHEREAS, as Montanans we see the streams, mountains, minerals, and land as our best resource, but it is the children of Montana that are our most valuable resource. Protecting our children is the most important thing we can do for our future; and

WHEREAS, as Montanans we declare the family unit as sacred and support and preserve the family as the single most powerful influence for ensuring the healthy social development and mental and physical well-being of Montana's children; and

WHEREAS, as Montanans we recognize that Montana children have a constitutional right to speak their truth and be respected as individual citizens with rights to safety, security, and freedom from domestic violence.

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

NEW SECTION. **Section 1. Purpose.** The purpose of [sections 1 and 2] is to:

- (1) increase the priority given to child safety in a child custody proceeding;
- (2) strengthen the ability of courts to:
 - (a) recognize and adjudicate domestic violence and child abuse allegations based on valid,

1 admissible evidence; and

2 (b) enter orders that protect and minimize the risk of harm to children; and

3 (3) ensure that professionals involved in child custody proceedings containing domestic violence
4 or child abuse allegations receive trauma-informed and culturally appropriate training on the dynamics, signs,
5 and impacts of domestic violence and child abuse, including child sexual abuse.

6

7 **NEW SECTION. Section 2. Orientation course -- annual training.** (1) Under the supervision of the
8 supreme court, a course of study must be presented as soon as is practical following each general election.
9 Actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of
10 registration and books and other materials must be paid to the elected or appointed judge or standing master
11 for attending the course by the county in which the judge or standing master holds or will hold court and must
12 be charged against that county.

13 (2) There must be two mandatory annual training sessions supervised by the supreme court for all
14 elected and appointed judges or standing masters. One of the training sessions may be held in conjunction with
15 the Montana magistrates' association convention. Actual and necessary travel expenses, as defined and
16 provided in 2-18-501 through 2-18-503, and the costs of registration and books and other materials must be
17 paid to the elected or appointed judges or standing masters for attending the sessions by the county in which
18 the judge or standing master holds or will hold court and must be charged against that county.

19 (3) Each judge or standing master shall attend the training sessions provided for in subsection (2).
20 Failure to attend disqualifies the judge or standing master from office and creates a vacancy in the office.
21 However, the supreme court may excuse a judge or standing master from attendance because of illness, a
22 death in the family, or any other good cause.

23 (4) A judge or standing master presiding over child custody proceedings shall complete:

24 (a) not less than 20 hours of initial orientation training; and

25 (b) not less than 15 hours of ongoing training every 2 years.

26 (5) The training required under subsection (4):

27 (a) must focus solely on domestic and sexual violence and child abuse, including:

28 (i) child sexual abuse;

- (ii) physical abuse;
- (iii) emotional abuse;
- (iv) coercive control;
- (v) implicit and explicit bias, including biases relating to parents with disabilities;
- (vi) trauma;
- (vii) long-term and short-term impacts of domestic violence and child abuse on children; and
- (viii) victim and perpetrator behavior patterns and relationship dynamics within the cycle of violence;
- (b) must be provided by:
 - (i) a professional with substantive experience in assisting survivors of domestic violence or child abuse, including a victim service provider as defined in 34 U.S.C. 12291; and
 - (ii) if possible, a survivor of domestic violence or child physical or sexual abuse;
 - (c) must rely on evidence-based and peer-reviewed research by recognized experts in the types of abuse described in subsection (5)(a);
 - (d) may not include theories, concepts, or belief systems unsupported by the research described in subsection (5)(c); and
 - (e) must be designed to improve the ability of courts to:
 - (i) recognize and respond to child physical abuse, child sexual abuse, domestic violence, and trauma in all family victims, particularly children; and
 - (ii) make appropriate custody recommendations that prioritize child safety and well-being and are culturally sensitive and appropriate for diverse communities.

Section 3. Section 3-1-1501, MCA, is amended to read:

"3-1-1501. Definitions. As used in this part, the following definitions apply:

- (1) (a) "Child custody proceeding" means a dissolution, separation, visitation, paternity, support, custody, or civil protection order proceeding between the parents of a child involving the care or custody of the child.
- (b) The term does not include:
 - (i) a child protection, abuse, or neglect proceeding under Title 41, chapter 3;

(ii) a juvenile justice proceeding under Title 41, chapter 5; or
(iii) a child placement proceeding in which the state or a tribal government, a designee of the state or tribal government, or a contractor of the state or tribal government is a party to the proceeding.

(2) "Commission" means the commission on courts of limited jurisdiction established by the supreme court.

~~(2)~~ (3) "Judge" means:

- (a) a municipal court judge;
- (b) a justice of the peace; ~~or~~
- (c) a city judge; or
- (d) a district court judge."

Section 4. Section 3-1-1502, MCA, is amended to read:

"3-1-1502. Training and certification of judges and standing masters. Except as provided in 3-1-1503, a judge or standing master selected for a term of office may not assume the functions of the office unless the judge or standing master has filed with the county clerk and recorder in the jurisdiction a certificate of completion of a course of education and training prescribed by the commission."

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

"40-4-205. Guardian ad litem -- definitions. (1) The court may appoint a guardian ad litem to represent the interests of a minor dependent child with respect to the child's ~~support, parenting, and parental contact~~ best interest pursuant to 40-4-212. The guardian ad litem ~~may~~ must be an attorney. The county attorney, a deputy county attorney, if any, or the department of public health and human services or any of its staff may not be appointed for this purpose.

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

- (a) to work independently of other parties to establish an unbiased representation of the child's best interest;
- (b) to conduct investigations that the guardian ad litem considers necessary to ascertain the facts related to the child's support, parenting, and parental contact best interests according to 40-4-212;

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

(e) (d) to make written reports to the court concerning the child's ~~support, parenting, and parental~~
~~contact~~ best interest;

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

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

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

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

(5) The guardian ad litem shall mail the report to counsel and to any party not represented by
counsel at least 10 days prior to the hearing.

(6) The guardian ad litem appointed to represent the interests of a minor dependent child in child
custody proceedings is required to demonstrate to the clerk of court verification of:

(a) not less than 20 hours of initial training; and

(b) not less than 15 hours of ongoing training every 2 years.

(7) The training required under subsection (6):

(a) must focus solely on domestic and sexual violence and child abuse, including:

(i) child sexual abuse;

(ii) physical abuse;

(iii) emotional abuse;

(iv) coercive control;

(v) implicit and explicit bias, including biases relating to parents with disabilities;

(vi) trauma;

(vii) long-term and short-term impacts of domestic violence and child abuse on children; and

(viii) victim and perpetrator behavior patterns and relationship dynamics within the cycle of violence;

(b) must be provided by:

(i) a professional with substantive experience in assisting survivors of domestic violence or child abuse, including a victim service provider as defined in 34 U.S.C. 12291; and

(ii) if possible, a survivor of domestic violence or child physical or sexual abuse;

(c) must rely on evidence-based and peer-reviewed research by recognized experts in the types of abuse described in subsection (7)(a);

(d) may not include theories, concepts, or belief systems unsupported by the research described in subsection (7)(c); and

(e) must be designed to improve the ability of courts to:

(i) recognize and respond to child physical abuse, child sexual abuse, domestic violence, and trauma in all family victims, particularly children; and

(ii) make appropriate custody recommendations that prioritize child safety and well-being and are culturally sensitive and appropriate for diverse communities, reflecting the child's best interest.

(8) (a) As used in this section the term "child custody proceeding" means a dissolution, separation, visitation, paternity, support, custody, or civil protection order proceeding between the parents of a child involving the care or custody of the child.

(b) The term does not include:

(i) a child protection, abuse, or neglect proceeding under Title 41, chapter 3;

(ii) a juvenile justice proceeding under Title 41, chapter 5; or

(iii) a child placement proceeding in which the state or a tribal government, a designee of the state or tribal government, or a contractor of the state or tribal government is a party to the proceeding."

Section 6. Section 40-4-212, MCA, is amended to read:

"40-4-212. Best interest of child. (1) The court shall determine the parenting plan in accordance with the best interest of the child and shall provide the child an opportunity to be heard, which may be under the provisions of 40-4-214, regarding any judicial or administrative proceeding directly affecting 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, including the right to request an audience before the court;
- (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, psychological, or financial abuse or threat of physical, psychological, or financial 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 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) In a proceeding in which a parent is found to be a predominant aggressor of domestic violence under 46-6-311(2)(b) or the offending parent of child abuse under Title 41, chapter 3, or a perpetrator of violence under Title 45, chapter 5, relevant admissible evidence, including any abuse or neglect proceeding materials discoverable pursuant to 41-3-431 and evidence of past sexual or domestic violence committed by the predominant aggressor under 46-6-311(2)(b), must be considered, including but not limited to:
- (i) any past or current protection or restraining orders against the accused parent;

(ii) sexual violence abuse protection orders against the accused parent;

(iii) arrests of the accused parent for domestic violence, sexual violence, or child abuse; and

(iv) convictions of the accused parent for domestic violence, sexual violence, or child abuse.

(b) Expert testimony from a court-appointed or outside professional relating to the alleged abuse may be admitted only if the professional possesses demonstrated expertise ~~and~~ OR clinical experience in working with victims of domestic violence or child abuse, including child sexual abuse, that is not solely of a forensic nature as verified by a brief account of the professional's education, qualifications, and previous experience submitted to the court.

(c) Expert testimony may not include diagnoses or opinions about any party not personally evaluated and may not offer parenting plan recommendations when both parents and children have not been personally evaluated. In situations in which all parties are unable to be evaluated, recommendations and opinions must be limited to the individuals evaluated.

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

(3) (4) 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.

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

(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."

Section 7. 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-on~~ the basis of facts that have arisen since the prior plan or that were

unknown to the court at 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.

(a) In determining how a proposed change will affect the child, the court shall consider the potential impact of the change on the criteria in 40-4-212 and the fundamental rights of the child under 40-4-227 and whether:

(i) the parents agree to the amendment;

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

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

(iv) one parent has willfully and consistently:

(A) been found in contempt for violations of the parenting plan that undermines the best interest of the child and that have created the change in circumstances;

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

~~(B)~~ (C) attempted to frustrate or deny contact with the child by the other parent.

(b) If 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, the court shall consider, in addition to all the criteria in 40-4-212 and subsection (1)(a):

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

(ii) the reasons of each parent for seeking or opposing the change of residence;

(iii) whether the parent seeking to change the child's residence has demonstrated a willingness to promote the relationship between the child and the nonrelocating parent; and

(iv) whether reasonable alternatives to the proposed change of residence are available to the parent seeking to relocate.

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

(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)(a)(iv) or (8).

(4) The court may amend the prior parenting plan based on subsection (1)(b) to provide a new

1 residential schedule for parental contact with the child and to apportion transportation costs between the
2 parents.

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

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

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

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

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

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

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

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

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

23 (v) deviate sexual conduct with an animal or dead human body, as described in 45-2-101 and
24 prohibited under 45-8-218;

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

26 (vii) child sex trafficking, as described in 45-5-711;

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

28 (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; and

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

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

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

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

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

Section 8. Section 40-4-227, MCA, is amended to read:

"40-4-227. Rights of parents and children -- policy -- findings -- definitions. (1) It is the policy of the state of Montana:

(a) to recognize the constitutionally protected rights of parents and the integrity of the family unit;

(b) to recognize a child's rights, including constitutionally protected rights, including rights:

(i) to be protected from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, exploitation, and sexual abuse while in the care of a parent, legal guardian, or other person who has a duty to care for the child;

(ii) when the child is capable of forming the child's own views, to express those views freely in all matters affecting the child and for the child's views to be given due weight in accordance with the child's age

1 and maturity;

2 (iii) to refuse a relationship with an unfit parent, sibling, or extended family member; and

3 (iv) to all fundamental rights unless those rights are specifically precluded by laws that enhance
4 their protection; and

5 (c) to ensure that the best interests of the child are met in parenting proceedings.

6 (2) The legislature finds:

7 (a) that while it is in the best interests of a child to maintain a relationship with a natural parent, a
8 natural parent's inchoate interest in the child requires constitutional protection only when the parent has
9 demonstrated a timely commitment to the responsibilities of parenthood; and

10 (b) that a parent's constitutionally protected interest in the parental control of a child should yield to
11 the best interests of the child when the parent's conduct is contrary to the child-parent relationship.

12 (3) In a child custody proceeding, a court may not, solely in order to improve a deficient
13 relationship with the other parent of a child, remove the child from or restrict contact between the child and a
14 parent or litigating party:

15 (a) who is competent, protective, and not physically or sexually abusive; and

16 (b) with whom the child is bonded or to whom the child is attached.

17 (4) In a child custody proceeding, a court may not order a reunification treatment unless:

18 (a) there is generally accepted and scientifically valid proof of the safety, effectiveness, and
19 therapeutic value of the reunification treatment; and

20 (b) the reunification treatment is not predicated on cutting off a child from a parent with whom the
21 child is bonded or to whom the child is attached.

22 (5) An order in a child custody proceeding to remediate the resistance of a child to have contact
23 with a violent or abusive parent must primarily address the behavior of that parent or the contributions of that
24 parent to the resistance of the child before ordering the other parent of the child to take steps to potentially
25 improve the relationship of the child with the parent with whom the child resists contact.

26 (6) As used in this section, the following definitions apply:

27 (a) (i) "Child custody proceeding" means a dissolution, separation, visitation, paternity, support,
28 custody, or civil protection order proceeding between the parents of a child involving the care or custody of the

1 child.

2 (ii) The term does not include:

3 (A) a child protection, abuse, or neglect proceeding under Title 41, chapter 3;

4 (B) a juvenile justice proceeding under Title 41, chapter 5; or

5 (C) a child placement proceeding in which the state or a tribal government, a designee of the state
6 or tribal government, or a contractor of the state or tribal government is a party to the proceeding.

7 (b) "Reunification treatment" means a treatment or therapy aimed at reuniting or reestablishing a
8 relationship between a child and an estranged or rejected parent or other family member of the child."

9

10 NEW SECTION. Section 9. Repealer. The following section of the Montana Code Annotated is
11 repealed:

12 3-10-203. Orientation course -- annual training.

13

14 NEW SECTION. Section 10. Unfunded mandate laws superseded. The provisions of [this act]
15 expressly supersede and modify the requirements of 1-2-112 through 1-2-116.

16

17 NEW SECTION. Section 11. Codification instruction. [Sections 1 and 2] are intended to be codified
18 as an integral part of Title 3, chapter 1, part 15, and the provisions of Title 3, chapter 1, part 15, apply to
19 [sections 1 and 2].

20

21 NEW SECTION. Section 12. Effective dates. (1) Except as provided in subsection (2), [this act] is
22 effective on passage and approval.

23 (2) [Sections 2, 4, and 5] are effective July 1, 2025.

24 - END -