

SENATE BILL NO. 318

INTRODUCED BY D. LENZ, S. DEMAROIS, S. FYANT, J. SOOKTIS

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,

(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 ~~may~~ 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;