

HOUSE BILL NO. 578

INTRODUCED BY RICE, MERCER, SPAETH, MCDONOUGH

IN THE HOUSE

FEBRUARY 4, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 16, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 17, 1989	PRINTING REPORT.
FEBRUARY 18, 1989	SECOND READING, DO PASS.
FEBRUARY 21, 1989	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 99; NOES, 0.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 28, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 17, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 18, 1989	SECOND READING, CONCURRED IN.
MARCH 21, 1989	THIRD READING, CONCURRED IN. AYES, 49; NOES, 0.
	RETURNED TO HOUSE.

MARCH 22, 1989

IN THE HOUSE

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 578
2 INTRODUCED BY Rico Mercer Spaulding
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A
5 PROCEDURE WHEREBY A CUSTODIAL PARENT OR GUARDIAN CAN FILE AN
6 OBJECTION WITH THE COURT TO THE VISITATION RIGHTS OR CUSTODY
7 RIGHT OF THE OTHER PARENT IF THE OTHER PARENT HAS BEEN
8 CONVICTED OF CERTAIN CRIMES; PROVIDING THAT THE CONVICTED
9 PARENT HAS THE BURDEN OF PROVING THAT HIS VISITATION OR
10 CUSTODY IS IN THE BEST INTEREST OF THE CHILD OR CHILDREN;
11 AND AMENDING SECTIONS 40-4-217 AND 40-4-219, MCA."
12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

15 "40-4-217. Visitation. (1) A parent not granted
16 custody of the child is entitled to reasonable visitation
17 rights unless the court finds, after a hearing, that
18 visitation would endanger seriously the child's physical,
19 mental, moral, or emotional health.

20 (2) In a proceeding for dissolution of marriage or
21 legal separation, the court may, upon the petition of a
22 grandparent, grant reasonable visitation rights to the
23 grandparent of the child if the court finds, after a
24 hearing, that the visitation would be in the best interest
25 of the child.

1 (3) The court may modify an order granting or denying
2 visitation rights whenever modification would serve the best
3 interest of the child; but the court ~~shall~~ may not restrict
4 a parent's visitation rights unless it finds that the
5 visitation would endanger seriously the child's physical,
6 mental, moral, or emotional health or unless the provisions
7 of subsection (6) apply.

8 (4) So long as a noncustodial parent who has
9 visitation rights under a decree or a custody agreement
10 remains a resident of this state, a resident custodial
11 parent shall, before changing the child's residence to
12 another state and unless the noncustodial parent has given
13 written consent, give written notice to the noncustodial
14 parent, as provided in subsection (5).

15 (5) The written notice required by subsection (4) must
16 be served personally or given by certified mail not less
17 than 30 days before the proposed change in residence. Proof
18 of service must be filed with the court that issued the
19 custody order. The purpose of the notice is to allow the
20 noncustodial parent to seek a modification of his visitation
21 schedule.

22 (6) (a) If a noncustodial parent has been convicted of
23 any of the crimes listed in subsection (6)(c), the custodial
24 parent or any other person who has been granted custody of
25 the child pursuant to court order may file an objection to

visitation with the court. The custodial parent or other person having custody shall give notice to the noncustodial parent of the objection as provided by the Montana Rules of Civil Procedure, and the noncustodial parent shall have 20 days from the notice to respond. If the noncustodial parent fails to respond within 20 days, the visitation rights of the noncustodial parent are suspended until further order of the court. If the noncustodial parent responds and objects, a hearing must be held within 30 days of the response.

(b) The noncustodial parent has the burden at the hearing to prove that visitation by the noncustodial parent does not seriously endanger the child's physical, mental, moral, or emotional health and that the modification of visitation is not in the best interest of the child.

(c) This subsection (6) 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) incest, as described in 45-5-507;

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

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

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

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

"40-4-219. Modification. (1) The court may in its discretion modify a prior custody decree if it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interest of the child and if it further finds that:

(a) the custodian agrees to the modification;

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

(c) the child's present environment endangers seriously his physical, mental, moral, or emotional health and the harm likely to be caused by a change of environment is outweighed by its advantages to him;

(d) the child is 14 years of age or older and desires the modification;

(e) the custodian willfully and consistently:

(i) refuses to allow the child to have any contact with the noncustodial parent; or

(ii) attempts to frustrate or deny the noncustodial parent's exercise of visitation rights; or

(f) the custodial parent has changed or intends to change the child's residence to another state.

(2) The court shall presume the custodian is not acting in the child's best interest if the custodian does any of the acts specified in subsection (1)(e) or (6).

(3) The court may modify the prior decree based on subsection (1)(f) to provide a new visitation schedule and to apportion transportation costs between the parents.

(4) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

(5) A custody decree may be modified upon the death of the custodial parent pursuant to 40-4-221.

(6) (a) If a parent has been convicted of any of the crimes listed in subsection (6)(c), the other parent or any other person who has been granted custody of the child pursuant to court order may file an objection to the current custody order with the court. The parent or other person having custody shall give notice to the convicted parent of the objection as provided by the Montana Rules of Civil Procedure, and the convicted parent shall have 20 days from the notice to respond. If the convicted parent fails to respond within 20 days, the custody rights of the convicted

parent are suspended until further order of the court. If the convicted parent responds and objects, a hearing must be held within 30 days of the response.

(b) The convicted parent has the burden at the hearing to prove that custody by the convicted parent does not seriously endanger the child's physical, mental, moral, or emotional health and that the modification of custody is not in the best interest of the child.

(c) This subsection (6) applies to the following crimes:

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

(ii) mitigated deliberate homicide, as described in 45-5-503;

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

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

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

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

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

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

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 578

INTRODUCED BY RICE, MERCER, SPAETH, MCDONOUGH

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A PROCEDURE WHEREBY A CUSTODIAL PARENT OR GUARDIAN CAN FILE AN OBJECTION WITH THE COURT TO THE VISITATION RIGHTS OR CUSTODY RIGHT OF THE OTHER PARENT IF THE OTHER PARENT HAS BEEN CONVICTED OF CERTAIN CRIMES; PROVIDING THAT THE CONVICTED PARENT HAS THE BURDEN OF PROVING THAT HIS VISITATION OR CUSTODY IS IN THE BEST INTEREST OF THE CHILD OR CHILDREN; AND AMENDING SECTIONS 40-4-217 AND 40-4-219, MCA."

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

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

"40-4-217. Visitation. (1) A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health.

(2) In a proceeding for dissolution of marriage or legal separation, the court may, upon the petition of a grandparent, grant reasonable visitation rights to the grandparent of the child if the court finds, after a hearing, that the visitation would be in the best interest of the child.

(3) The court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child; but the court ~~shall~~ may not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health or unless the provisions of subsection (6) apply.

(4) So long as a noncustodial parent who has visitation rights under a decree or a custody agreement remains a resident of this state, a resident custodial parent shall, before changing the child's residence to another state and unless the noncustodial parent has given written consent, give written notice to the noncustodial parent, as provided in subsection (5).

(5) The written notice required by subsection (4) must be served personally or given by certified mail not less than 30 days before the proposed change in residence. Proof of service must be filed with the court that issued the custody order. The purpose of the notice is to allow the noncustodial parent to seek a modification of his visitation schedule.

(6) (a) If a noncustodial parent has been convicted of any of the crimes listed in subsection (6)(c), the custodial parent or any other person who has been granted custody of the child pursuant to court order may file an objection to

visitation with the court. The custodial parent or other person having custody shall give notice to the noncustodial parent of the objection as provided by the Montana Rules of Civil Procedure, and the noncustodial parent shall have 20 days from the notice to respond. If the noncustodial parent fails to respond within 20 days, the visitation rights of the noncustodial parent are suspended until further order of the court. If the noncustodial parent responds and objects, a hearing must be held within 30 days of the response.

(b) The noncustodial parent has the burden at the hearing to prove that visitation by the noncustodial parent does not seriously endanger the child's physical, mental, moral, or emotional health and that the modification of visitation is not in the best interest of the child.

(c) This subsection (6) 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) incest, as described in 45-5-507;

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

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

(VIII) DOMESTIC ABUSE OF THE TYPE DESCRIBED IN 45-5-206(1)(A);

~~(viii)~~ (IX) sexual abuse of children, as described in 45-5-625."

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

"40-4-219. Modification. (1) The court may in its discretion modify a prior custody decree if it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interest of the child and if it further finds that:

(a) the custodian agrees to the modification;

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

(c) the child's present environment endangers seriously his physical, mental, moral, or emotional health and the harm likely to be caused by a change of environment is outweighed by its advantages to him;

(d) the child is 14 years of age or older and desires the modification;

(e) the custodian willfully and consistently:

(i) refuses to allow the child to have any contact with the noncustodial parent; or

(ii) attempts to frustrate or deny the noncustodial parent's exercise of visitation rights; or

(f) the custodial parent has changed or intends to change the child's residence to another state.

(2) The court shall presume the custodian is not acting in the child's best interest if the custodian does any of the acts specified in subsection (1)(e) or (6).

(3) The court may modify the prior decree based on subsection (1)(f) to provide a new visitation schedule and to apportion transportation costs between the parents.

(4) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

(5) A custody decree may be modified upon the death of the custodial parent pursuant to 40-4-221.

(6) (a) If a parent has been convicted of any of the crimes listed in subsection (6)(c), the other parent or any other person who has been granted custody of the child pursuant to court order may file an objection to the current custody order with the court. The parent or other person having custody shall give notice to the convicted parent of the objection as provided by the Montana Rules of Civil Procedure, and the convicted parent shall have 20 days from

the notice to respond. If the convicted parent fails to respond within 20 days, the custody rights of the convicted parent are suspended until further order of the court. If the convicted parent responds and objects, a hearing must be held within 30 days of the response.

(b) The convicted parent has the burden at the hearing to prove that custody by the convicted parent does not seriously endanger the child's physical, mental, moral, or emotional health and that the modification of custody is not in the best interest of the child.

(c) This subsection (6) applies to the following crimes:

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

(ii) mitigated deliberate homicide, as described in 45-5-503;

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

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

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

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

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

(VIII) DOMESTIC ABUSE OF THE TYPE DESCRIBED IN 45-5-206(1)(A);

HB 0578/02

- 1 ~~tviii~~(IX) sexual abuse of children, as described in
- 2 45-5-625."

-End-

HOUSE BILL NO. 578

INTRODUCED BY RICE, MERCER, SPAETH, MCDONOUGH

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A PROCEDURE WHEREBY A CUSTODIAL PARENT OR GUARDIAN CAN FILE AN OBJECTION WITH THE COURT TO THE VISITATION RIGHTS OR CUSTODY RIGHT OF THE OTHER PARENT IF THE OTHER PARENT HAS BEEN CONVICTED OF CERTAIN CRIMES; PROVIDING THAT THE CONVICTED PARENT HAS THE BURDEN OF PROVING THAT HIS VISITATION OR CUSTODY IS IN THE BEST INTEREST OF THE CHILD OR CHILDREN; AND AMENDING SECTIONS 40-4-217 AND 40-4-219, MCA."

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

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

"40-4-217. Visitation. (1) A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health.

(2) In a proceeding for dissolution of marriage or legal separation, the court may, upon the petition of a grandparent, grant reasonable visitation rights to the grandparent of the child if the court finds, after a hearing, that the visitation would be in the best interest of the child.

(3) The court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child; but the court ~~shall~~ may not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health or unless the provisions of subsection (6) apply.

(4) So long as a noncustodial parent who has visitation rights under a decree or a custody agreement remains a resident of this state, a resident custodial parent shall, before changing the child's residence to another state and unless the noncustodial parent has given written consent, give written notice to the noncustodial parent, as provided in subsection (5).

(5) The written notice required by subsection (4) must be served personally or given by certified mail not less than 30 days before the proposed change in residence. Proof of service must be filed with the court that issued the custody order. The purpose of the notice is to allow the noncustodial parent to seek a modification of his visitation schedule.

(6) (a) If a noncustodial parent has been convicted of any of the crimes listed in subsection (6)(c), the custodial parent or any other person who has been granted custody of the child pursuant to court order may file an objection to

visitation with the court. The custodial parent or other person having custody shall give notice to the noncustodial parent of the objection as provided by the Montana Rules of Civil Procedure, and the noncustodial parent shall have 20 days from the notice to respond. If the noncustodial parent fails to respond within 20 days, the visitation rights of the noncustodial parent are suspended until further order of the court. If the noncustodial parent responds and objects, a hearing must be held within 30 days of the response.

(b) The noncustodial parent has the burden at the hearing to prove that visitation by the noncustodial parent does not seriously endanger the child's physical, mental, moral, or emotional health and that the modification of visitation is not in the best interest of the child.

(c) This subsection (6) 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) incest, as described in 45-5-507;
- (vi) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

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

(VIII) DOMESTIC ABUSE OF THE TYPE DESCRIBED IN 45-5-206(1)(A);

~~(viii)~~(IX) sexual abuse of children, as described in 45-5-625."

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

"40-4-219. Modification. (1) The court may in its discretion modify a prior custody decree if it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interest of the child and if it further finds that:

- (a) the custodian agrees to the modification;
- (b) the child has been integrated into the family of the petitioner with consent of the custodian;
- (c) the child's present environment endangers seriously his physical, mental, moral, or emotional health and the harm likely to be caused by a change of environment is outweighed by its advantages to him;
- (d) the child is 14 years of age or older and desires the modification;
- (e) the custodian willfully and consistently:

1 (i) refuses to allow the child to have any contact
 2 with the noncustodial parent; or
 3 (ii) attempts to frustrate or deny the noncustodial
 4 parent's exercise of visitation rights; or
 5 (f) the custodial parent has changed or intends to
 6 change the child's residence to another state.
 7 (2) The court shall presume the custodian is not
 8 acting in the child's best interest if the custodian does
 9 any of the acts specified in subsection (1)(e) or (6).
 10 (3) The court may modify the prior decree based on
 11 subsection (1)(f) to provide a new visitation schedule and
 12 to apportion transportation costs between the parents.
 13 (4) Attorney fees and costs shall be assessed against
 14 a party seeking modification if the court finds that the
 15 modification action is vexatious and constitutes harassment.
 16 (5) A custody decree may be modified upon the death of
 17 the custodial parent pursuant to 40-4-221.
 18 (6) (a) If a parent has been convicted of any of the
 19 crimes listed in subsection (6)(c), the other parent or any
 20 other person who has been granted custody of the child
 21 pursuant to court order may file an objection to the current
 22 custody order with the court. The parent or other person
 23 having custody shall give notice to the convicted parent of
 24 the objection as provided by the Montana Rules of Civil
 25 Procedure, and the convicted parent shall have 20 days from

1 the notice to respond. If the convicted parent fails to
 2 respond within 20 days, the custody rights of the convicted
 3 parent are suspended until further order of the court. If
 4 the convicted parent responds and objects, a hearing must be
 5 held within 30 days of the response.
 6 (b) The convicted parent has the burden at the hearing
 7 to prove that custody by the convicted parent does not
 8 seriously endanger the child's physical, mental, moral, or
 9 emotional health and that the modification of custody is not
 10 in the best interest of the child.
 11 (c) This subsection (6) applies to the following
 12 crimes:
 13 (i) deliberate homicide, as described in 45-5-102;
 14 (ii) mitigated deliberate homicide, as described in
 15 45-5-503;
 16 (iii) sexual assault, as described in 45-5-502;
 17 (iv) sexual intercourse without consent, as described
 18 in 45-5-503;
 19 (v) incest, as described in 45-5-507;
 20 (vi) aggravated promotion of prostitution of a child,
 21 as described in 45-5-603(1)(b);
 22 (vii) endangering the welfare of children, as described
 23 in 45-5-622;
 24 (VIII) DOMESTIC ABUSE OF THE TYPE DESCRIBED IN
 25 45-5-206(1)(A);

HB 0578/02

- 1 ~~{viii}~~(IX) sexual abuse of children, as described in
- 2 45-5-625."

-End-

HOUSE BILL NO. 578

INTRODUCED BY RICE, MERCER, SPAETH, MCDONOUGH

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A PROCEDURE WHEREBY A CUSTODIAL PARENT OR GUARDIAN CAN FILE AN OBJECTION WITH THE COURT TO THE VISITATION RIGHTS OR CUSTODY RIGHT OF THE OTHER PARENT IF THE OTHER PARENT HAS BEEN CONVICTED OF CERTAIN CRIMES; PROVIDING THAT THE CONVICTED PARENT HAS THE BURDEN OF PROVING THAT HIS VISITATION OR CUSTODY IS IN THE BEST INTEREST OF THE CHILD OR CHILDREN; AND AMENDING SECTIONS 40-4-217 AND 40-4-219, MCA."

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

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

"40-4-217. Visitation. (1) A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health.

(2) In a proceeding for dissolution of marriage or legal separation, the court may, upon the petition of a grandparent, grant reasonable visitation rights to the grandparent of the child if the court finds, after a hearing, that the visitation would be in the best interest of the child.

(3) The court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child; but the court ~~shall~~ may not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health or unless the provisions of subsection (6) apply.

(4) So long as a noncustodial parent who has visitation rights under a decree or a custody agreement remains a resident of this state, a resident custodial parent shall, before changing the child's residence to another state and unless the noncustodial parent has given written consent, give written notice to the noncustodial parent, as provided in subsection (5).

(5) The written notice required by subsection (4) must be served personally or given by certified mail not less than 30 days before the proposed change in residence. Proof of service must be filed with the court that issued the custody order. The purpose of the notice is to allow the noncustodial parent to seek a modification of his visitation schedule.

(6) (a) If a noncustodial parent has been convicted of any of the crimes listed in subsection (6)(c), the custodial parent or any other person who has been granted custody of the child pursuant to court order may file an objection to

visitation with the court. The custodial parent or other person having custody shall give notice to the noncustodial parent of the objection as provided by the Montana Rules of Civil Procedure, and the noncustodial parent shall have 20 days from the notice to respond. If the noncustodial parent fails to respond within 20 days, the visitation rights of the noncustodial parent are suspended until further order of the court. If the noncustodial parent responds and objects, a hearing must be held within 30 days of the response.

(b) The noncustodial parent has the burden at the hearing to prove that visitation by the noncustodial parent does not seriously endanger the child's physical, mental, moral, or emotional health and that the modification of visitation is not in the best interest of the child.

(c) This subsection (6) 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) incest, as described in 45-5-507;

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

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

(VIII) DOMESTIC ABUSE OF THE TYPE DESCRIBED IN 45-5-206(1)(A);

~~(viii)~~(IX) sexual abuse of children, as described in 45-5-625."

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

"40-4-219. Modification. (1) The court may in its discretion modify a prior custody decree if it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interest of the child and if it further finds that:

(a) the custodian agrees to the modification;

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

(c) the child's present environment endangers seriously his physical, mental, moral, or emotional health and the harm likely to be caused by a change of environment is outweighed by its advantages to him;

(d) the child is 14 years of age or older and desires the modification;

(e) the custodian willfully and consistently:

1 (i) refuses to allow the child to have any contact
 2 with the noncustodial parent; or
 3 (ii) attempts to frustrate or deny the noncustodial
 4 parent's exercise of visitation rights; or
 5 (f) the custodial parent has changed or intends to
 6 change the child's residence to another state.
 7 (2) The court shall presume the custodian is not
 8 acting in the child's best interest if the custodian does
 9 any of the acts specified in subsection (1)(e) or (6).
 10 (3) The court may modify the prior decree based on
 11 subsection (1)(f) to provide a new visitation schedule and
 12 to apportion transportation costs between the parents.
 13 (4) Attorney fees and costs shall be assessed against
 14 a party seeking modification if the court finds that the
 15 modification action is vexatious and constitutes harassment.
 16 (5) A custody decree may be modified upon the death of
 17 the custodial parent pursuant to 40-4-221.
 18 (6) (a) If a parent has been convicted of any of the
 19 crimes listed in subsection (6)(c), the other parent or any
 20 other person who has been granted custody of the child
 21 pursuant to court order may file an objection to the current
 22 custody order with the court. The parent or other person
 23 having custody shall give notice to the convicted parent of
 24 the objection as provided by the Montana Rules of Civil
 25 Procedure, and the convicted parent shall have 20 days from

1 the notice to respond. If the convicted parent fails to
 2 respond within 20 days, the custody rights of the convicted
 3 parent are suspended until further order of the court. If
 4 the convicted parent responds and objects, a hearing must be
 5 held within 30 days of the response.
 6 (b) The convicted parent has the burden at the hearing
 7 to prove that custody by the convicted parent does not
 8 seriously endanger the child's physical, mental, moral, or
 9 emotional health and that the modification of custody is not
 10 in the best interest of the child.
 11 (c) This subsection (6) applies to the following
 12 crimes:
 13 (i) deliberate homicide, as described in 45-5-102;
 14 (ii) mitigated deliberate homicide, as described in
 15 45-5-503;
 16 (iii) sexual assault, as described in 45-5-502;
 17 (iv) sexual intercourse without consent, as described
 18 in 45-5-503;
 19 (v) incest, as described in 45-5-507;
 20 (vi) aggravated promotion of prostitution of a child,
 21 as described in 45-5-603(1)(b);
 22 (vii) endangering the welfare of children, as described
 23 in 45-5-622;
 24 (VIII) DOMESTIC ABUSE OF THE TYPE DESCRIBED IN
 25 45-5-206(1)(A);

HB 0578/02

1 (viii)(IX) sexual abuse of children, as described in
2 45-5-625."

-End-