

J. Barrett

House BILL NO. 231

INTRODUCED BY

B. Barrett, Brooke Eck, Water Dowell, Cochiarola, and Wyatt, Katal, Halley, Hays

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING DOMESTIC RELATIONS STATUTES REGARDING THE CUSTODY AND VISITATION OF CHILDREN INVOLVED IN A MARRIAGE DISSOLUTION; REVISING APPLICABLE TERMINOLOGY; REQUIRING ADOPTION OF A FINAL PARENTING PLAN THAT INCLUDES SPECIFIC PROVISIONS IN THE BEST INTERESTS OF THE CHILD, AN OPTION FOR DISPUTE RESOLUTION OR MEDIATION EXCEPT IN CASES OF PROVEN CHILD OR SPOUSAL ABUSE, AND AN OPTION FOR PERIODIC REVIEW OF THE PARENTING PLAN; ALLOWING ADOPTION OF AN INTERIM PARENTING PLAN DURING THE TIME DISSOLUTION PROCEEDINGS ARE PENDING; REQUIRING DESIGNATION OF ONE PARENT AS CUSTODIAN FOR APPLICABILITY OF FEDERAL OR STATE LAWS; REQUIRING THAT PARENTS RECEIVE INFORMATION REGARDING PARENTAL RESPONSIBILITY AND CONTACT WITH THE CHILD IN DISPUTED CASES; ALLOWING THE TRIAL COURT TO DETERMINE THE APPROPRIATE LEVEL OF EVALUATION NECESSARY TO ESTABLISH PARENTING ARRANGEMENTS; PROVIDING A FEE FOR FILING A PETITION FOR CONTESTED AMENDMENT OF A PARENTING PLAN TO DEFRAY THE COSTS OF IMPLEMENTING THE COURT-ORDERED EDUCATIONAL PROGRAM ON THE EFFECTS OF DIVORCE ON CHILDREN IN DISPUTED CASES AND THE COST OF PARENTING EDUCATION WHEN ORDERED FOR THE INVESTIGATION AND PREPARATION OF A REPORT CONCERNING PARENTING ARRANGEMENTS; REVISING APPROPRIATE TERMINOLOGY IN GRANDPARENT VISITATION STATUTES AND APPLICABLE CRIMINAL STATUTES; AMENDING SECTIONS 25-1-201, 40-1-105, 40-1-213, 40-1-402, 40-4-103, 40-4-104, 40-4-105, 40-4-109, 40-4-123, 40-4-201, 40-4-204, 40-4-205, 40-4-211, 40-4-212, 40-4-213, 40-4-214, 40-4-215, 40-4-216, 40-4-217, 40-4-219, 40-4-220, 40-4-221, 40-4-225, 40-4-226, 40-4-302, 40-4-307, 40-6-211, 40-6-221, 40-9-101, 40-9-102, 45-5-304, 45-5-631, 45-5-632, AND 45-5-633, MCA; REPEALING SECTIONS 40-4-222, 40-4-223, 40-4-224, 40-6-222, 40-6-223, 40-6-224, AND 40-6-231, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. Section 25-1-201, MCA, is amended to read:

"25-1-201. Fees of clerk of district court. (1) The clerk of the district court shall collect the



1 following fees:

2 (a) at the commencement of each action or proceeding, except a petition for dissolution of
3 marriage, from the plaintiff or petitioner, \$80; for filing a complaint in intervention, from the intervenor,
4 \$80; for filing a petition for dissolution of marriage, a fee of \$120; ~~and~~ for filing a petition for legal
5 separation, a fee of \$120; and for filing a petition for a contested amendment of a final parenting plan, a
6 fee of \$120;

7 (b) from each defendant or respondent, on appearance, \$60;

8 (c) on the entry of judgment, from the prevailing party, \$45;

9 (d) for preparing copies of papers on file in the clerk's office, 50 cents per page for the first five
10 pages of each file, per request, and 25 cents per additional page;

11 (e) for each certificate, with seal, \$2;

12 (f) for oath and jurat, with seal, \$1;

13 (g) for search of court records, 50 cents for each year searched, not to exceed a total of \$25;

14 (h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts,
15 the fee for entry of judgment provided for in subsection (1)(c);

16 (i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;

17 (j) for transmission of records or files or transfer of a case to another court, \$5;

18 (k) for filing and entering papers received by transfer from other courts, \$10;

19 (l) for issuing a marriage license, \$30;

20 (m) on the filing of an application for informal, formal, or supervised probate or for the appointment
21 of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from
22 the applicant or petitioner, \$70, which includes the fee for filing a will for probate;

23 (n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative
24 of the estate of a nonresident decedent, \$55;

25 (o) for filing a declaration of marriage without solemnization, \$30;

26 (p) for filing a motion for substitution of a judge, \$100.

27 (2) Except as provided in subsections (3) through ~~(8)~~ (9), 32% of all fees collected by the clerk of
28 the district court must be deposited in and credited to the district court fund. If no district court fund exists,
29 that portion of the fees must be deposited in the general fund for district court operations. The remaining
30 portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

1 (3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage
2 without solemnization, \$14 must be deposited in and credited to the state general fund, \$6.40 must be
3 deposited in and credited to the county general fund, and \$9.60 must be remitted to the state to be
4 deposited as provided in 19-5-404.

5 (4) Of the fee for filing a petition for dissolution of marriage or legal separation, \$40 must be
6 deposited in the state general fund, \$35 must be remitted to the state to be deposited as provided in
7 19-5-404, \$5 must be deposited in the children's trust fund account established by 41-3-702, and \$20
8 must be deposited in and credited to the district court fund. If no district court fund exists, the \$20 must
9 be deposited in the general fund for district court operations.

10 (5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the
11 district court fund or the county general fund or remitted to the state, the clerk of the district court shall
12 deduct from the following fees the amounts indicated:

13 (i) at the commencement of each action or proceeding and for filing a complaint in intervention as
14 provided in subsection (1)(a), \$35;

15 (ii) from each defendant or respondent, on appearance, as provided in subsection (1)(b), \$25;

16 (iii) on the entry of judgment as provided in subsection (1)(c), \$15; and

17 (iv) from the applicant or petitioner, on the filing of an application for probate or for the appointment
18 of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as
19 provided in subsection (1)(m), \$15.

20 (b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the
21 county general fund for district court operations unless the county has a district court fund. If the county
22 has a district court fund, the money must be deposited in that fund.

23 (6) The fee for filing a motion for substitution of a judge as provided in subsection (1)(p) must be
24 remitted to the state to be deposited as provided in 19-5-404.

25 (7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court
26 fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

27 (8) The clerk of the district court shall remit to the credit of the state general fund \$20 of each fee
28 collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion of
29 judicial salaries.

30 (9) The fee for filing a petition for a contested amendment of a parenting plan must be remitted by

1 the clerk of the district court to the credit of the district court to defray the costs of the court-sponsored
 2 educational program concerning the effects of dissolution of marriage on children, as required in 40-4-226,
 3 and to defray the expense of education when ordered for the investigation and preparation of a report
 4 concerning parenting arrangements, as provided in 40-4-215(2)(a)."

5
 6 **Section 2.** Section 40-1-105, MCA, is amended to read:

7 **"40-1-105. Application of the Montana Rules of Civil Procedure.** (1) Except for proceedings
 8 ~~coming~~ under the Uniform Child Custody Jurisdiction Act, the Montana Rules of Civil Procedure apply to
 9 all proceedings under this chapter, except as otherwise provided in this chapter.

10 (2) A proceeding for declaration of invalidity of marriage ~~shall~~ must be entitled, "In re the Marriage
 11 of and". A ~~custody~~ parenting or support proceeding ~~shall~~ must be entitled, "In re the
 12 ~~(custody)~~ (parenting) (support) of".

13 (3) The initial pleading in all proceedings under this chapter ~~shall~~ must be denominated a petition.
 14 A responsive pleading ~~shall~~ must be denominated a response. Other pleadings, and all pleadings in other
 15 matters under this chapter, ~~shall~~ must be denominated as provided in the Montana Rules of Civil Procedure.

16 (4) In this chapter, "decree" includes "judgment".
 17

18 **Section 3.** Section 40-1-213, MCA, is amended to read:

19 **"40-1-213. Judicial approval.** (1) The district court may order the clerk of the district court to
 20 issue a marriage license and a marriage certificate form to a party ~~aged~~ 16 or 17 years of age who has no
 21 parent capable of consenting to ~~his~~ the party's marriage or has the consent of both parents or of the parent
 22 having the actual care, ~~custody~~ parenting authority, and control to ~~his~~ the party's marriage, if capable of
 23 giving consent, or of ~~his~~ the party's guardian. The court must require both parties to participate in a period
 24 of marriage counseling involving at least two separate counseling sessions not less than 10 days apart with
 25 a designated counselor as a condition of the order for issuance of a marriage license and a marriage
 26 certificate form under this section.

27 (2) A marriage license and a marriage certificate form may be issued under this section only if the
 28 court finds that the underaged party is capable of assuming the responsibilities of marriage and the marriage
 29 will serve ~~his~~ the party's best ~~interest~~ interests. Pregnancy alone does not establish that the best ~~interest~~
 30 interests of the party will be served.

1 (3) The district court shall authorize performance of a marriage by proxy upon the showing required
2 by the provisions on solemnization."
3

4 **Section 4.** Section 40-1-402, MCA, is amended to read:

5 **"40-1-402. Declaration of invalidity.** (1) The district court shall enter its decree declaring the
6 invalidity of a marriage entered into under the following circumstances:

7 (a) a party lacked capacity to consent to the marriage at the time that the marriage was entered
8 into, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other
9 incapacitating substances, or a party was induced to enter into a marriage by force or duress or by fraud
10 involving the essentials of marriage;

11 (b) a party lacks the physical capacity to consummate the marriage by sexual intercourse, and at
12 the time that the marriage was entered into, the other party did not know of the incapacity;

13 (c) a party was under ~~the age of 16 years~~ of age or was ~~aged~~ 16 or 17 years of age and did not
14 have the consent of the party's parents or guardian or judicial approval; or

15 (d) the marriage is prohibited.

16 (2) A declaration of invalidity under subsections (1)(a) through (1)(c) may be sought by any of the
17 following persons and must be commenced within the times specified, but ~~in no event may~~ a declaration
18 of invalidity may not be sought after the death of either party to the marriage:

19 (a) for lack of capacity to consent because of mental incapacity or infirmity, no later than 1 year
20 after the petitioner obtained knowledge of the described condition;

21 (b) for lack of capacity to consent because of the influence of alcohol, drugs, or other
22 incapacitating substances, no later than 1 year after the petitioner obtained knowledge of the described
23 condition;

24 (c) for lack of capacity to consent because of force, duress, or fraud, no later than 2 years after
25 the petitioner obtained knowledge of the described condition;

26 (d) for the reason set forth in subsection (1)(b), by either party, no later than 4 years after the
27 petitioner obtained knowledge of the described condition;

28 (e) for the reason set forth in subsection (1)(c), by the underaged party or the party's parent or
29 guardian, ~~prior to~~ before the time that the underaged party reaches the age at which the party could have
30 married without satisfying the omitted requirement.

1 (3) A declaration of invalidity for the reason set forth in subsection (1)(d) may be sought by either
 2 party, the legal spouse in case of a bigamous marriage, the county attorney, or a child of either party, at
 3 any time ~~prior to~~ before the death of one of the parties.

4 (4) Children born of a marriage declared invalid are legitimate.

5 (5) Unless the court finds, after a consideration of all relevant circumstances, including the effect
 6 of a retroactive decree on third parties, that the interests of justice would be served by making the decree
 7 not retroactive, it shall declare the marriage invalid as of the date of the marriage. The provisions of chapter
 8 4 relating to property rights of the spouses, maintenance, support, and ~~custody~~ parenting of children on
 9 dissolution of marriage are applicable to nonretroactive decrees of invalidity.

10 (6) The clerk of the court shall give notice of the entry of a decree declaring the invalidity of a
 11 marriage:

12 (a) if the marriage is registered in this state, to the clerk of the district court of the county where
 13 the marriage is registered, who shall enter the fact of invalidity in the book in which the marriage license
 14 and certificate are recorded; or

15 (b) if the marriage is registered in another jurisdiction, to the appropriate official of that jurisdiction,
 16 with the request that the official enter the fact of invalidity in the appropriate record."

17

18 **Section 5.** Section 40-4-103, MCA, is amended to read:

19 **"40-4-103. Application of the Montana Rules of Civil Procedure.** (1) Except for proceedings
 20 coming under the Uniform Child Custody Jurisdiction Act, the Montana Rules of Civil Procedure apply to
 21 all proceedings under this chapter, except as otherwise provided in this chapter.

22 (2) A proceeding for dissolution of marriage or legal separation ~~shall~~ must be entitled, "In re the
 23 Marriage of and". A ~~custody~~ parenting or support proceeding ~~shall~~ must be entitled, "In
 24 re the ~~(custody)~~ (parenting) (support) of".

25 (3) The initial pleading in all proceedings under this chapter ~~shall~~ must be denominated a petition.
 26 A responsive pleading ~~shall~~ must be denominated a response. Other pleadings, and all pleadings in other
 27 matters under this chapter, ~~shall~~ must be denominated as provided in the Montana Rules of Civil Procedure.

28 (4) In this chapter, "decree" includes "judgment".

29 (5) A decree of dissolution or of legal separation, if made, ~~shall~~ may not be awarded to one of the
 30 parties but ~~shall~~ must provide that it affects the status previously existing between the parties in the

1 manner decreed."

2

3 **Section 6.** Section 40-4-104, MCA, is amended to read:

4 **"40-4-104. Dissolution of marriage -- legal separation.** (1) The district court shall enter a decree
5 of dissolution of marriage if:

6 (a) the court finds that one of the parties, at the time the action was commenced, was domiciled
7 in this state or was stationed in this state while a member of the armed services and that the domicile or
8 military presence has been maintained for 90 days ~~next~~ preceding the making of the findings;

9 (b) the court finds that the marriage is irretrievably broken, which findings ~~shall~~ must be supported
10 by evidence:

11 (i) that the parties have lived separate and apart for a period of more than 180 days ~~next~~ preceding
12 the commencement of this proceeding; or

13 (ii) that there is serious marital discord ~~which~~ that adversely affects the attitude of one or both of
14 the parties towards the marriage;

15 (c) the court finds that the conciliation provisions of the Montana Conciliation Law and of 40-4-107
16 either do not apply or have been met; and

17 (d) to the extent it has jurisdiction to do so, the court has considered, approved, or made provision
18 for ~~child custody~~ parenting, the support of any child entitled to support, the maintenance of either spouse,
19 and the disposition of property.

20 (2) If a party requests a decree of legal separation rather than a decree of dissolution of marriage,
21 the court shall grant the decree in that form unless the other party objects."

22

23 **Section 7.** Section 40-4-105, MCA, is amended to read:

24 **"40-4-105. Procedure -- commencement -- pleadings -- abolition of existing defenses.** (1) The
25 verified petition in a proceeding for dissolution of marriage or legal separation ~~shall~~ must allege that the
26 marriage is irretrievably broken and ~~shall~~ must set forth:

27 (a) the age, occupation, and residence of each party and ~~his~~ the party's length of residence in this
28 state;

29 (b) the date of the marriage and the place at which it was registered;

30 (c) that the jurisdictional requirements of 40-4-104 exist and that the marriage is irretrievably

1 broken in that either:

2 (i) the parties have lived separate and apart for a period of more than 180 days ~~next~~ preceding the
3 commencement of this proceeding; or

4 (ii) there is serious marital discord ~~which~~ that adversely affects the attitude of one or both of the
5 parties towards the marriage, and there is no reasonable prospect of reconciliation;

6 (d) the names, ages, and addresses of all living children of the marriage and whether the wife is
7 pregnant;

8 (e) any arrangements as to support, ~~custody, and visitation~~ of the children and maintenance of a
9 spouse; ~~and~~

10 (f) a proposed parenting plan, if applicable; and

11 (g) the relief sought.

12 (2) Either or both parties to the marriage may initiate the proceeding.

13 (3) If a proceeding is commenced by one of the parties, the other party must be served in the
14 manner provided by the Montana Rules of Civil Procedure and may within 20 days after the date of service
15 file a verified response. ~~No~~ A decree may not be entered until 20 days after the date of service.

16 (4) Previously existing defenses to divorce and legal separation, including but not limited to
17 condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

18 (5) The court may join additional parties proper for the exercise of its authority to implement this
19 chapter."
20

21 **Section 8.** Section 40-4-109, MCA, is amended to read:

22 "**40-4-109. Independence of provisions of decree or temporary order.** If a party fails to comply
23 with a provision of a decree or temporary order or injunction, the obligation of the other party to make
24 payments for support or maintenance or to permit ~~visitation~~ parental contact with the child is not suspended
25 but ~~no~~ the party may move the court to grant an appropriate order."
26

27 **Section 9.** Section 40-4-123, MCA, is amended to read:

28 "**40-4-123. Jurisdiction and venue.** (1) District courts, municipal courts, justices' courts, and city
29 courts have concurrent jurisdiction to hear and issue orders under 40-4-121.

30 (2) The municipal judge, justice of the peace, or city court judge shall on motion suspend all further

1 proceedings in the action and certify the pleading and any orders to the clerk of the district court of the
2 county where the action was begun if an action for declaration of invalidity of a marriage, legal separation,
3 or dissolution of marriage or for ~~child custody~~ parenting is pending between the parties. From the time of
4 the certification of the pleadings and any orders to the clerk, the district court has the same jurisdiction over
5 the action as if it had been commenced in district court.

6 (3) An action brought under 40-4-121 may be tried in the county in which either party resides or
7 in which the physical abuse was committed.

8 (4) The right to petition for relief may not be denied because the plaintiff has vacated the residence
9 or household to avoid abuse."

10
11 **Section 10.** Section 40-4-201, MCA, is amended to read:

12 "**40-4-201. Separation agreement.** (1) To promote amicable settlement of disputes between parties
13 to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into
14 a written separation agreement containing provisions for disposition of any property owned by either of
15 them, maintenance of either of them, and support, ~~custody parenting~~, and ~~visitation of parental contact~~
16 with their children. In cases in which children are involved, the separation agreement must contain a
17 parenting plan as required in [section 19].

18 (2) In a proceeding for dissolution of marriage or for legal separation, the terms of the separation
19 agreement, except those providing for the support, ~~custody parenting~~, and ~~visitation of parental contact~~
20 with children, are binding upon the court unless it finds, after considering the economic circumstances of
21 the parties and any other relevant evidence produced by the parties, on their own motion or on request of
22 the court, that the separation agreement is unconscionable.

23 (3) If the court finds the separation agreement unconscionable, it may request that the parties ~~to~~
24 submit a revised separation agreement or it may make orders for the disposition of property, maintenance,
25 and support.

26 (4) If the court finds that the separation agreement is not unconscionable as to disposition of
27 property or maintenance and not unsatisfactory as to support:

28 (a) unless the separation agreement provides to the contrary, its terms ~~shall~~ must be set forth in
29 the decree of dissolution or legal separation and the parties ~~shall be~~ ordered to perform them; or

30 (b) if the separation agreement provides that its terms ~~shall~~ may not be set forth in the decree, the

1 decree ~~shall~~ must identify the separation agreement and state that the court has found the terms not
2 unconscionable.

3 (5) Terms of the agreement set forth in the decree are enforceable by all remedies available for
4 enforcement of a judgment, including contempt, and are enforceable as contract terms.

5 (6) Except for terms concerning the support, ~~custody parenting~~, or ~~visitation of parental contact~~
6 with the children, the decree may expressly preclude or limit modification of terms set forth in the decree
7 if provided for in the separation agreement ~~so provides~~. Otherwise, terms of a separation agreement set
8 forth in the decree are automatically modified by modification of the decree."
9

10 **Section 11.** Section 40-4-204, MCA, is amended to read:

11 **"40-4-204. Child support -- orders to address health insurance -- withholding of child support.** (1)

12 In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall
13 order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary
14 for the child's support, without regard to marital misconduct.

15 (2) The court shall consider all relevant factors, including:

16 (a) the financial resources of the child;

17 (b) the financial resources of the ~~custodial parent~~ parents;

18 (c) the standard of living that the child would have enjoyed had the marriage not been dissolved;

19 (d) the physical and emotional condition of the child and the child's educational and medical needs;

20 (e) ~~the financial resources and needs of the noncustodial parent;~~

21 ~~(f)~~ the age of the child;

22 ~~(g)~~(f) the cost of day care for the child;

23 ~~(h)~~(g) any ~~custody arrangement~~ parenting plan that is ordered or decided upon; and

24 ~~(i)~~(h) the needs of any person, other than the child, whom either parent is legally obligated to
25 support.

26 (3) (a) Whenever a court issues or modifies an order concerning child support, the court shall
27 determine the child support obligation by applying the standards in this section and the uniform child
28 support guidelines adopted by the department of public health and human services pursuant to 40-5-209.
29 The guidelines must be used in all cases, including cases in which the order is entered upon the default of
30 a party and those in which the parties have entered into an agreement regarding the support amount. A

1 verified representation of the defaulting parent's income, based on the best information available, may be
2 used when a parent fails to provide financial information for use in applying the guidelines. The amount
3 determined under the guidelines is presumed to be an adequate and reasonable support award, unless the
4 court finds by clear and convincing evidence that the application of the standards and guidelines is unjust
5 to the child or to any of the parties or that it is inappropriate in that particular case.

6 (b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall
7 state its reasons for that finding. Similar reasons must also be stated in a case in which the parties have
8 agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the
9 guideline amount must include a statement of the amount of support that would have ordinarily been
10 ordered under the guidelines.

11 (c) If the court does not order a parent owing a duty of support to a child to pay any amount for
12 the child's support, the court shall state its reasons for not ordering child support.

13 (4) Each temporary or final district court judgment, decree, or order establishing a child support
14 obligation under this title and each modification of a final order for child support must include a medical
15 support order as provided for in Title 40, chapter 5, part 8.

16 (5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception
17 is included in the support order, a support obligation established by judgment, decree, or order under this
18 section, whether temporary or final, and each modification of an existing support obligation under 40-4-208
19 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part
20 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides
21 for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the
22 payment of support without need for an amendment to the support order or for any further action by the
23 court.

24 (b) If an obligor is exempt from immediate income withholding, the district court judgment or order
25 must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's
26 income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to
27 include a warning statement in a judgment or order does not preclude the use of withholding procedures.

28 (c) If a support order subject to income withholding is expressed in terms of a monthly obligation,
29 the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's
30 regular pay period. When an order is annualized and withheld on a weekly or biweekly basis under this

1 section, the support withheld from the obligor may be retained by the obligee when it exceeds the obligor's
2 monthly support obligation if the excess support is a result of annualized withholding.

3 (6) For the purposes of income withholding under subsection (5), each district court judgment,
4 decree, or order that establishes or modifies a child support obligation must include a provision requiring
5 the parent obligated to pay support to inform the court and, if the department of public health and human
6 services is providing services under Title IV-D of the Social Security Act for the enforcement of the
7 judgment, decree, or order, the department, of the following:

8 (a) the name and address of the parent's current employer;

9 (b) whether the parent has access to health insurance through an employer or other group; and

10 (c) if insurance coverage is available, the health insurance policy information.

11 (7) Each district court judgment, decree, or order establishing a final child support obligation under
12 this part and each modification of a final order for child support must contain a statement that the order
13 is subject to review and modification by the department of public health and human services upon the
14 request of the department or a party under 40-5-271 through 40-5-273 when the department is providing
15 services under Title IV-D of the Social Security Act for the enforcement of the order.

16 (8) (a) A district court judgment, decree, or order that establishes or modifies a child support
17 obligation must include a provision requiring the child support to be paid to:

18 ~~(i) the legal custodian of the minor child;~~

19 ~~(ii) (A) any other person, organization, or agency having legal physical custody of the minor child~~
20 ~~under a legal assignment of rights; or~~

21 ~~(B) the court for the benefit of the minor child;~~

22 ~~(iii) any other person or agency designated as caretaker of the minor child by agreement of the legal~~
23 ~~custodian; or~~

24 ~~(iv) any assignee or other person, organization, or agency authorized to receive or collect child~~
25 ~~support pursuant to the child support guidelines adopted under 40-5-209.~~

26 (b) A judgment, decree, or order that omits the provision required by subsection (8)(a) is subject
27 to the requirements of subsection (8)(a) without need for an amendment to the judgment, decree, or order
28 or for any further action by the court."

29
30 **Section 12.** Section 40-4-205, MCA, is amended to read:

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

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

7 (a) to conduct investigations that the guardian ad litem considers necessary to ascertain the facts
 8 related to the child's support, ~~custody~~ parenting, and ~~visitation~~ parental contact;

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

10 (c) to make written reports to the court concerning the child's support, ~~custody~~ parenting, and
 11 ~~visitation~~ parental contact;

12 (d) to appear and participate in all proceedings to the degree necessary to adequately represent
 13 the child and make recommendations to the court concerning the child's support, ~~custody~~ parenting, and
 14 ~~visitation~~ parental contact; and

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

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

19 (4) The court shall enter an order for costs and fees in favor of the child's guardian ad litem. The
 20 order must be made against either or both parents, except that if the responsible party is indigent, the costs
 21 must be waived."
 22

23 **Section 13.** Section 40-4-211, MCA, is amended to read:

24 **"40-4-211. ~~Child custody jurisdiction~~ Jurisdiction -- commencement of parenting proceedings.** (1)
 25 A court of this state competent to decide ~~child custody~~ parenting matters has jurisdiction to make a ~~child~~
 26 ~~custody~~ parenting authority determination by initial or ~~modification~~ amended decree if:

27 (a) this state:

28 (i) is the home state of the child at the time of commencement of the proceedings; or

29 (ii) had been the child's home state within 6 months before commencement of the ~~proceeding~~
 30 proceedings and the child is absent from this state because of ~~his~~ the child's removal or retention by a any

1 ~~person claiming his custody or for other reason~~ and a parent or person acting as parent continues to live
2 in this state; or

3 (b) it is in the best interest of the child that a court of this state assume jurisdiction because:

4 (i) the child and ~~his~~ the parents or the child and at least one contestant have a significant
5 connection with this state; and

6 (ii) there is available in this state substantial evidence concerning the child's present or future care,
7 protection, training, and personal relationships; or

8 (c) the child is physically present in this state and:

9 (i) has been abandoned; or

10 (ii) it is necessary in an emergency to protect ~~him~~ the child because ~~he~~ the child has been subjected
11 to or threatened with mistreatment or abuse or is neglected or dependent; or

12 (d) (i) no other state has jurisdiction under prerequisites substantially in accordance with subsection
13 (1)(a), (1)(b), or (1)(c) or another state has declined to exercise jurisdiction on the ground that this state
14 is the more appropriate forum to determine ~~custody of~~ parenting authority over the child; and

15 (ii) it is in ~~his~~ the child's best interest that the court assume jurisdiction.

16 (2) Except under subsections (1)(c) and (1)(d), physical presence in this state of the child or of the
17 child and one of the contestants is not alone sufficient to confer jurisdiction on a court of this state to make
18 a ~~child custody~~ parenting authority determination.

19 (3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine
20 ~~his custody~~ parenting authority.

21 (4) A ~~child custody~~ parenting plan proceeding is commenced in the district court:

22 (a) by a parent, by filing a petition:

23 (i) for dissolution or legal separation; or

24 (ii) for ~~custody of the child~~ parenting authority in the county in which ~~he~~ the child is permanently
25 resident or found; or

26 (b) by a person other than a parent, by filing a petition for ~~custody of the child~~ parenting authority
27 in the county in which ~~he~~ the child is permanently resident or found, but only if ~~he~~ the child is not in the
28 ~~physical custody of~~ physically residing with one of ~~his~~ the child's parents.

29 (5) Notice of a ~~child custody~~ parenting proceeding ~~shall~~ must be given to the child's parent,
30 guardian, ~~custodian~~ caretaker, those persons ~~having physical custody of~~ with whom the child is physically

1 residing, and all other contestants, who may appear, be heard, and file a responsive pleading. The court,
 2 upon a showing of good cause, may permit intervention of other interested parties."

3

4 **Section 14.** Section 40-4-212, MCA, is amended to read:

5 "**40-4-212. Best interest interests of child.** (1) The court shall determine ~~custody~~ the parenting
 6 plan in accordance with the best ~~interest~~ interests of the child. The court shall consider all relevant
 7 parenting factors, including but not limited to:

8 (a) the wishes of the child's parent or parents ~~as to custody~~;

9 (b) the wishes of the child ~~as to a custodian~~;

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

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

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

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

15 **and**

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

17 (h) continuity and stability of care;

18 (i) developmental needs of the child;

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

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

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

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

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

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

5 (a) ~~Custody should be granted to the parent who has provided most of the primary care during the~~
6 ~~child's life.~~

7 ~~(b) A e custody parenting plan action brought by a parent within 6 months after a child support~~
8 ~~action against that parent is vexatious.~~

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

12 ~~(4) The following are rebuttable presumptions:~~

13 ~~(a) A knowing failure to pay birth related costs that the person is able to pay is not in the best~~
14 ~~interest of the child.~~

15 ~~(b) Failure to pay child support that the person is able to pay is not in the best interest of a child~~
16 ~~in need of the child support."~~

17
18 **Section 15.** Section 40-4-213, MCA, is amended to read:

19 **"40-4-213. Temporary orders Interim parenting plan.** (1) A party to a ~~e custody~~ parenting proceeding
20 may move for ~~a temporary e custody order~~ an interim parenting plan. The motion must be supported by an
21 affidavit as provided in 40-4-220(1). The court may ~~award temporary e custody~~ adopt an interim parenting
22 plan under the standards of 40-4-212 after a hearing or under the standards of 40-4-212 and 40-4-220(2)
23 before a hearing. If there is no objection, the court may act solely on the basis of the affidavits.

24 (2) If a proceeding for dissolution of marriage or legal separation is dismissed, any ~~temporary~~
25 ~~e custody order~~ interim parenting plan is vacated unless a parent ~~or the child's custodian~~ moves that the
26 proceeding continue as a ~~e custody~~ parenting proceeding and the court finds, after a hearing, that the
27 circumstances of the parents and the best ~~interest~~ interests of the child require that a ~~e custody decree~~
28 parenting plan be ~~issued~~ adopted.

29 (3) If a ~~e custody~~ parenting proceeding commenced in the absence of a petition for dissolution of
30 marriage or legal separation is dismissed, any ~~temporary e custody order~~ interim parenting plan is vacated.

1 (4) Adoption of a final parenting plan under [section 19] vacates any interim parenting plan adopted
2 under this section."

3
4 **Section 16.** Section 40-4-214, MCA, is amended to read:

5 **"40-4-214. Interviews.** (1) The court may interview the child in chambers to ascertain the child's
6 wishes as to ~~his custodian residence~~ and ~~as to visitation~~ parental contact. The court may permit counsel
7 to be present at the interview. The court shall cause a record of the interview to be made and to be part
8 of the record in the case.

9 (2) The court may seek the advice of professional personnel, whether or not employed by the court
10 on a regular basis. The advice given ~~shall~~ must be in writing and made available by the court to counsel
11 upon request. Counsel may examine as a witness any professional personnel consulted by the court."

12
13 **Section 17.** Section 40-4-215, MCA, is amended to read:

14 **"40-4-215. Investigations and reports.** (1) ~~In contested custody proceedings and in other custody~~
15 ~~proceedings if~~ If a parent or the child's custodian a court-appointed third party requests, or if the court finds
16 that a parenting proceeding is contested, the court may order an investigation and report concerning
17 custodial parenting arrangements for the child. The investigator may be the child's guardian ad litem or
18 other professional considered appropriate by the court. The department of public health and human services
19 may not be ordered to conduct the investigation or draft a report unless the ~~parent or the child's custodian~~
20 person requesting the investigation is a recipient of aid to families with dependent children, food stamps,
21 or public assistance and all reasonable options for payment of the investigation, if conducted by a person
22 not employed by the department, are exhausted. The department may consult with any investigator and
23 share information relevant to the child's best interests. The cost of the investigation and report must be
24 paid according to the final order. The cost of the educational evaluation under subsection (2)(a) must be
25 paid from the fees for filing petitions for contested amendment of a parenting plan, as provided in
26 25-1-201(9).

27 (2) The court shall determine, if appropriate, the level of evaluation necessary for adequate
28 investigation and preparation of the report, which may include one or more of the following:

29 (a) parenting education;

30 (b) mediation pursuant to 40-4-303;

1 (c) factfinding by the investigator; and

2 (d) psychological evaluation of the parties.

3 ~~(2)(3)~~ In preparing a report concerning a child, the investigator may consult any person who ~~may~~
4 ~~have~~ has information about the child and the child's potential ~~custodial~~ parenting arrangements. Upon order
5 of the court, the investigator may refer the child to professional personnel for diagnosis. ~~The~~ Except as
6 required for children 16 years of age or older, the investigator may consult with and obtain information from
7 medical, psychiatric, or other expert persons who have served the child in the past without obtaining the
8 consent of the ~~parent or the child's custodian~~ persons or entities authorized by law to grant or withhold
9 access to the records. The child's consent must be obtained if the child has reached the age of 16 unless
10 the court finds that the child lacks mental capacity to consent. If the requirements of subsection ~~(3)~~ (4) are
11 fulfilled, the investigator's report may be received in evidence at the hearing.

12 ~~(3)(4)~~ The court shall mail the investigator's report to counsel and to any party not represented by
13 counsel at least 10 days prior to the hearing. ~~The~~ When consistent with state and federal law, the
14 investigator shall make available to counsel and to any party not represented by counsel the investigator's
15 file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant
16 to the provisions of subsection ~~(2)~~ (3), and the names and addresses of all persons whom the investigator
17 has consulted. Any party to the proceeding may call the investigator and any person the investigator has
18 consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing.
19 The results of the investigation must be included in the court record and may, without objection, be
20 sealed."

21

22 **NEW SECTION. Section 18. Final parenting plan -- purpose and objectives.** The objectives of a
23 final parenting plan are to:

24 (1) protect the best interest of the child of a marriage, consistent with 40-4-212;

25 (2) provide for the physical care of the child;

26 (3) maintain the child's emotional stability and minimize the child's exposure to parental conflict;

27 (4) provide for the child's changing needs as the child grows and matures, in a way that minimizes
28 the need for future amendment to the final parenting plan;

29 (5) set forth the authority and responsibilities of each parent with respect to the child, consistent
30 with the criteria in [section 19]; and

1 (6) encourage the parents, when appropriate under [section 19], to meet their responsibilities to
2 their minor children through agreements in the parenting plan rather than through judicial intervention.

3
4 **NEW SECTION. Section 19. Final parenting plan criteria.** (1) In every dissolution proceeding,
5 proceeding for declaration of invalidity of marriage, parenting plan proceeding, or legal separation
6 proceeding that involves a child, each parent or both parents jointly shall submit to the court, in good faith,
7 a proposed final plan for parenting the child, which must include the allocation of parenting functions. A
8 final parenting plan must be incorporated into any final decree or amended decree, including cases of
9 dissolution by default. As used in this section, parenting functions means those aspects of the parent-child
10 relationship in which the parent makes decisions and performs functions necessary for the care and growth
11 of the child, including:

12 (a) maintaining a loving, stable, consistent, and nurturing relationship with the child;

13 (b) attending to the daily needs of the child such as feeding, physical care and grooming,
14 supervision, health care, day care, and engaging in other activities that are appropriate to the developmental
15 level of the child and that are within the social and economic circumstances of the particular family;

16 (c) attending to adequate education for the child, including remedial or other education essential
17 to the best interests of the child;

18 (d) assisting the child in developing and maintaining appropriate interpersonal relationships; and

19 (e) exercising appropriate judgment regarding the child's welfare, consistent with the child's
20 developmental level and the family's social and economic circumstances.

21 (2) Based on the best interest of the child, a final parenting plan must include, at a minimum,
22 provisions for:

23 (a) designation of a parent as custodian of the child, solely for the purposes of all other state and
24 federal statutes that require a designation or determination of custody, but the designation may not affect
25 either parent's rights and responsibilities under the parenting plan;

26 (b) designation of the legal residence of both parents and the child, except as provided in 40-4-217;

27 (c) a residential schedule specifying the periods of time during which the child will reside with each
28 parent, including provisions for holidays, birthdays of family members, vacations, and other special
29 occasions;

30 (d) finances to provide for the child's needs; and

1 (e) any other factors affecting the physical and emotional health and well-being of the child.

2 (3) Based on the best interest of the child, a parenting plan may include:

3 (a) provisions for periodic review of the parenting plan when requested by either parent or the child
4 or when circumstances arise that are foreseen by the parents as triggering a need for review, such as
5 attainment by the child of a certain age or if a change in the child's residence is necessitated;

6 (b) sanctions that will apply if a parent fails to follow the terms of the parenting plan, including
7 contempt of court;

8 (c) allocation of parental decisionmaking authority regarding the child's:

9 (i) education;

10 (ii) religious upbringing; and

11 (iii) health care;

12 (d) the method by which future disputes concerning the child will be resolved between the parents,
13 other than court action; and

14 (e) other provisions applicable to the unique circumstances of the child or the family situation that
15 the parents agree will facilitate a meaningful, ongoing relationship between the child and parents.

16 (4) The court may in its discretion order the parties to participate in a dispute resolution process
17 to assist in resolving any conflicts between the parties regarding adoption of the parenting plan. The dispute
18 resolution process may include counseling or mediation by a specified person or agency, or court action.

19 (5) Each parent may make decisions regarding the day-to-day care and control of the child while
20 the child is residing with that parent and, regardless of the allocation of decisionmaking in the parenting
21 plan, either parent may make emergency decisions affecting the child's safety or health. When mutual
22 decisionmaking is designated in the parenting plan but cannot be achieved regarding a particular issue, the
23 parents shall make a good faith effort to resolve the issue through any dispute resolution process provided
24 for in the final parenting plan.

25 (6) If a parent fails to comply with a provision of the parenting plan, the other parent's obligations
26 under the parenting plan are not affected.

27

28 **Section 20.** Section 40-4-216, MCA, is amended to read:

29 **"40-4-216. Hearings.** (1) ~~Custody~~ Parenting plan proceedings shall receive priority in being set for
30 hearing.

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

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

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

11
12 **Section 21.** Section 40-4-217, MCA, is amended to read:

13 **"40-4-217. Visitation Notice of intent to move.** (1) ~~A parent who is not granted custody of the~~
14 ~~child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would~~
15 ~~endanger seriously the child's physical, mental, moral, or emotional health.~~

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

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

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

27 (5) The A parent who intends to change residence shall, unless precluded under [section 19],
28 provide written notice required by subsection (4) to the other parent.

29 (2) If a parent's change in residence will significantly affect the child's contact with the other
30 parent, as defined in 40-4-219(1)(e), notice must be served personally or given by certified mail not less

1 than 30 days before the proposed change in residence and must include a proposed revised residential
 2 schedule. Proof of service must be filed with the court that ~~issued the custody order~~ adopted the parenting
 3 plan. The purpose of the notice is to allow the noncustodial parent to seek a modification of the parent's
 4 ~~visitation schedule~~. Failure of the parent who receives notice to respond to the written notice or to seek
 5 amendment of the residential schedule pursuant to 40-4-219 within the 30-day period constitutes
 6 acceptance of the proposed revised residential schedule.

7 ~~(6) (a) If a noncustodial parent or other person residing in the noncustodial parent's household has~~
 8 ~~been convicted of any of the crimes listed in subsection (6)(c), the custodial parent or any other person~~
 9 ~~who has been granted custody of the child pursuant to court order may file an objection to visitation with~~
 10 ~~the court. The custodial parent or other person having custody shall give notice to the noncustodial parent~~
 11 ~~of the objection as provided by the Montana Rules of Civil Procedure, and the noncustodial parent has 20~~
 12 ~~days from the notice to respond. If the noncustodial parent fails to respond within 20 days, the visitation~~
 13 ~~rights of the noncustodial parent are suspended until further order of the court. If the noncustodial parent~~
 14 ~~responds and objects, a hearing must be held within 30 days of the response.~~

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

18 ~~(c) This subsection (6) 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, as described in 45-2-101 and prohibited under~~
 24 ~~45-5-505;~~

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

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

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);~~

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

30

1 **Section 22.** Section 40-4-219, MCA, is amended to read:

2 "**40-4-219. ~~Modification~~ Amendment of parenting plan -- mediation.** (1) The court may in its
3 discretion ~~modify~~ amend a prior ~~e custody decree~~ parenting plan if it finds, upon the basis of facts that have
4 arisen since the prior ~~decree~~ plan or that were unknown to the court at the time of entry of the prior ~~decree~~
5 plan, that a change has occurred in the circumstances of the child ~~or the child's custodian~~ and that the
6 ~~modification~~ amendment is necessary to serve the best interest of the child, ~~and if it further finds that~~ In
7 determining the child's best interest under this section, the court may, in addition to the criteria in
8 40-4-212, also consider whether:

9 (a) the ~~custodian agrees~~ parents agree to the ~~modification~~ amendment;

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

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

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

16 ~~(e)~~ (d) the custodian one parent has willfully and consistently:

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

18 (ii) ~~attempts~~ attempted to frustrate or deny contact with the child by the ~~noncustodial parent's~~
19 ~~exercise of visitation rights~~ other parent; or

20 ~~(f)~~ (e) the custodial parent one parent has changed or intends to change the child's residence ~~to~~
21 ~~another state~~ in a manner that significantly affects the child's contact with the other parent. A change in
22 residence of more than 30 miles from the child's present residence constitutes a significant effect on
23 parent-child contact.

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

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

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

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

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

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

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

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

23 ~~(c)~~ This subsection (8) applies to the following crimes:

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

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

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

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

28 (v) deviate sexual conduct with an animal, as described in 45-2-101 and prohibited under
29 45-5-505;

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

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

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

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

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

5 (9) Except in cases of physical abuse or threat of physical abuse by one parent against the other
 6 parent or the child, or when a parent has been convicted of a crime enumerated in subsection (8)(b), the
 7 court may, in its discretion, order the parties to participate in a dispute resolution process to assist in
 8 resolving any conflicts between the parties regarding amendment of the parenting plan. The dispute
 9 resolution process may include counseling or mediation by a specified person or agency, and court action."
 10

11 **Section 23.** Section 40-4-220, MCA, is amended to read:

12 **"40-4-220. Affidavit practice.** (1) A Unless the parties agree to an interim parenting plan or an
 13 amended parenting plan, the moving party seeking a temporary custody order an interim parenting plan or
 14 modification amendment of a custody decree final parenting plan shall submit, together with his the moving
 15 papers, an affidavit setting forth facts supporting the requested order plan or modification amendment and
 16 shall give notice, together with a copy of his the affidavit, to other parties to the proceeding, who may file
 17 opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the
 18 motion is established by the affidavits, based on the best interests of the child, in which case it shall set
 19 a date for hearing on an order to show cause why the requested order plan or modification amendment
 20 should not be granted.

21 (2) (a) A party seeking a temporary custody order an interim parenting plan may request that the
 22 court grant a temporary assignment of custody order providing for living arrangements for the child ex
 23 parte. ~~He~~ The party shall ~~so~~ make the request in his the moving papers and shall submit an affidavit
 24 showing that:

25 (i) no previous determination of custody parenting plan has been made ordered by a court and it
 26 would be in the child's best interest under the standards of 40-4-212 if temporary eustody—were placed
 27 with the person designated living arrangements for the child were as proposed by the moving party; or

28 (ii) although a previous determination of custody parenting plan has been made ordered, an
 29 emergency situation has arisen in the child's present environment endangers his physical or emotional
 30 health—that is detrimental to the child's best interests and an immediate change of eustody—would serve in

1 ~~the parenting plan is necessary to protect the child's physical or emotional health~~ child.

2 (b) If the court finds from the affidavits submitted by the moving party that ~~a temporary assignment~~
3 ~~of custody~~ the interim parenting plan proposed by the moving party would be in the child's best interest
4 under the standards of 40-4-212 or that the child's ~~physical or emotional health is endangered~~ present
5 environment is detrimental to the child's best interest and would be protected by ~~a temporary assignment~~
6 ~~of custody~~ the interim parenting plan, the court shall make an order ~~placing temporary custody with the~~
7 ~~person designated~~ implementing the interim parenting plan proposed by the moving party ~~or with some~~
8 ~~other person designated by the court and.~~ The court shall require all parties to appear and show cause
9 within 20 days from the execution of the ~~order~~ interim parenting plan ~~why, in the case of a temporary order~~
10 ~~issued under subsection (2)(a)(i), the temporary order~~ interim parenting plan should not remain in effect until
11 further order of court ~~or, in the case of a temporary order issued under subsection (2)(a)(ii), the court~~
12 ~~should not restore the child to the custodian from whom the child was removed by the temporary order."~~

13
14 **Section 24.** Section 40-4-221, MCA, is amended to read:

15 **"40-4-221. Determination of custody child's care upon death of custodial parent.** (1) Upon the
16 death of a parent ~~granted custody of a child, custody shall pass to the noncustodial parent unless,~~ one or
17 more parties named in subsection (2) may request a custody parenting plan hearing. The ~~noncustodial~~
18 surviving parent ~~shall~~ must be a party in any proceeding brought under this section.

19 (2) Upon the death of a parent ~~granted custody of a child,~~ any of the following parties may request
20 a custody parenting plan hearing ~~and seek custody of the child:~~

21 (a) the ~~noncustodial~~ natural parent;

22 (b) the surviving spouse of the deceased custodial parent;

23 (c) a person nominated by the will of the deceased custodial parent;

24 (d) any person nominated by the child if the child is at least 12 years old;

25 (e) any other person if that person has actual physical control over the child;

26 (f) any other party whom, upon showing of good cause, the court permits to intervene as an
27 interested party.

28 (3) The hearing and determination of ~~custody shall be~~ a parenting plan is governed by this part."
29

30 **Section 25.** Section 40-4-225, MCA, is amended to read:

1 **"40-4-225. Access to records by noncustodial parent.** Notwithstanding any other provision of law,
 2 access to records and information pertaining to a minor child, including but not limited to medical, dental,
 3 law enforcement, and school records, may not be denied to a parent ~~because such parent is not the child's~~
 4 ~~custodial parent~~ who is a party to a parenting plan."

5
 6 **Section 26.** Section 40-4-226, MCA, is amended to read:

7 **"40-4-226. Court-ordered educational program on effects of dissolution of marriage on children.**

8 (1) In a proceeding for dissolution of marriage involving a minor child or in a ~~custody modification~~ parenting
 9 plan proceeding involving a minor child, a court shall inform the parties, excluding the minor child, of
 10 available educational programs concerning the effects of dissolution of marriage on children and, if the court
 11 finds that it would be in the best interest of the minor child, ~~may~~ shall order the parties to attend a
 12 court-sponsored program. The program may be divided into sessions. The program must be educational in
 13 nature and may not be designed for individual therapy.

14 (2) ~~Any facts presented at an educational session resulting from a referral under this section may~~
 15 ~~not be considered in a dissolution of a marriage or a custody modification proceeding, nor may a report~~
 16 ~~resulting from an educational session become part of the record of the dissolution or proceeding unless the~~
 17 ~~parties have stipulated in writing to the contrary.~~

18 (3) ~~The fees or costs of an educational session under this section must be borne by the parties and~~
 19 ~~may be assessed by the court in an equitable manner. The cost of implementing the court-sponsored~~
 20 educational program for each district court, provided for in subsection (1), must be paid from the fees for
 21 filing petitions for contested amendment of a parenting plan, provided for in 25-1-201(9)."

22
 23 **Section 27.** Section 40-4-302, MCA, is amended to read:

24 **"40-4-302. Mediation proceeding -- tolling of statute of limitations.** (1) The purpose of a mediation
 25 proceeding is to reduce the acrimony that may exist between the parties and to develop an agreement that
 26 is supportive of the best interests of a child involved in the proceeding.

27 (2) The mediator shall attempt to effect a settlement of the ~~child custody~~ parenting, child support,
 28 ~~visitation~~ parental contact with the child, maintenance, or property settlement dispute. The mediator may
 29 not use coercive measures to effect the settlement. The mediator may recommend that a party obtain
 30 assistance from other resources in the community.

1 (3) Subject to 40-4-301(1), the mediator may exclude attorneys from the mediation sessions. The
 2 parties' attorneys may confer with the mediator prior to the mediation session and may review and approve
 3 any agreement.

4 (4) An applicable statute of limitations is tolled as to the participants during the period of mediation.
 5 The tolling commences on the date the parties agree in writing to participate in the mediation or when the
 6 court orders mediation, whichever is later, and ends on the date the mediation is officially terminated by
 7 the mediator."

8
 9 **Section 28.** Section 40-4-307, MCA, is amended to read:

10 "**40-4-307. Mediator qualifications.** A mediator ~~shall~~ must meet the following minimum
 11 qualifications:

12 (1) knowledge of the court system and the procedures used in family law matters;

13 (2) knowledge of other resources in the community to which the parties may be referred for
 14 assistance;

15 (3) if applicable, knowledge of child development, clinical issues relating to children, the effects
 16 of marriage dissolution on children, and ~~child-custody~~ parenting research; and

17 (4) knowledge of the mediation process."

18
 19 **Section 29.** Section 40-6-211, MCA, is amended to read:

20 "**40-6-211. Obligations of parents for the support and education of their children.** The parent or
 21 parents ~~entitled to the custody~~ of a child ~~must~~ shall give ~~him~~ the child support and education suitable to
 22 ~~his~~ the child's circumstances."

23
 24 **Section 30.** Section 40-6-221, MCA, is amended to read:

25 "**40-6-221. Custody Parenting, services, and earnings of child.** The father and mother of an
 26 unmarried minor child are equally entitled to the ~~custody~~ parenting, services, and earnings of the child. If
 27 either parent ~~be~~ is dead or unable or refuses to ~~take the custody~~ exercise parenting or has abandoned ~~his~~
 28 ~~or her~~ the family, the other parent is entitled to the ~~custody~~ parenting, services, and earnings of the child,
 29 unless ~~custody~~ care of the child is determined otherwise pursuant to 40-4-221."

30

1 **Section 31.** Section 40-9-101, MCA, is amended to read:

2 "**40-9-101. Application of Montana Rules of Civil Procedure.** (1) Except as otherwise provided,
3 the Montana Rules of Civil Procedure apply to all proceedings under this section and 40-9-102.

4 (2) A proceeding for ~~grandparent~~ grandparent-grandchild contact visitation under this section and
5 40-9-102 ~~shall~~ must be entitled, "In re the ~~visitation~~ grandparent-grandchild contact of"

6 (3) The initial pleading in all proceedings under this section and 40-9-102 ~~shall~~ must be
7 denominated a petition. A responsive pleading ~~shall~~ must be denominated a response. Other pleadings ~~shall~~
8 must be denominated as provided in the Montana Rules of Civil Procedure."

9
10 **Section 32.** Section 40-9-102, MCA, is amended to read:

11 "**40-9-102. Grandparent Grandparent-grandchild contact visitation rights.** (1) Except as provided
12 in subsection (5), the district court may grant to a grandparent of a child reasonable ~~visitation~~ rights to
13 contact with the child, including but not limited to ~~visitation~~ rights regarding a child who is the subject of,
14 or as to whom a disposition has been made during, an administrative or court proceeding under Title 41
15 or this title. The department of public health and human services must be given notice of a petition for
16 ~~grandparent~~ grandparent-grandchild contact visitation regarding a child who is the subject of, or as to
17 whom a disposition has been made during, an administrative or court proceeding under Title 41 or this title.

18 (2) ~~Visitation rights~~ Grandparent-grandchild contact granted under this section may be granted only
19 upon a finding by the court, after a hearing, that the ~~visitation~~ contact would be in the best interest of the
20 child.

21 (3) A person may not petition the court under this section more often than once every 2 years
22 unless there has been a significant change in the circumstances of:

- 23 (a) the child;
24 (b) the child's parent, guardian, or custodian; or
25 (c) the child's grandparent.

26 (4) The court may appoint an attorney to represent the interests of a child with respect to ~~visitation~~
27 grandparent-grandchild contact when the interests are not adequately represented by the parties to the
28 proceeding.

29 (5) This section does not apply if the child has been adopted by a person other than a stepparent
30 or a grandparent. ~~Visitation rights~~ Grandparent-grandchild contact granted under this section ~~terminate~~

1 terminates upon the adoption of the child by a person other than a stepparent or a grandparent."

2

3 **Section 33.** Section 45-5-304, MCA, is amended to read:

4 "**45-5-304. Custodial interference.** (1) A person commits the offense of custodial interference if,
5 knowing that the person has no legal right to do so, the person:

6 (a) takes, entices, or withholds from lawful custody any child, incompetent person, or other person
7 entrusted by authority of law to the custody of another person or institution;

8 ~~(b) prior to the entry of a court order determining custodial rights, takes, entices, or withholds any~~
9 ~~child from the other parent when the action manifests a purpose to substantially deprive that parent of~~
10 ~~parental rights; or~~

11 ~~(c) is one of two persons who has joint custody of a child under a court order and takes, entices,~~
12 ~~or withholds the child from the other when the action manifests a purpose to substantially deprive the other~~
13 ~~parent of parental rights.~~

14 (2) A person convicted of the offense of custodial interference shall be imprisoned in the state
15 prison for any term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both.

16 (3) With respect to the first alleged commission of the offense only, a person who has not left the
17 state does not commit an offense under this section if the person voluntarily returns the child, incompetent
18 person, or other person to lawful custody ~~prior to~~ before arraignment. With respect to the first alleged
19 commission of the offense only, a person who has left the state does not commit an offense under this
20 section if the person voluntarily returns the child, incompetent person, or other person to lawful custody
21 ~~prior to~~ before arrest."

22

23 **NEW SECTION. Section 34. Parenting interference.** (1) A person commits the offense of parenting
24 interference if, knowing that the person has no legal right to do so, the person:

25 (a) before the entry of a court order determining parenting rights, takes, entices, or withholds a
26 child from the other parent when the action manifests a purpose to substantially deprive that parent of
27 parenting rights; or

28 (b) is one of two persons who has parenting authority of a child under a court order and takes,
29 entices, or withholds the child from the other when the action manifests a purpose to substantially deprive
30 the other parent of parenting rights.

1 (2) A person convicted of the offense of parenting interference shall be imprisoned in the state
2 prison for any term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both.

3 (3) With respect to the first alleged commission of the offense only, a person who has not left the
4 state does not commit an offense under this section if the person voluntarily returns the child before
5 arraignment. With respect to the first alleged commission of the offense only, a person who has left the
6 state does not commit an offense under this section if the person voluntarily returns the child before arrest.

7
8 **Section 35.** Section 45-5-631, MCA, is amended to read:

9 "**45-5-631. ~~Visitation interference~~ Interference with parent-child contact.** (1) A person who has
10 ~~legal custody of a minor child been granted parent-child contact under a parenting plan~~ commits the offense
11 of ~~visitation~~ interference with parent-child contact if ~~he~~ the person knowingly or purposely prevents,
12 obstructs, or frustrates the ~~visitation~~ rights of a another person entitled to ~~visitation~~ parent-child contact
13 under an existing court order.

14 (2) A person convicted of the offense of ~~visitation~~ interference with parent-child contact shall be
15 fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 5 days,
16 or both."

17
18 **Section 36.** Section 45-5-632, MCA, is amended to read:

19 "**45-5-632. ~~Aggravated visitation~~ interference with parent-child contact.** (1) A person who
20 commits the offense of ~~visitation~~ interference with parent-child contact by changing the residence of the
21 minor child ~~over whom he has legal custody~~ to another state without giving written notice as required in
22 40-4-217, unless the notice requirement has been precluded under [section 19], or without written consent
23 of the person entitled to ~~visitation~~ parent-child contact pursuant to an existing court order commits the
24 offense of aggravated ~~visitation~~ interference with parent-child contact.

25 (2) A person convicted of the offense of aggravated ~~visitation~~ interference with parent-child contact
26 shall be fined an amount not to exceed \$1,000 or be imprisoned in the state prison for a term not to exceed
27 18 months, or both."

28
29 **Section 37.** Section 45-5-633, MCA, is amended to read:

30 "**45-5-633. Defenses to ~~visitation~~ interference with parent-child contact and aggravated visitation**

1 **interference with parent-child contact.** (1) A person does not commit the offense of ~~visitation~~ interference
2 with parent-child contact or aggravated ~~visitation~~ interference with parent-child contact if he ~~is~~ the person
3 acts:

4 (a) with the consent of the person entitled to ~~visitation~~ parent-child contact;

5 (b) under an existing court order; or

6 (c) with reasonable cause.

7 (2) Return of the child ~~prior to~~ before arrest is a defense only with respect to the first commission
8 of ~~visitation~~ interference with parent-child contact or aggravated ~~visitation~~ interference with parent-child
9 contact."

10

11 **NEW SECTION. Section 38. Repealer.** Sections 40-4-222, 40-4-223, 40-4-224, 40-6-222,
12 40-6-223, 40-6-224, and 40-6-231, MCA, are repealed.

13

14 **NEW SECTION. Section 39. Codification instruction.** (1) [Sections 18 and 19] are intended to be
15 codified as an integral part of Title 40, chapter 4, part 2, and the provisions of Title 40, chapter 4, part 2,
16 apply to [sections 18 and 19].

17 (2) [Section 34] is intended to be codified as an integral part of Title 45, chapter 5, part 6, and the
18 provisions of Title 45, chapter 5, part 6, apply to [section 34].

19

20 **NEW SECTION. Section 40. Saving clause.** [This act] does not affect rights and duties that
21 matured, penalties that were incurred, or proceedings that were begun before October 1, 1997.

22

23 **NEW SECTION. Section 41. Severability.** If a part of [this act] is invalid, all valid parts that are
24 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
25 applications, the part remains in effect in all valid applications that are severable from the invalid
26 applications.

27

28 **NEW SECTION. Section 42. Applicability.** [This act] applies to proceedings begun after October
29 1, 1997.

30

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0231, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising domestic relations statutes regarding the custody and visitation of children involved in a marriage dissolution; revising applicable terminology; requiring adoption of a final parenting plan that includes specific provisions in the best interests of the child, an option for dispute resolution or mediation except in cases of proven child or spousal abuse, and an option for periodic review of the parenting plan.

ASSUMPTIONS:

1. If the adoption of a final parenting plan replaces any elements of an interim parenting plan, including any child support provisions in that interim parenting plan, then any amount due under the interim parenting plan becomes null and void. This will require the return of funds collected under the interim plan on cases the Child Support Enforcement Division (CSED) services.
2. It is unknown how many CSED cases this will impact, but it is anticipated it will have a minor negative effect on CSED collections. For purposes of this fiscal note, assume that the department will absorb any impact within existing resources.

FISCAL IMPACT:

None.

Dave Lewis 1-16-97

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

BEVERLY BARNHART, PRIMARY SPONSOR DATE

Fiscal Note for HB0231, as introduced

HB 231

1 HOUSE BILL NO. 231

2 INTRODUCED BY BARNHART, BROOKE, ECK, WATERMAN, DOWELL, COCCHIARELLA, SANDS,
3 WYATT, KOTTEL, HALLIGAN, HARGROVE, BURNETT
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING DOMESTIC RELATIONS STATUTES
6 REGARDING THE CUSTODY AND VISITATION OF CHILDREN INVOLVED IN A MARRIAGE DISSOLUTION;
7 REVISING APPLICABLE TERMINOLOGY; REQUIRING ADOPTION OF A FINAL PARENTING PLAN THAT
8 INCLUDES SPECIFIC PROVISIONS IN THE BEST INTERESTS OF THE CHILD, AN OPTION FOR DISPUTE
9 RESOLUTION OR MEDIATION EXCEPT IN CASES OF PROVEN CHILD OR SPOUSAL ABUSE, AND AN
10 OPTION FOR PERIODIC REVIEW OF THE PARENTING PLAN; ALLOWING ADOPTION OF AN INTERIM
11 PARENTING PLAN DURING THE TIME DISSOLUTION PROCEEDINGS ARE PENDING; REQUIRING
12 DESIGNATION OF ONE PARENT AS CUSTODIAN FOR APPLICABILITY OF FEDERAL OR STATE LAWS;
13 REQUIRING THAT PARENTS RECEIVE INFORMATION REGARDING PARENTAL RESPONSIBILITY AND
14 CONTACT WITH THE CHILD IN DISPUTED CASES; ALLOWING THE TRIAL COURT TO DETERMINE THE
15 APPROPRIATE LEVEL OF EVALUATION NECESSARY TO ESTABLISH PARENTING ARRANGEMENTS;
16 PROVIDING A FEE FOR FILING A PETITION FOR CONTESTED AMENDMENT OF A PARENTING PLAN TO
17 DEFRAY THE COSTS OF IMPLEMENTING THE ~~COURT-ORDERED~~ COURT-SANCTIONED EDUCATIONAL
18 PROGRAM ON THE EFFECTS OF DIVORCE ON CHILDREN IN DISPUTED CASES AND THE COST OF
19 PARENTING EDUCATION WHEN ORDERED FOR THE INVESTIGATION AND PREPARATION OF A REPORT
20 CONCERNING PARENTING ARRANGEMENTS; REVISING APPROPRIATE TERMINOLOGY IN GRANDPARENT
21 VISITATION STATUTES AND APPLICABLE CRIMINAL STATUTES; AMENDING SECTIONS 25-1-201,
22 40-1-105, 40-1-213, 40-1-402, 40-4-103, 40-4-104, 40-4-105, 40-4-109, 40-4-110, 40-4-123, 40-4-201,
23 40-4-204, 40-4-205, 40-4-211, 40-4-212, 40-4-213, 40-4-214, 40-4-215, 40-4-216, 40-4-217, 40-4-219,
24 40-4-220, 40-4-221, 40-4-225, 40-4-226, 40-4-302, 40-4-307, 40-6-211, 40-6-221, 40-9-101, 40-9-102,
25 45-5-304, 45-5-631, 45-5-632, AND 45-5-633, MCA; REPEALING SECTIONS 40-4-222, 40-4-223,
26 40-4-224, 40-6-222, 40-6-223, 40-6-224, AND 40-6-231, MCA; AND PROVIDING AN APPLICABILITY
27 DATE."

28
29 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
30

1 **Section 1.** Section 25-1-201, MCA, is amended to read:

2 "**25-1-201. Fees of clerk of district court.** (1) The clerk of the district court shall collect the
3 following fees:

4 (a) at the commencement of each action or proceeding, except a petition for dissolution of
5 marriage, from the plaintiff or petitioner, \$80; for filing a complaint in intervention, from the intervenor,
6 \$80; for filing a petition for dissolution of marriage, a fee of \$120; ~~and~~ for filing a petition for legal
7 separation, a fee of \$120; and for filing a petition for a contested amendment of a final parenting plan, a
8 fee of \$120;

9 (b) from each defendant or respondent, on appearance, \$60;

10 (c) on the entry of judgment, from the prevailing party, \$45;

11 (d) for preparing copies of papers on file in the clerk's office, 50 cents per page for the first five
12 pages of each file, per request, and 25 cents per additional page;

13 (e) for each certificate, with seal, \$2;

14 (f) for oath and jurat, with seal, \$1;

15 (g) for search of court records, 50 cents for each year searched, not to exceed a total of \$25;

16 (h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts,
17 the fee for entry of judgment provided for in subsection (1)(c);

18 (i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;

19 (j) for transmission of records or files or transfer of a case to another court, \$5;

20 (k) for filing and entering papers received by transfer from other courts, \$10;

21 (l) for issuing a marriage license, \$30;

22 (m) on the filing of an application for informal, formal, or supervised probate or for the appointment
23 of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from
24 the applicant or petitioner, \$70, which includes the fee for filing a will for probate;

25 (n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative
26 of the estate of a nonresident decedent, \$55;

27 (o) for filing a declaration of marriage without solemnization, \$30;

28 (p) for filing a motion for substitution of a judge, \$100.

29 (2) Except as provided in subsections (3) through ~~(8)~~ (9), 32% of all fees collected by the clerk of
30 the district court must be deposited in and credited to the district court fund. If no district court fund exists,

1 that portion of the fees must be deposited in the general fund for district court operations. The remaining
2 portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

3 (3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage
4 without solemnization, \$14 must be deposited in and credited to the state general fund, \$6.40 must be
5 deposited in and credited to the county general fund, and \$9.60 must be remitted to the state to be
6 deposited as provided in 19-5-404.

7 (4) Of the fee for filing a petition for dissolution of marriage or legal separation, \$40 must be
8 deposited in the state general fund, \$35 must be remitted to the state to be deposited as provided in
9 19-5-404, \$5 must be deposited in the children's trust fund account established by 41-3-702, and \$20
10 must be deposited in and credited to the district court fund. If no district court fund exists, the \$20 must
11 be deposited in the general fund for district court operations.

12 (5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the
13 district court fund or the county general fund or remitted to the state, the clerk of the district court shall
14 deduct from the following fees the amounts indicated:

15 (i) at the commencement of each action or proceeding and for filing a complaint in intervention as
16 provided in subsection (1)(a), \$35;

17 (ii) from each defendant or respondent, on appearance, as provided in subsection (1)(b), \$25;

18 (iii) on the entry of judgment as provided in subsection (1)(c), \$15; and

19 (iv) from the applicant or petitioner, on the filing of an application for probate or for the appointment
20 of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as
21 provided in subsection (1)(m), \$15.

22 (b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the
23 county general fund for district court operations unless the county has a district court fund. If the county
24 has a district court fund, the money must be deposited in that fund.

25 (6) The fee for filing a motion for substitution of a judge as provided in subsection (1)(p) must be
26 remitted to the state to be deposited as provided in 19-5-404.

27 (7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court
28 fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

29 (8) The clerk of the district court shall remit to the credit of the state general fund \$20 of each fee
30 collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion of

1 judicial salaries.

2 (9) The fee for filing a petition for a contested amendment of a parenting plan must be remitted by
 3 the clerk of the district court to the credit of the district court to defray the costs of the ~~court sponsored~~
 4 COURT-SANCTIONED educational program concerning the effects of dissolution of marriage on children,
 5 as required in 40-4-226, and to defray the expense of education when ordered for the investigation and
 6 preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a)."

7

8 **Section 2.** Section 40-1-105, MCA, is amended to read:

9 **"40-1-105. Application of the Montana Rules of Civil Procedure.** (1) Except for proceedings
 10 ~~coming~~ under the Uniform Child Custody Jurisdiction Act, the Montana Rules of Civil Procedure apply to
 11 all proceedings under this chapter, except as otherwise provided in this chapter.

12 (2) A proceeding for declaration of invalidity of marriage ~~shall~~ must be entitled, "In re the Marriage
 13 of and". A ~~custody~~ parenting or support proceeding ~~shall~~ must be entitled, "In re the
 14 ~~(custody)~~ (parenting) (support) of".

15 (3) The initial pleading in all proceedings under this chapter ~~shall~~ must be denominated a petition.
 16 A responsive pleading ~~shall~~ must be denominated a response. Other pleadings, and all pleadings in other
 17 matters under this chapter, ~~shall~~ must be denominated as provided in the Montana Rules of Civil Procedure.

18 (4) In this chapter, "decree" includes "judgment".

19

20 **Section 3.** Section 40-1-213, MCA, is amended to read:

21 **"40-1-213. Judicial approval.** (1) The district court may order the clerk of the district court to
 22 issue a marriage license and a marriage certificate form to a party ~~aged~~ aged 16 or 17 years of age who has no
 23 parent capable of consenting to ~~his~~ the party's marriage or has the consent of both parents or of the parent
 24 having the actual care, ~~custody~~ parenting authority, and control to ~~his~~ the party's marriage, if capable of
 25 giving consent, or of ~~his~~ the party's guardian. The court must require both parties to participate in a period
 26 of marriage counseling involving at least two separate counseling sessions not less than 10 days apart with
 27 a designated counselor as a condition of the order for issuance of a marriage license and a marriage
 28 certificate form under this section.

29 (2) A marriage license and a marriage certificate form may be issued under this section only if the
 30 court finds that the underaged party is capable of assuming the responsibilities of marriage and the marriage

1 will serve ~~his~~ the party's best interest interests. Pregnancy alone does not establish that the best ~~interest~~
 2 interests of the party will be served.

3 (3) The district court shall authorize performance of a marriage by proxy upon the showing required
 4 by the provisions on solemnization."
 5

6 **Section 4.** Section 40-1-402, MCA, is amended to read:

7 **"40-1-402. Declaration of invalidity.** (1) The district court shall enter its decree declaring the
 8 invalidity of a marriage entered into under the following circumstances:

9 (a) a party lacked capacity to consent to the marriage at the time that the marriage was entered
 10 into, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other
 11 incapacitating substances, or a party was induced to enter into a marriage by force or duress or by fraud
 12 involving the essentials of marriage;

13 (b) a party lacks the physical capacity to consummate the marriage by sexual intercourse, and at
 14 the time that the marriage was entered into, the other party did not know of the incapacity;

15 (c) a party was under ~~the age of 16 years~~ of age or was ~~aged~~ 16 or 17 years of age and did not
 16 have the consent of the party's parents or guardian or judicial approval; or

17 (d) the marriage is prohibited.

18 (2) A declaration of invalidity under subsections (1)(a) through (1)(c) may be sought by any of the
 19 following persons and must be commenced within the times specified, but ~~in no event may~~ a declaration
 20 of invalidity may not be sought after the death of either party to the marriage:

21 (a) for lack of capacity to consent because of mental incapacity or infirmity, no later than 1 year
 22 after the petitioner obtained knowledge of the described condition;

23 (b) for lack of capacity to consent because of the influence of alcohol, drugs, or other
 24 incapacitating substances, no later than 1 year after the petitioner obtained knowledge of the described
 25 condition;

26 (c) for lack of capacity to consent because of force, duress, or fraud, no later than 2 years after
 27 the petitioner obtained knowledge of the described condition;

28 (d) for the reason set forth in subsection (1)(b), by either party, no later than 4 years after the
 29 petitioner obtained knowledge of the described condition;

30 (e) for the reason set forth in subsection (1)(c), by the underaged party or the party's parent or

1 guardian, ~~prior to~~ before the time that the underaged party reaches the age at which the party could have
2 married without satisfying the omitted requirement.

3 (3) A declaration of invalidity for the reason set forth in subsection (1)(d) may be sought by either
4 party, the legal spouse in case of a bigamous marriage, the county attorney, or a child of either party, at
5 any time ~~prior to~~ before the death of one of the parties.

6 (4) Children born of a marriage declared invalid are legitimate.

7 (5) Unless the court finds, after a consideration of all relevant circumstances, including the effect
8 of a retroactive decree on third parties, that the interests of justice would be served by making the decree
9 not retroactive, it shall declare the marriage invalid as of the date of the marriage. The provisions of chapter
10 4 relating to property rights of the spouses, maintenance, support, and ~~custody~~ parenting of children on
11 dissolution of marriage are applicable to nonretroactive decrees of invalidity.

12 (6) The clerk of the court shall give notice of the entry of a decree declaring the invalidity of a
13 marriage:

14 (a) if the marriage is registered in this state, to the clerk of the district court of the county where
15 the marriage is registered, who shall enter the fact of invalidity in the book in which the marriage license
16 and certificate are recorded; or

17 (b) if the marriage is registered in another jurisdiction, to the appropriate official of that jurisdiction,
18 with the request that the official enter the fact of invalidity in the appropriate record."
19

20 **Section 5.** Section 40-4-103, MCA, is amended to read:

21 **"40-4-103. Application of the Montana Rules of Civil Procedure.** (1) Except for proceedings
22 coming under the Uniform Child Custody Jurisdiction Act, the Montana Rules of Civil Procedure apply to
23 all proceedings under this chapter, except as otherwise provided in this chapter.

24 (2) A proceeding for dissolution of marriage or legal separation ~~shall~~ must be entitled, "In re the
25 Marriage of and". A ~~custody~~ parenting or support proceeding ~~shall~~ must be entitled, "In
26 re the ~~(custody)~~ (parenting) (support) of".

27 (3) The initial pleading in all proceedings under this chapter ~~shall~~ must be denominated a petition.
28 A responsive pleading ~~shall~~ must be denominated a response. Other pleadings, and all pleadings in other
29 matters under this chapter, ~~shall~~ must be denominated as provided in the Montana Rules of Civil Procedure.

30 (4) In this chapter, "decree" includes "judgment".

1 (5) A decree of dissolution or of legal separation, if made, ~~shall~~ may not be awarded to one of the
 2 parties but ~~shall~~ must provide that it affects the status previously existing between the parties in the
 3 manner decreed."

4
 5 **Section 6.** Section 40-4-104, MCA, is amended to read:

6 **"40-4-104. Dissolution of marriage -- legal separation.** (1) The district court shall enter a decree
 7 of dissolution of marriage if:

8 (a) the court finds that one of the parties, at the time the action was commenced, was domiciled
 9 in this state or was stationed in this state while a member of the armed services and that the domicile or
 10 military presence has been maintained for 90 days ~~next~~ preceding the making of the findings;

11 (b) the court finds that the marriage is irretrievably broken, which findings ~~shall~~ must be supported
 12 by evidence:

13 (i) that the parties have lived separate and apart for a period of more than 180 days ~~next~~ preceding
 14 the commencement of this proceeding; or

15 (ii) that there is serious marital discord ~~which~~ that adversely affects the attitude of one or both of
 16 the parties towards the marriage;

17 (c) the court finds that the conciliation provisions of the Montana Conciliation Law and of 40-4-107
 18 either do not apply or have been met; and

19 (d) to the extent it has jurisdiction to do so, the court has considered, approved, or made provision
 20 for ~~child custody~~ parenting, the support of any child entitled to support, the maintenance of either spouse,
 21 and the disposition of property.

22 (2) If a party requests a decree of legal separation rather than a decree of dissolution of marriage,
 23 the court shall grant the decree in that form unless the other party objects."

24
 25 **Section 7.** Section 40-4-105, MCA, is amended to read:

26 **"40-4-105. Procedure -- commencement -- pleadings -- abolition of existing defenses.** (1) The
 27 verified petition in a proceeding for dissolution of marriage or legal separation ~~shall~~ must allege that the
 28 marriage is irretrievably broken and ~~shall~~ must set forth:

29 (a) the age, occupation, and residence of each party and ~~his~~ the party's length of residence in this
 30 state;

1 (b) the date of the marriage and the place at which it was registered;

2 (c) that the jurisdictional requirements of 40-4-104 exist and that the marriage is irretrievably
3 broken in that either:

4 (i) the parties have lived separate and apart for a period of more than 180 days ~~next~~ preceding the
5 commencement of this proceeding; or

6 (ii) there is serious marital discord ~~which~~ that adversely affects the attitude of one or both of the
7 parties towards the marriage, and there is no reasonable prospect of reconciliation;

8 (d) the names, ages, and addresses of all living children of the marriage and whether the wife is
9 pregnant;

10 (e) any arrangements as to support, ~~custody, and visitation~~ of the children and maintenance of a
11 spouse; ~~and~~

12 (f) a proposed parenting plan, if applicable; and

13 (g) the relief sought.

14 (2) Either or both parties to the marriage may initiate the proceeding.

15 (3) If a proceeding is commenced by one of the parties, the other party must be served in the
16 manner provided by the Montana Rules of Civil Procedure and may within 20 days after the date of service
17 file a verified response. ~~No~~ A decree may not be entered until 20 days after the date of service.

18 (4) Previously existing defenses to divorce and legal separation, including but not limited to
19 condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

20 (5) The court may join additional parties proper for the exercise of its authority to implement this
21 chapter."

22

23 **Section 8.** Section 40-4-109, MCA, is amended to read:

24 **"40-4-109. Independence of provisions of decree or temporary order.** If a party fails to comply
25 with a provision of a decree or temporary order or injunction, the obligation of the other party to make
26 payments for support or maintenance or to permit ~~visitation~~ parental contact with the child is not suspended
27 but ~~he~~ the party may move the court to grant an appropriate order."

28

29 **SECTION 9. SECTION 40-4-110, MCA, IS AMENDED TO READ:**

30 **"40-4-110. Costs -- attorney's professional fees.** (1) The court from time to time, after considering

1 the financial resources of both parties, may order a party to pay a reasonable amount for the cost to the
 2 other party of maintaining or defending any proceeding under chapters 1 and 4 ~~of this title~~ and for
 3 ~~attorney's~~ professional fees, including sums for legal and professional services rendered and costs incurred
 4 prior to the commencement of the proceeding or after entry of judgment. The court may order that the
 5 amount be paid directly to the ~~attorney~~ professional, who may enforce the order in ~~his~~ the professional's
 6 name.

7 (2) The purpose of this section is to ensure that both parties have timely and equitable access to
 8 marital financial resources for costs incurred before, during, and after a proceeding under chapters 1 and
 9 4."

10

11 **Section 10.** Section 40-4-123, MCA, is amended to read:

12 **"40-4-123. Jurisdiction and venue.** (1) District courts, municipal courts, justices' courts, and city
 13 courts have concurrent jurisdiction to hear and issue orders under 40-4-121.

14 (2) The municipal judge, justice of the peace, or city court judge shall on motion suspend all further
 15 proceedings in the action and certify the pleading and any orders to the clerk of the district court of the
 16 county where the action was begun if an action for declaration of invalidity of a marriage, legal separation,
 17 or dissolution of marriage or for ~~child custody~~ parenting is pending between the parties. From the time of
 18 the certification of the pleadings and any orders to the clerk, the district court has the same jurisdiction over
 19 the action as if it had been commenced in district court.

20 (3) An action brought under 40-4-121 may be tried in the county in which either party resides or
 21 in which the physical abuse was committed.

22 (4) The right to petition for relief may not be denied because the plaintiff has vacated the residence
 23 or household to avoid abuse."

24

25 **Section 11.** Section 40-4-201, MCA, is amended to read:

26 **"40-4-201. Separation agreement.** (1) To promote amicable settlement of disputes between parties
 27 to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into
 28 a written separation agreement containing provisions for disposition of any property owned by either of
 29 them, maintenance of either of them, and support, custody parenting, and ~~visitation of parental contact~~
 30 with their children. In cases in which children are involved, the separation agreement must MAY contain

1 a parenting plan as required in [section 19 20].

2 (2) In a proceeding for dissolution of marriage or for legal separation, the terms of the separation
3 agreement, except those providing for the support, ~~custody parenting~~, and ~~visitation of parental contact~~
4 with children, are binding upon the court unless it finds, after considering the economic circumstances of
5 the parties and any other relevant evidence produced by the parties, on their own motion or on request of
6 the court, that the separation agreement is unconscionable.

7 (3) If the court finds the separation agreement unconscionable, it may request that the parties ~~to~~
8 submit a revised separation agreement or it may make orders for the disposition of property, maintenance,
9 and support.

10 (4) If the court finds that the separation agreement is not unconscionable as to disposition of
11 property or maintenance and not unsatisfactory as to support:

12 (a) unless the separation agreement provides to the contrary, its terms ~~shall~~ must be set forth in
13 the decree of dissolution or legal separation and the parties ~~shall be~~ ordered to perform them; or

14 (b) if the separation agreement provides that its terms ~~shall~~ may not be set forth in the decree, the
15 decree ~~shall~~ must identify the separation agreement and state that the court has found the terms not
16 unconscionable.

17 (5) Terms of the agreement set forth in the decree are enforceable by all remedies available for
18 enforcement of a judgment, including contempt, and are enforceable as contract terms.

19 (6) Except for terms concerning the support, ~~custody parenting~~, or ~~visitation of parental contact~~
20 with the children, the decree may expressly preclude or limit modification of terms set forth in the decree
21 if provided for in the separation agreement ~~so provides~~. Otherwise, terms of a separation agreement set
22 forth in the decree are automatically modified by modification of the decree."
23

24 **Section 12.** Section 40-4-204, MCA, is amended to read:

25 **"40-4-204. Child support -- orders to address health insurance -- withholding of child support.** (1)
26 In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall
27 order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary
28 for the child's support, without regard to marital misconduct.

29 (2) The court shall consider all relevant factors, including:

30 (a) the financial resources of the child;

- 1 (b) the financial resources of the ~~custodial parent~~ parents;
- 2 (c) the standard of living that the child would have enjoyed had the marriage not been dissolved;
- 3 (d) the physical and emotional condition of the child and the child's educational and medical needs;
- 4 (e) ~~the financial resources and needs of the noncustodial parent~~;
- 5 ~~ff~~ the age of the child;
- 6 ~~g~~(f) the cost of day care for the child;
- 7 ~~h~~(g) any ~~custody arrangement~~ parenting plan that is ordered or decided upon; and
- 8 ~~h~~(h) the needs of any person, other than the child, whom either parent is legally obligated to
- 9 support.

10 (3) (a) Whenever a court issues or modifies an order concerning child support, the court shall

11 determine the child support obligation by applying the standards in this section and the uniform child

12 support guidelines adopted by the department of public health and human services pursuant to 40-5-209.

13 The guidelines must be used in all cases, including cases in which the order is entered upon the default of

14 a party and those in which the parties have entered into an agreement regarding the support amount. A

15 verified representation of the defaulting parent's income, based on the best information available, may be

16 used when a parent fails to provide financial information for use in applying the guidelines. The amount

17 determined under the guidelines is presumed to be an adequate and reasonable support award, unless the

18 court finds by clear and convincing evidence that the application of the standards and guidelines is unjust

19 to the child or to any of the parties or that it is inappropriate in that particular case.

20 (b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall

21 state its reasons for that finding. Similar reasons must also be stated in a case in which the parties have

22 agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the

23 guideline amount must include a statement of the amount of support that would have ordinarily been

24 ordered under the guidelines.

25 (c) If the court does not order a parent owing a duty of support to a child to pay any amount for

26 the child's support, the court shall state its reasons for not ordering child support.

27 (4) Each temporary or final district court judgment, decree, or order establishing a child support

28 obligation under this title and each modification of a final order for child support must include a medical

29 support order as provided for in Title 40, chapter 5, part 8.

30 (5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception

1 is included in the support order, a support obligation established by judgment, decree, or order under this
2 section, whether temporary or final, and each modification of an existing support obligation under 40-4-208
3 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part
4 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides
5 for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the
6 payment of support without need for an amendment to the support order or for any further action by the
7 court.

8 (b) If an obligor is exempt from immediate income withholding, the district court judgment or order
9 must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's
10 income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to
11 include a warning statement in a judgment or order does not preclude the use of withholding procedures.

12 (c) If a support order subject to income withholding is expressed in terms of a monthly obligation,
13 the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's
14 regular pay period. When an order is annualized and withheld on a weekly or biweekly basis under this
15 section, the support withheld from the obligor may be retained by the obligee when it exceeds the obligor's
16 monthly support obligation if the excess support is a result of annualized withholding.

17 (6) For the purposes of income withholding under subsection (5), each district court judgment,
18 decree, or order that establishes or modifies a child support obligation must include a provision requiring
19 the parent obligated to pay support to inform the court and, if the department of public health and human
20 services is providing services under Title IV-D of the Social Security Act for the enforcement of the
21 judgment, decree, or order, the department, of the following:

- 22 (a) the name and address of the parent's current employer;
23 (b) whether the parent has access to health insurance through an employer or other group; and
24 (c) if insurance coverage is available, the health insurance policy information.

25 (7) Each district court judgment, decree, or order establishing a final child support obligation under
26 this part and each modification of a final order for child support must contain a statement that the order
27 is subject to review and modification by the department of public health and human services upon the
28 request of the department or a party under 40-5-271 through 40-5-273 when the department is providing
29 services under Title IV-D of the Social Security Act for the enforcement of the order.

30 (8) (a) A district court judgment, decree, or order that establishes or modifies a child support

1 obligation must include a provision requiring the child support OBLIGATION to be paid, WITHOUT NEED
 2 FOR FURTHER COURT ORDER:

3 (I) TO THE PERSON WITH WHOM THE CHILD RESIDES BY LEGAL ORDER;

4 (II) IF THE PERSON WITH WHOM THE CHILD LEGALLY RESIDES VOLUNTARILY OR
 5 INVOLUNTARILY RELINQUISHES PHYSICAL CARE AND CONTROL OF THE CHILD TO ANOTHER PERSON,
 6 ORGANIZATION, OR AGENCY, TO THE PERSON, ORGANIZATION, OR AGENCY TO WHOM PHYSICAL
 7 CUSTODY HAS BEEN RELINQUISHED;

8 (III) IF ANY OTHER PERSON, ORGANIZATION, OR AGENCY IS ENTITLED BY LAW, ASSIGNMENT,
 9 OR SIMILAR REASON TO RECEIVE OR COLLECT THE CHILD SUPPORT OBLIGATION, TO THE PERSON,
 10 ORGANIZATION, OR AGENCY HAVING THE RIGHT TO RECEIVE OR COLLECT THE PAYMENT; OR

11 (IV) TO THE COURT FOR THE BENEFIT OF THE MINOR CHILD to:

12 (i) the legal custodian of the minor child;

13 (ii) (A) any other person, organization, or agency having legal physical custody of the minor child
 14 under a legal assignment of rights; or

15 (B) the court for the benefit of the minor child;

16 (iii) any other person or agency designated as caretaker of the minor child by agreement of the legal
 17 custodian; or

18 (iv) any assignee or other person, organization, or agency authorized to receive or collect child
 19 support pursuant to the child support guidelines adopted under 40-5-209.

20 (b) A judgment, decree, or order that omits the provision required by subsection (8)(a) is subject
 21 to the requirements of subsection (8)(a) without need for an amendment to the judgment, decree, or order
 22 or for any further action by the court."
 23

24 **Section 13.** Section 40-4-205, MCA, is amended to read:

25 **"40-4-205. ~~Representation of child~~ Guardian ad litem.** (1) The court may appoint a guardian ad
 26 litem to represent the interests of a minor dependent child with respect to the child's support, ~~eustody~~
 27 parenting, and ~~visitation~~ parental contact. The guardian ad litem may be an attorney. The county attorney,
 28 a deputy county attorney, if any, or the department of public health and human services or any of its staff
 29 may not be appointed for this purpose.

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

1 (a) to conduct investigations that the guardian ad litem considers necessary to ascertain the facts
2 related to the child's support, ~~custody~~ parenting, and ~~visitation~~ parental contact;

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

4 (c) to make written reports to the court concerning the child's support, ~~custody~~ parenting, and
5 ~~visitation~~ parental contact;

6 (d) to appear and participate in all proceedings to the degree necessary to adequately represent
7 the child and make recommendations to the court concerning the child's support, ~~custody~~ parenting, and
8 ~~visitation~~ parental contact; and

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

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

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

16
17 **Section 14.** Section 40-4-211, MCA, is amended to read:

18 **"40-4-211. ~~Child custody jurisdiction~~ Jurisdiction -- commencement of parenting proceedings. (1)**

19 A court of this state competent to decide ~~child custody~~ parenting matters has jurisdiction to make a ~~child~~
20 ~~custody~~ parenting authority determination by initial or ~~modification~~ amended decree if:

21 (a) this state:

22 (i) is the home state of the child at the time of commencement of the proceedings; or

23 (ii) had been the child's home state within 6 months before commencement of the ~~proceeding~~
24 proceedings and the child is absent from this state because of ~~his~~ the child's removal or retention by a any
25 person ~~claiming his custody or for other reason~~ and a parent or person acting as parent continues to live
26 in this state; or

27 (b) it is in the best interest of the child that a court of this state assume jurisdiction because:

28 (i) the child and ~~his~~ the parents or the child and at least one contestant have a significant
29 connection with this state; and

30 (ii) there is available in this state substantial evidence concerning the child's present or future care,

- 1 protection, training, and personal relationships; or
- 2 (c) the child is physically present in this state and:
- 3 (i) has been abandoned; or
- 4 (ii) it is necessary in an emergency to protect ~~him~~ the child because ~~he~~ the child has been subjected
- 5 to or threatened with mistreatment or abuse or is neglected or dependent; or
- 6 (d) (i) no other state has jurisdiction under prerequisites substantially in accordance with subsection
- 7 (1)(a), (1)(b), or (1)(c) or another state has declined to exercise jurisdiction on the ground that this state
- 8 is the more appropriate forum to determine ~~custody of parenting authority over~~ OF the child; and
- 9 (ii) it is in ~~his~~ the child's best interest that the court assume jurisdiction.
- 10 (2) Except under subsections (1)(c) and (1)(d), physical presence in this state of the child or of the
- 11 child and one of the contestants is not alone sufficient to confer jurisdiction on a court of this state to make
- 12 a ~~child custody parenting authority~~ determination.
- 13 (3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine
- 14 ~~his custody parenting authority~~ OF THE CHILD.
- 15 (4) A ~~child custody parenting plan~~ proceeding is commenced in the district court:
- 16 (a) by a parent, by filing a petition:
- 17 (i) for dissolution or legal separation; or
- 18 (ii) for ~~custody of the child parenting authority~~ in the county in which ~~he~~ the child is permanently
- 19 resident or found; or
- 20 (b) by a person other than a parent, by filing a petition for ~~custody of the child parenting authority~~
- 21 in the county in which ~~he~~ the child is permanently resident or found, but only if ~~he~~ the child is not in the
- 22 ~~physical custody of physically residing with~~ one of ~~his~~ the child's parents.
- 23 (5) Notice of a ~~child custody parenting~~ proceeding ~~shall~~ must be given to the child's parent,
- 24 guardian, ~~custodian caretaker~~, those persons ~~having physical custody of~~ with whom the child is physically
- 25 residing, and all other contestants, who may appear, be heard, and file a responsive pleading. The court,
- 26 upon a showing of good cause, may permit intervention of other interested parties."

27

28 **Section 15.** Section 40-4-212, MCA, is amended to read:

29 **"40-4-212. Best interest ~~interests~~ INTEREST of child.** (1) The court shall determine ~~custody~~ the

30 parenting plan in accordance with the best ~~interest interests~~ INTEREST of the child. The court shall consider

1 all relevant parenting factors, ~~including~~ WHICH MAY INCLUDE but ARE not limited to:

2 (a) the wishes of the child's parent or parents ~~as to custody~~;

3 (b) the wishes of the child ~~as to a custodian~~;

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

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

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

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

9 and

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

11 (h) continuity and stability of care;

12 (i) developmental needs of the child;

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

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

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

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

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

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

29 ~~(a) Custody should be granted to the parent who has provided most of the primary care during the~~
30 ~~child's life.~~

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

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

6 ~~(4) The following are rebuttable presumptions:~~

7 ~~(a) A knowing failure to pay birth related costs that the person is able to pay is not in the best~~
8 ~~interest of the child.~~

9 ~~(b) Failure to pay child support that the person is able to pay is not in the best interest of a child~~
10 ~~in need of the child support."~~

11
12 **Section 16.** Section 40-4-213, MCA, is amended to read:

13 "**40-4-213. ~~Temporary orders~~ Interim parenting plan.** (1) A party to a ~~eustedy parenting~~ proceeding
14 may move for a ~~temporary eustedy order~~ an interim parenting plan. The motion must be supported by an
15 affidavit as provided in 40-4-220(1). The court may ~~award temporary eustedy~~ adopt an interim parenting
16 plan under the standards of 40-4-212 after a hearing or under the standards of 40-4-212 and 40-4-220(2)
17 before a hearing. If there is no objection, the court may act solely on the basis of the affidavits.

18 (2) If a proceeding for dissolution of marriage or legal separation is dismissed, any ~~temporary~~
19 ~~eustedy order~~ interim parenting plan is vacated unless a parent ~~or the child's eustodian~~ moves that the
20 proceeding continue as a ~~eustedy parenting~~ proceeding and the court finds, after a hearing, that the
21 circumstances of the parents and the best ~~interest~~ interests of the child require that a ~~eustedy decree~~
22 parenting plan be ~~issued~~ adopted. A CHILD SUPPORT DELINQUENCY EXISTING AT THE TIME THAT AN
23 INTERIM PARENTING PLAN IS VACATED REMAINS A JUDGMENT SUBJECT TO COLLECTION.

24 (3) If a ~~eustedy parenting~~ proceeding commenced in the absence of a petition for dissolution of
25 marriage or legal separation is dismissed, any ~~temporary eustedy order~~ interim parenting plan is vacated.
26 A CHILD SUPPORT DELINQUENCY EXISTING AT THE TIME THAT AN INTERIM PARENTING PLAN IS
27 VACATED REMAINS A JUDGMENT SUBJECT TO COLLECTION.

28 (4) Adoption of a final parenting plan under [section ~~19~~ 20] vacates any interim parenting plan
29 adopted under this section. A CHILD SUPPORT DELINQUENCY EXISTING AT THE TIME THAT AN INTERIM
30 PARENTING PLAN IS VACATED REMAINS A JUDGMENT SUBJECT TO COLLECTION."

1 **Section 17.** Section 40-4-214, MCA, is amended to read:

2 **"40-4-214. Interviews.** (1) The court may interview the child in chambers to ascertain the child's
3 wishes as to ~~his custodian residence and as to visitation~~ parental contact. The court may permit counsel
4 to be present at the interview. The court shall cause a record of the interview to be made and to be part
5 of the record in the case.

6 (2) The court may seek the advice of professional personnel, whether or not employed by the court
7 on a regular basis. The advice given ~~shall~~ must be in writing and made available by the court to counsel
8 upon request. Counsel may examine as a witness any professional personnel consulted by the court."

9

10 **Section 18.** Section 40-4-215, MCA, is amended to read:

11 **"40-4-215. Investigations and reports.** (1) ~~In contested custody proceedings and in other custody~~
12 ~~proceedings if~~ If a parent or the child's custodian a court-appointed third party requests, or if the court finds
13 that a parenting proceeding is contested, the court may order an investigation and report concerning
14 ~~custodial parenting~~ parenting arrangements for the child. The investigator may be the child's guardian ad litem or
15 other professional considered appropriate by the court. The department of public health and human services
16 may not be ordered to conduct the investigation or draft a report unless the ~~parent or the child's custodian~~
17 person requesting the investigation is a recipient of ~~aid to families with dependent children~~ CASH
18 ASSISTANCE UNDER THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BLOCK GRANT, food stamps,
19 or public assistance and all reasonable options for payment of the investigation, if conducted by a person
20 not employed by the department, are exhausted. The department may consult with any investigator and
21 share information relevant to the child's best interests. The cost of the investigation and report must be
22 paid according to the final order. The cost of the educational evaluation under subsection (2)(a) must be
23 paid from the fees for filing petitions for contested amendment of a parenting plan, as provided in
24 25-1-201(9).

25 (2) The court shall determine, if appropriate, the level of evaluation necessary for adequate
26 investigation and preparation of the report, which may include one or more of the following:

- 27 (a) parenting education;
28 (b) mediation pursuant to ~~40-4-303~~ 40-4-301;
29 (c) factfinding by the investigator; and
30 (d) psychological evaluation of the parties.

1 ~~(2)~~(3) In preparing a report concerning a child, the investigator may consult any person who may
 2 ~~have~~ has information about the child and the child's potential ~~custodial~~ parenting arrangements. Upon order
 3 of the court, the investigator may refer the child to professional personnel for diagnosis. ~~The~~ Except as
 4 required for children 16 years of age or older, the investigator may consult with and obtain information from
 5 medical, psychiatric, or other expert persons who have served the child in the past without obtaining the
 6 consent of the ~~parent or the child's custodian~~ persons or entities authorized by law to grant or withhold
 7 access to the records. The child's consent must be obtained if the child has reached the age of 16 unless
 8 the court finds that the child lacks mental capacity to consent. If the requirements of subsection ~~(3)~~ (4) are
 9 fulfilled, the investigator's report may be received in evidence at the hearing.

10 ~~(3)~~(4) The court shall mail the investigator's report to counsel and to any party not represented by
 11 counsel at least 10 days prior to the hearing. ~~The~~ When consistent with state and federal law, the
 12 investigator shall make available to counsel and to any party not represented by counsel the investigator's
 13 file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant
 14 to the provisions of subsection ~~(2)~~ (3), and the names and addresses of all persons whom the investigator
 15 has consulted. Any party to the proceeding may call the investigator and any person the investigator has
 16 consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing.
 17 The results of the investigation must be included in the court record and may, without objection, be
 18 sealed."

19
 20 **NEW SECTION. Section 19. Final parenting plan -- purpose and objectives.** The objectives of a
 21 final parenting plan are to:

- 22 (1) protect the best interest of the child ~~of a marriage~~, consistent with 40-4-212;
- 23 (2) provide for the physical care of the child;
- 24 (3) maintain the child's emotional stability and minimize the child's exposure to parental conflict;
- 25 (4) provide for the child's changing needs as the child grows and matures, in a way that minimizes
 26 the need for future amendment to the final parenting plan;
- 27 (5) set forth the authority and responsibilities of each parent with respect to the child, consistent
 28 with the criteria in [section ~~19~~ 20]; and
- 29 (6) encourage the parents, when appropriate under [section ~~19~~ 20], to meet their responsibilities
 30 to their minor children through agreements in the parenting plan rather than through judicial intervention.

1 NEW SECTION. Section 20. Final parenting plan criteria. (1) In every dissolution proceeding,
2 proceeding for declaration of invalidity of marriage, parenting plan proceeding, or legal separation
3 proceeding that involves a child, each parent or both parents jointly shall submit to the court, in good faith,
4 a proposed final plan for parenting the child, which ~~must~~ MAY include the allocation of parenting functions.
5 A final parenting plan must be incorporated into any final decree or amended decree, including cases of
6 dissolution by default. As used in this section, parenting functions means those aspects of the parent-child
7 relationship in which the parent makes decisions and performs functions necessary for the care and growth
8 of the child, ~~including~~ WHICH MAY INCLUDE:

9 (a) maintaining a loving, stable, consistent, and nurturing relationship with the child;

10 (b) attending to the daily needs of the child such as feeding, physical care, DEVELOPMENT, and
11 grooming, supervision, SPIRITUAL GROWTH AND DEVELOPMENT, health care, day care, and engaging in
12 other activities that are appropriate to the developmental level of the child and that are within the social
13 and economic circumstances of the particular family;

14 (c) attending to adequate education for the child, including remedial or other education essential
15 to the best ~~interests~~ INTEREST of the child;

16 (d) ~~assisting the child in developing and maintaining appropriate interpersonal relationships~~
17 ENSURING THE INTERACTIONS AND INTERRELATIONSHIP OF THE CHILD WITH THE CHILD'S PARENTS
18 AND SIBLINGS AND WITH ANY OTHER PERSON WHO SIGNIFICANTLY AFFECTS THE CHILD'S BEST
19 INTEREST; and

20 (e) exercising appropriate judgment regarding the child's welfare, consistent with the child's
21 developmental level and the family's social and economic circumstances.

22 (2) Based on the best interest of the child, a final parenting plan ~~must~~ MAY include, at a minimum,
23 provisions for:

24 (a) designation of a parent as custodian of the child, solely for the purposes of all other state and
25 federal statutes that require a designation or determination of custody, but the designation may not affect
26 either parent's rights and responsibilities under the parenting plan;

27 (b) designation of the legal residence of both parents and the child, except as provided in 40-4-217;

28 (c) a residential schedule specifying the periods of time during which the child will reside with each
29 parent, including provisions for holidays, birthdays of family members, vacations, and other special
30 occasions;

- 1 (d) finances to provide for the child's needs; ~~and~~
- 2 (e) any other factors affecting the physical and emotional health and well-being of the child;
- 3 ~~(3) Based on the best interest of the child, a parenting plan may include:~~
- 4 ~~(a) provisions for (F) periodic review of the parenting plan when requested by either parent or the~~
 5 ~~child or when circumstances arise that are foreseen by the parents as triggering a need for review, such~~
 6 ~~as attainment by the child of a certain age or if a change in the child's residence is necessitated;~~
- 7 ~~(b)(G) sanctions that will apply if a parent fails to follow the terms of the parenting plan, including~~
 8 ~~contempt of court;~~
- 9 ~~(c)(H) allocation of parental decisionmaking authority regarding the child's:~~
- 10 (i) education;
- 11 (ii) ~~religious upbringing~~ SPIRITUAL DEVELOPMENT; and
- 12 (iii) health care AND PHYSICAL GROWTH;
- 13 ~~(d)(I) the method by which future disputes concerning the child will be resolved between the~~
 14 ~~parents, other than court action; and~~
- 15 ~~(e) other provisions applicable to (J) the unique circumstances of the child or the family situation~~
 16 ~~that the parents agree will facilitate a meaningful, ongoing relationship between the child and parents.~~
- 17 (4) The court may in its discretion order the parties to participate in a dispute resolution process
 18 to assist in resolving any conflicts between the parties regarding adoption of the parenting plan. The dispute
 19 resolution process may include counseling or mediation by a specified person or agency, or court action.
- 20 (5) Each parent may make decisions regarding the day-to-day care and control of the child while
 21 the child is residing with that parent, ~~and, regardless of the allocation of decisionmaking in the parenting~~
 22 ~~plan,~~ either parent may make emergency decisions affecting the child's safety or health. When mutual
 23 decisionmaking is designated in the parenting plan but cannot be achieved regarding a particular issue, the
 24 parents shall make a good faith effort to resolve the issue through any dispute resolution process provided
 25 for in the final parenting plan.
- 26 (6) If a parent fails to comply with a provision of the parenting plan, the other parent's obligations
 27 under the parenting plan are not affected.
- 28 (7) THE COURT MAY ORDER THAT THE PARENTING PLAN BE SEALED IF PRIVACY OF THE PLAN
 29 IS NECESSARY TO PROTECT THE BEST INTEREST OF THE CHILD.
- 30

1 **Section 21.** Section 40-4-216, MCA, is amended to read:

2 "**40-4-216. Hearings.** (1) ~~Custody~~ Parenting plan proceedings shall receive priority in being set for
3 hearing.

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

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

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

14

15 **Section 22.** Section 40-4-217, MCA, is amended to read:

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

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

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

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

30 (5) The A parent who intends to change residence shall, unless precluded under [section 19 20],

1 ~~provide written notice required by subsection (4) to the other parent.~~

2 ~~(2) If a parent's change in residence will significantly affect the child's contact with the other~~
3 ~~parent, as defined in 40-4-219(1)(e), notice must be served personally or given by certified mail not less~~
4 ~~than 30 days before the proposed change in residence and must include a proposed revised residential~~
5 ~~schedule. Proof of service must be filed with the court that issued the custody order adopted the parenting~~
6 ~~plan. The purpose of the notice is to allow the noncustodial parent to seek a modification of the parent's~~
7 ~~visitation schedule. Failure of the parent who receives notice to respond to the written notice or to seek~~
8 ~~amendment of the residential schedule pursuant to 40-4-219 within the 30-day period constitutes~~
9 ~~acceptance of the proposed revised residential schedule.~~

10 ~~(6) (a) If a noncustodial parent or other person residing in the noncustodial parent's household has~~
11 ~~been convicted of any of the crimes listed in subsection (6)(c), the custodial parent or any other person~~
12 ~~who has been granted custody of the child pursuant to court order may file an objection to visitation with~~
13 ~~the court. The custodial parent or other person having custody shall give notice to the noncustodial parent~~
14 ~~of the objection as provided by the Montana Rules of Civil Procedure, and the noncustodial parent has 20~~
15 ~~days from the notice to respond. If the noncustodial parent fails to respond within 20 days, the visitation~~
16 ~~rights of the noncustodial parent are suspended until further order of the court. If the noncustodial parent~~
17 ~~responds and objects, a hearing must be held within 30 days of the response.~~

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

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

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

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

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

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

26 ~~(v) deviate sexual conduct with an animal, as described in 45-2-101 and prohibited under~~
27 ~~45-5-505;~~

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

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

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

1 ~~(ix) partner or family member assault of the type described in 45-5-206(1)(a);~~
 2 ~~(x) sexual abuse of children, as described in 45-5-625."~~

3

4 **Section 23.** Section 40-4-219, MCA, is amended to read:

5 "**40-4-219. ~~Modification~~ Amendment of parenting plan -- mediation.** (1) The court may in its
 6 discretion ~~modify~~ amend a prior ~~e custody decree~~ parenting plan if it finds, upon the basis of facts that have
 7 arisen since the prior ~~decree~~ plan or that were unknown to the court at the time of entry of the prior ~~decree~~
 8 plan, that a change has occurred in the circumstances of the child ~~or the child's custodian~~ and that the
 9 ~~modification~~ amendment is necessary to serve the best interest of the child, ~~and if it further finds that~~ In
 10 determining the child's best interest under this section, the court may, in addition to the criteria in
 11 40-4-212, also consider whether:

12 (a) ~~the custodian agrees~~ parents agree to the ~~modification~~ amendment;

13 (b) the child has been integrated into the family of the petitioner with consent of the ~~e custodian~~
 14 parents;

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

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

19 ~~(e)~~(d) ~~the custodian~~ one parent has willfully and consistently:

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

21 (ii) ~~attempts~~ attempted to frustrate or deny contact with the child by the ~~noncustodial parent's~~
 22 ~~exercise of visitation rights~~ other parent; or

23 ~~(f)~~(e) ~~the custodial parent~~ one parent has changed or intends to change the child's residence to
 24 another state in a manner that significantly affects the child's contact with the other parent. A change in
 25 residence of more than 30 miles from the child's present residence constitutes a significant effect on
 26 parent-child contact.

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

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

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

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

7 (6) A ~~custody decree~~ parenting plan may be ~~modified~~ amended upon the death of ~~the custodial one~~
 8 parent pursuant to 40-4-221.

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

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

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

26 ~~(e)~~ This subsection (8) applies to the following crimes:

- 27 (i) deliberate homicide, as described in 45-5-102;
- 28 (ii) mitigated deliberate homicide, as described in 45-5-103;
- 29 (iii) sexual assault, as described in 45-5-502;
- 30 (iv) sexual intercourse without consent, as described in 45-5-503;

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

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

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

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

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

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

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

13
14 **Section 24.** Section 40-4-220, MCA, is amended to read:

15 **"40-4-220. Affidavit practice.** (1) A Unless the parties agree to an interim parenting plan or an
16 amended parenting plan, the moving party seeking a temporary custody order an interim parenting plan or
17 modification amendment of a custody decree final parenting plan shall submit, together with ~~his~~ the moving
18 papers, an affidavit setting forth facts supporting the requested ~~order plan~~ or ~~modification amendment~~
19 shall give notice, together with a copy of ~~his~~ the affidavit, to other parties to the proceeding, who may file
20 opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the
21 motion is established by the affidavits, based on the best interests of the child, in which case it shall set
22 a date for hearing on an order to show cause why the requested ~~order plan~~ or ~~modification amendment~~
23 should not be granted.

24 (2) (a) A party seeking ~~a temporary custody order~~ an interim parenting plan may request that the
25 court grant a temporary ~~assignment of custody order~~ order providing for living arrangements for the child ex
26 parte. He The party shall ~~so~~ make the request in ~~his~~ the moving papers and shall submit an affidavit
27 showing that:

28 (i) no previous ~~determination of custody~~ parenting plan has been ~~made~~ ordered by a court and it
29 would be in the child's best interest under the standards of 40-4-212 if temporary ~~custody~~ were placed
30 ~~with the person designated~~ living arrangements for the child were as proposed by the moving party; or

1 (ii) although a previous ~~determination of custody~~ parenting plan has been ~~made~~ ordered, an
 2 emergency situation has arisen in the child's present environment ~~endangers his physical or emotional~~
 3 health that is detrimental to the child's best interests and an immediate change ~~of custody would serve in~~
 4 the parenting plan is necessary to protect the ~~child's physical or emotional health~~ child.

5 (b) If the court finds from the affidavits submitted by the moving party that ~~a temporary assignment~~
 6 ~~of custody~~ the interim parenting plan proposed by the moving party would be in the child's best interest
 7 under the standards of 40-4-212 or that the child's ~~physical or emotional health is endangered~~ present
 8 environment is detrimental to the child's best interest and would be protected by ~~a temporary assignment~~
 9 ~~of custody~~ the interim parenting plan, the court shall make an order ~~placing temporary custody with the~~
 10 ~~person designated~~ implementing the interim parenting plan proposed by the moving party ~~or with some~~
 11 ~~other person designated by the court and~~. The court shall require all parties to appear and show cause
 12 within 20 days from the execution of the ~~order~~ interim parenting plan ~~why, in the case of a temporary order~~
 13 ~~issued under subsection (2)(a)(i), the temporary order~~ interim parenting plan should not remain in effect until
 14 further order of court ~~or, in the case of a temporary order issued under subsection (2)(a)(ii), the court~~
 15 ~~should not restore the child to the custodian from whom the child was removed by the temporary order."~~

16
 17 **Section 25.** Section 40-4-221, MCA, is amended to read:

18 **"40-4-221. Determination of custody child's care upon death of ~~custodial~~ parent.** (1) Upon the
 19 death of a parent ~~granted custody of a child, custody shall pass to the noncustodial parent unless~~ one or
 20 more parties named in subsection (2) may request a custody parenting plan hearing. The ~~noncustodial~~
 21 surviving parent ~~shall~~ must be a party in any proceeding brought under this section.

22 (2) Upon the death of a parent ~~granted custody of a child~~, any of the following parties may request
 23 a custody parenting plan hearing ~~and seek custody of the child~~:

24 (a) the ~~noncustodial~~ natural parent;

25 (b) the surviving spouse of the deceased ~~custodial~~ parent;

26 (c) a person nominated by the will of the deceased ~~custodial~~ parent;

27 (d) any person nominated by the child if the child is at least 12 years old;

28 (e) any other person if that person has actual physical control over the child;

29 (f) any other party whom, upon showing of good cause, the court permits to intervene as an
 30 interested party.

1 (3) The hearing and determination of ~~custody shall be~~ a parenting plan is governed by this part."

2
3 **Section 26.** Section 40-4-225, MCA, is amended to read:

4 "**40-4-225. Access to records by ~~noncustodial~~ parent.** Notwithstanding any other provision of law,
5 access to records and information pertaining to a minor child, including but not limited to medical, dental,
6 law enforcement, and school records, may not be denied to a parent ~~because such parent is not the child's~~
7 ~~custodial parent~~ who is a party to a parenting plan."

8
9 **Section 27.** Section 40-4-226, MCA, is amended to read:

10 "**40-4-226. ~~Court-ordered~~ COURT-SANCTIONED educational program on effects of dissolution of**
11 **marriage on children.** (1) In a proceeding for dissolution of marriage involving a minor child or in a ~~custody~~
12 ~~modification~~ parenting plan proceeding involving a minor child, a court shall inform the parties, excluding
13 the minor child, of available educational programs concerning the effects of dissolution of marriage on
14 children and, if the court finds that it would be in the best interest of the minor child, ~~may~~ shall order the
15 parties to attend a ~~court-sponsored~~ COURT-SANCTIONED program. The program may be divided into
16 sessions. The program must be educational in nature and may not be designed for individual therapy.

17 (2) ~~Any facts presented at an educational session resulting from a referral under this section may~~
18 ~~not be considered in a dissolution of a marriage or a custody modification proceeding, nor may a report~~
19 ~~resulting from an educational session become part of the record of the dissolution or proceeding unless the~~
20 ~~parties have stipulated in writing to the contrary.~~

21 (3) ~~The fees or costs of an educational session under this section must be borne by the parties and~~
22 ~~may be assessed by the court in an equitable manner. The cost of implementing the court-sponsored~~
23 COURT-SANCTIONED educational program for each district court, provided for in subsection (1), must be
24 paid from the fees for filing petitions for contested amendment of a parenting plan, provided for in
25 25-1-201(9). COSTS MAY INCLUDE PARENTING EVALUATION AND GUARDIAN AD LITEM SERVICES."

26
27 **Section 28.** Section 40-4-302, MCA, is amended to read:

28 "**40-4-302. Mediation proceeding -- tolling of statute of limitations.** (1) The purpose of a mediation
29 proceeding is to reduce the acrimony that may exist between the parties and to develop an agreement that
30 is supportive of the best interests of a child involved in the proceeding.

1 (2) The mediator shall attempt to effect a settlement of the ~~child-custody parenting~~, child support,
2 ~~visitation parental contact with the child~~, maintenance, or property settlement dispute. The mediator may
3 not use coercive measures to effect the settlement. The mediator may recommend that a party obtain
4 assistance from other resources in the community.

5 (3) Subject to 40-4-301(1), the mediator may exclude attorneys from the mediation sessions. The
6 parties' attorneys may confer with the mediator prior to the mediation session and may review and approve
7 any agreement.

8 (4) An applicable statute of limitations is tolled as to the participants during the period of mediation.
9 The tolling commences on the date the parties agree in writing to participate in the mediation or when the
10 court orders mediation, whichever is later, and ends on the date the mediation is officially terminated by
11 the mediator."
12

13 **Section 29.** Section 40-4-307, MCA, is amended to read:

14 **"40-4-307. Mediator qualifications.** A mediator ~~shall~~ must meet the following minimum
15 qualifications:

16 (1) knowledge of the court system and the procedures used in family law matters;

17 (2) knowledge of other resources in the community to which the parties may be referred for
18 assistance;

19 (3) if applicable, knowledge of child development, clinical issues relating to children, the effects
20 of marriage dissolution on children, and ~~child-custody parenting~~ research; and

21 (4) knowledge of the mediation process."
22

23 **Section 30.** Section 40-6-211, MCA, is amended to read:

24 **"40-6-211. Obligations of parents for the support and education of their children.** The parent or
25 parents ~~entitled to the custody~~ of a child ~~must~~ shall give ~~him~~ the child support and education suitable to
26 ~~his~~ the child's circumstances."
27

28 **Section 31.** Section 40-6-221, MCA, is amended to read:

29 **"40-6-221. Custody Parenting, services, and earnings of child.** The father and mother of an
30 unmarried minor child are equally entitled to the ~~custody parenting~~, services, and earnings of the child. If

1 either parent ~~be is~~ dead or unable or refuses to ~~take the custody~~ exercise parenting or has abandoned ~~his~~
 2 ~~or her~~ the family, the other parent is entitled to the ~~custody~~ parenting, services, and earnings of the child,
 3 unless ~~custody~~ care of the child is determined otherwise pursuant to 40-4-221."

4
 5 **Section 32.** Section 40-9-101, MCA, is amended to read:

6 **"40-9-101. Application of Montana Rules of Civil Procedure.** (1) Except as otherwise provided,
 7 the Montana Rules of Civil Procedure apply to all proceedings under this section and 40-9-102.

8 (2) A proceeding for ~~grandparent~~ grandparent-grandchild contact ~~visitation~~ under this section and
 9 40-9-102 ~~shall~~ must be entitled, "In re the ~~visitation~~ grandparent-grandchild contact of"

10 (3) The initial pleading in all proceedings under this section and 40-9-102 ~~shall~~ must be
 11 denominated a petition. A responsive pleading ~~shall~~ must be denominated a response. Other pleadings ~~shall~~
 12 must be denominated as provided in the Montana Rules of Civil Procedure."

13
 14 **Section 33.** Section 40-9-102, MCA, is amended to read:

15 **"40-9-102. Grandparent Grandparent-grandchild contact** ~~visitation rights~~. (1) Except as provided
 16 in subsection (5), the district court may grant to a grandparent of a child reasonable ~~visitation~~ rights to
 17 contact with the child, including but not limited to ~~visitation~~ rights regarding a child who is the subject of,
 18 or as to whom a disposition has been made during, an administrative or court proceeding under Title 41
 19 or this title. The department of public health and human services must be given notice of a petition for
 20 ~~grandparent~~ grandparent-grandchild contact ~~visitation~~ regarding a child who is the subject of, or as to
 21 whom a disposition has been made during, an administrative or court proceeding under Title 41 or this title.

22 (2) ~~Visitation rights~~ Grandparent-grandchild contact granted under this section may be granted only
 23 upon a finding by the court, after a hearing, that the ~~visitation~~ contact would be in the best interest of the
 24 child.

25 (3) A person may not petition the court under this section more often than once every 2 years
 26 unless there has been a significant change in the circumstances of:

- 27 (a) the child;
 28 (b) the child's parent, guardian, or custodian; or
 29 (c) the child's grandparent.

30 (4) The court may appoint an attorney to represent the interests of a child with respect to ~~visitation~~

1 grandparent-grandchild contact when the interests are not adequately represented by the parties to the
 2 proceeding.

3 (5) This section does not apply if the child has been adopted by a person other than a stepparent
 4 or a grandparent. ~~Visitation rights~~ Grandparent-grandchild contact granted under this section ~~terminate~~
 5 terminates upon the adoption of the child by a person other than a stepparent or a grandparent."

6
 7 **Section 34.** Section 45-5-304, MCA, is amended to read:

8 **"45-5-304. Custodial interference.** (1) A person commits the offense of custodial interference if,
 9 knowing that the person has no legal right to do so, the person:

10 ~~(a)~~ takes, entices, or withholds from lawful custody any child, incompetent person, or other person
 11 entrusted by authority of law to the custody of another person or institution;

12 ~~(b) prior to the entry of a court order determining custodial rights, takes, entices, or withholds any~~
 13 ~~child from the other parent when the action manifests a purpose to substantially deprive that parent of~~
 14 ~~parental rights; or~~

15 ~~(c) is one of two persons who has joint custody of a child under a court order and takes, entices,~~
 16 ~~or withholds the child from the other when the action manifests a purpose to substantially deprive the other~~
 17 ~~parent of parental rights.~~

18 (2) A person convicted of the offense of custodial interference shall be imprisoned in the state
 19 prison for any term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both.

20 (3) With respect to the first alleged commission of the offense only, a person who has not left the
 21 state does not commit an offense under this section if the person voluntarily returns the child, incompetent
 22 person, or other person to lawful custody ~~prior to~~ before arraignment. With respect to the first alleged
 23 commission of the offense only, a person who has left the state does not commit an offense under this
 24 section if the person voluntarily returns the child, incompetent person, or other person to lawful custody
 25 ~~prior to~~ before arrest."

26
 27 **NEW SECTION. Section 35. Parenting interference.** (1) A person commits the offense of parenting
 28 interference if, knowing that the person has no legal right to do so, the person:

29 (a) before the entry of a court order determining parenting rights, takes, entices, or withholds a
 30 child from the other parent when the action manifests a purpose to substantially deprive that parent of

1 parenting rights; or

2 (b) is one of two persons who has parenting authority of a child under a court order and takes,
3 entices, or withholds the child from the other when the action manifests a purpose to substantially deprive
4 the other parent of parenting rights.

5 (2) A person convicted of the offense of parenting interference shall be imprisoned in the state
6 prison for any term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both.

7 (3) With respect to the first alleged commission of the offense only, a person who has not left the
8 state does not commit an offense under this section if the person voluntarily returns the child before
9 arraignment. With respect to the first alleged commission of the offense only, a person who has left the
10 state does not commit an offense under this section if the person voluntarily returns the child before arrest.

11

12 **Section 36.** Section 45-5-631, MCA, is amended to read:

13 **"45-5-631. ~~Visitation interference~~ Interference with parent-child contact.** (1) A person who has
14 ~~legal custody of a minor child~~ been granted parent-child contact under a parenting plan commits the offense
15 of ~~visitation~~ interference with parent-child contact if ~~he~~ the person knowingly or purposely prevents,
16 obstructs, or frustrates the ~~visitation~~ rights of a another person entitled to ~~visitation~~ parent-child contact
17 under an existing court order.

18 (2) A person convicted of the offense of ~~visitation~~ interference with parent-child contact shall be
19 fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 5 days,
20 or both."

21

22 **Section 37.** Section 45-5-632, MCA, is amended to read:

23 **"45-5-632. ~~Aggravated visitation interference~~ with parent-child contact.** (1) A person who
24 commits the offense of ~~visitation~~ interference with parent-child contact by changing the residence of the
25 minor child ~~over whom he has legal custody~~ to another state without giving written notice as required in
26 40-4-217, unless the notice requirement has been precluded under [section 49 20], or without written
27 consent of the person entitled to ~~visitation~~ parent-child contact pursuant to an existing court order commits
28 the offense of aggravated ~~visitation~~ interference with parent-child contact.

29 (2) A person convicted of the offense of aggravated ~~visitation~~ interference with parent-child contact
30 shall be fined an amount not to exceed \$1,000 or be imprisoned in the state prison for a term not to exceed

1 18 months, or both."

2

3 **Section 38.** Section 45-5-633, MCA, is amended to read:

4 "**45-5-633. Defenses to ~~visitation~~ interference with parent-child contact and aggravated ~~visitation~~**
5 **interference with parent-child contact.** (1) A person does not commit the offense of ~~visitation~~ interference
6 with parent-child contact or aggravated ~~visitation~~ interference with parent-child contact if ~~he~~ the person
7 acts:

8 (a) with the consent of the person entitled to ~~visitation~~ parent-child contact;

9 (b) under an existing court order; or

10 (c) with reasonable cause.

11 (2) Return of the child ~~prior to~~ before arrest is a defense only with respect to the first commission
12 of ~~visitation~~ interference with parent-child contact or aggravated ~~visitation~~ interference with parent-child
13 contact."

14

15 **NEW SECTION. Section 39. Repealer.** Sections 40-4-222, 40-4-223, 40-4-224, 40-6-222,
16 40-6-223, 40-6-224, and 40-6-231, MCA, are repealed.

17

18 **NEW SECTION. Section 40. Codification instruction.** (1) [Sections ~~18 and 19~~ AND 20] are
19 intended to be codified as an integral part of Title 40, chapter 4, part 2, and the provisions of Title 40,
20 chapter 4, part 2, apply to [sections ~~18 and 19~~ AND 20].

21 (2) [Section ~~34~~ 35] is intended to be codified as an integral part of Title 45, chapter 5, part 6, and
22 the provisions of Title 45, chapter 5, part 6, apply to [section ~~34~~ 35].

23

24 **NEW SECTION. Section 41. Saving clause.** [This act] does not affect rights and duties that
25 matured, penalties that were incurred, or proceedings that were begun before October 1, 1997.

26

27 **NEW SECTION. Section 42. Severability.** If a part of [this act] is invalid, all valid parts that are
28 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
29 applications, the part remains in effect in all valid applications that are severable from the invalid
30 applications.

1 HOUSE BILL NO. 231

2 INTRODUCED BY BARNHART, BROOKE, ECK, WATERMAN, DOWELL, COCCHIARELLA, SANDS,
3 WYATT, KOTTEL, HALLIGAN, HARGROVE, BURNETT

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING DOMESTIC RELATIONS STATUTES
6 REGARDING THE CUSTODY AND VISITATION OF CHILDREN INVOLVED IN A MARRIAGE DISSOLUTION;
7 REVISING APPLICABLE TERMINOLOGY; REQUIRING ADOPTION OF A FINAL PARENTING PLAN THAT
8 INCLUDES SPECIFIC PROVISIONS IN THE BEST INTERESTS OF THE CHILD, AN OPTION FOR DISPUTE
9 RESOLUTION OR MEDIATION EXCEPT IN CASES OF PROVEN CHILD OR SPOUSAL ABUSE, AND AN
10 OPTION FOR PERIODIC REVIEW OF THE PARENTING PLAN; ALLOWING ADOPTION OF AN INTERIM
11 PARENTING PLAN DURING THE TIME DISSOLUTION PROCEEDINGS ARE PENDING; REQUIRING
12 DESIGNATION OF ONE PARENT AS CUSTODIAN FOR APPLICABILITY OF FEDERAL OR STATE LAWS;
13 REQUIRING THAT PARENTS RECEIVE INFORMATION REGARDING PARENTAL RESPONSIBILITY AND
14 CONTACT WITH THE CHILD IN DISPUTED CASES; ALLOWING THE TRIAL COURT TO DETERMINE THE
15 APPROPRIATE LEVEL OF EVALUATION NECESSARY TO ESTABLISH PARENTING ARRANGEMENTS;
16 PROVIDING A FEE FOR FILING A PETITION FOR CONTESTED AMENDMENT OF A PARENTING PLAN TO
17 DEFRAY THE COSTS OF IMPLEMENTING THE ~~COURT ORDERED~~ COURT-SANCTIONED EDUCATIONAL
18 PROGRAM ON THE EFFECTS OF DIVORCE ON CHILDREN IN DISPUTED CASES AND THE COST OF
19 PARENTING EDUCATION WHEN ORDERED FOR THE INVESTIGATION AND PREPARATION OF A REPORT
20 CONCERNING PARENTING ARRANGEMENTS; REVISING APPROPRIATE TERMINOLOGY IN GRANDPARENT
21 VISITATION STATUTES AND APPLICABLE CRIMINAL STATUTES; AMENDING SECTIONS 25-1-201,
22 40-1-105, 40-1-213, 40-1-402, 40-4-103, 40-4-104, 40-4-105, 40-4-109, 40-4-110, 40-4-123, 40-4-201,
23 40-4-204, 40-4-205, 40-4-211, 40-4-212, 40-4-213, 40-4-214, 40-4-215, 40-4-216, 40-4-217, 40-4-219,
24 40-4-220, 40-4-221, 40-4-225, 40-4-226, 40-4-302, 40-4-307, 40-6-211, 40-6-221, 40-9-101, 40-9-102,
25 45-5-304, 45-5-631, 45-5-632, AND 45-5-633, MCA; REPEALING SECTIONS 40-4-222, 40-4-223,
26 40-4-224, 40-6-222, 40-6-223, 40-6-224, AND 40-6-231, MCA; AND PROVIDING AN APPLICABILITY
27 DATE."

28
29 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

30

1 **Section 1.** Section 25-1-201, MCA, is amended to read:

2 **"25-1-201. Fees of clerk of district court.** (1) The clerk of the district court shall collect the
3 following fees:

4 (a) at the commencement of each action or proceeding, except a petition for dissolution of
5 marriage, from the plaintiff or petitioner, \$80; for filing a complaint in intervention, from the intervenor,
6 \$80; for filing a petition for dissolution of marriage, a fee of \$120; ~~and~~ for filing a petition for legal
7 separation, a fee of \$120; and for filing a petition for a contested amendment of a final parenting plan, a
8 fee of \$120;

9 (b) from each defendant or respondent, on appearance, \$60;

10 (c) on the entry of judgment, from the prevailing party, \$45;

11 (d) for preparing copies of papers on file in the clerk's office, 50 cents per page for the first five
12 pages of each file, per request, and 25 cents per additional page;

13 (e) for each certificate, with seal, \$2;

14 (f) for oath and jurat, with seal, \$1;

15 (g) for search of court records, 50 cents for each year searched, not to exceed a total of \$25;

16 (h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts,
17 the fee for entry of judgment provided for in subsection (1)(c);

18 (i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;

19 (j) for transmission of records or files or transfer of a case to another court, \$5;

20 (k) for filing and entering papers received by transfer from other courts, \$10;

21 (l) for issuing a marriage license, \$30;

22 (m) on the filing of an application for informal, formal, or supervised probate or for the appointment
23 of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from
24 the applicant or petitioner, \$70, which includes the fee for filing a will for probate;

25 (n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative
26 of the estate of a nonresident decedent, \$55;

27 (o) for filing a declaration of marriage without solemnization, \$30;

28 (p) for filing a motion for substitution of a judge, \$100.

29 (2) Except as provided in subsections (3) through ~~(9)~~ (9), 32% of all fees collected by the clerk of
30 the district court must be deposited in and credited to the district court fund. If no district court fund exists,

1 that portion of the fees must be deposited in the general fund for district court operations. The remaining
2 portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

3 (3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage
4 without solemnization, \$14 must be deposited in and credited to the state general fund, \$6.40 must be
5 deposited in and credited to the county general fund, and \$9.60 must be remitted to the state to be
6 deposited as provided in 19-5-404.

7 (4) Of the fee for filing a petition for dissolution of marriage or legal separation, \$40 must be
8 deposited in the state general fund, \$35 must be remitted to the state to be deposited as provided in
9 19-5-404, \$5 must be deposited in the children's trust fund account established by 41-3-702, and \$20
10 must be deposited in and credited to the district court fund. If no district court fund exists, the \$20 must
11 be deposited in the general fund for district court operations.

12 (5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the
13 district court fund or the county general fund or remitted to the state, the clerk of the district court shall
14 deduct from the following fees the amounts indicated:

15 (i) at the commencement of each action or proceeding and for filing a complaint in intervention as
16 provided in subsection (1)(a), \$35;

17 (ii) from each defendant or respondent, on appearance, as provided in subsection (1)(b), \$25;

18 (iii) on the entry of judgment as provided in subsection (1)(c), \$15; and

19 (iv) from the applicant or petitioner, on the filing of an application for probate or for the appointment
20 of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as
21 provided in subsection (1)(m), \$15.

22 (b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the
23 county general fund for district court operations unless the county has a district court fund. If the county
24 has a district court fund, the money must be deposited in that fund.

25 (6) The fee for filing a motion for substitution of a judge as provided in subsection (1)(p) must be
26 remitted to the state to be deposited as provided in 19-5-404.

27 (7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court
28 fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

29 (8) The clerk of the district court shall remit to the credit of the state general fund \$20 of each fee
30 collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion of

1 judicial salaries.

2 (9) The fee for filing a petition for a contested amendment of a parenting plan must be remitted by
3 the clerk of the district court to the credit of the district court to defray the costs of the ~~court sponsored~~
4 COURT-SANCTIONED educational program concerning the effects of dissolution of marriage on children,
5 as required in 40-4-226, and to defray the expense of education when ordered for the investigation and
6 preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a)."

7

8 **Section 2.** Section 40-1-105, MCA, is amended to read:

9 **"40-1-105. Application of the Montana Rules of Civil Procedure.** (1) Except for proceedings
10 ~~coming~~ under the Uniform Child Custody Jurisdiction Act, the Montana Rules of Civil Procedure apply to
11 all proceedings under this chapter, except as otherwise provided in this chapter.

12 (2) A proceeding for declaration of invalidity of marriage ~~shall~~ must be entitled, "In re the Marriage
13 of and". A ~~custody~~ parenting or support proceeding ~~shall~~ must be entitled, "In re the
14 ~~(custody)~~ (parenting) (support) of".

15 (3) The initial pleading in all proceedings under this chapter ~~shall~~ must be denominated a petition.
16 A responsive pleading ~~shall~~ must be denominated a response. Other pleadings, and all pleadings in other
17 matters under this chapter, ~~shall~~ must be denominated as provided in the Montana Rules of Civil Procedure.

18 (4) In this chapter, "decree" includes "judgment".

19

20 **Section 3.** Section 40-1-213, MCA, is amended to read:

21 **"40-1-213. Judicial approval.** (1) The district court may order the clerk of the district court to
22 issue a marriage license and a marriage certificate form to a party ~~aged~~ 16 or 17 years of age who has no
23 parent capable of consenting to ~~his~~ the party's marriage or has the consent of both parents or of the parent
24 having the actual care, ~~custody~~ parenting authority, and control to ~~his~~ the party's marriage, if capable of
25 giving consent, or of ~~his~~ the party's guardian. The court must require both parties to participate in a period
26 of marriage counseling involving at least two separate counseling sessions not less than 10 days apart with
27 a designated counselor as a condition of the order for issuance of a marriage license and a marriage
28 certificate form under this section.

29 (2) A marriage license and a marriage certificate form may be issued under this section only if the
30 court finds that the underaged party is capable of assuming the responsibilities of marriage and the marriage

1 will serve ~~his~~ the party's best interest interests. Pregnancy alone does not establish that the best ~~interest~~
2 interests of the party will be served.

3 (3) The district court shall authorize performance of a marriage by proxy upon the showing required
4 by the provisions on solemnization."
5

6 **Section 4.** Section 40-1-402, MCA, is amended to read:

7 **"40-1-402. Declaration of invalidity.** (1) The district court shall enter its decree declaring the
8 invalidity of a marriage entered into under the following circumstances:

9 (a) a party lacked capacity to consent to the marriage at the time that the marriage was entered
10 into, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other
11 incapacitating substances, or a party was induced to enter into a marriage by force or duress or by fraud
12 involving the essentials of marriage;

13 (b) a party lacks the physical capacity to consummate the marriage by sexual intercourse, and at
14 the time that the marriage was entered into, the other party did not know of the incapacity;

15 (c) a party was under ~~the age of~~ 16 years of age or was ~~aged~~ 16 or 17 years of age and did not
16 have the consent of the party's parents or guardian or judicial approval; or

17 (d) the marriage is prohibited.

18 (2) A declaration of invalidity under subsections (1)(a) through (1)(c) may be sought by any of the
19 following persons and must be commenced within the times specified, but ~~in no event may~~ a declaration
20 of invalidity may not be sought after the death of either party to the marriage:

21 (a) for lack of capacity to consent because of mental incapacity or infirmity, no later than 1 year
22 after the petitioner obtained knowledge of the described condition;

23 (b) for lack of capacity to consent because of the influence of alcohol, drugs, or other
24 incapacitating substances, no later than 1 year after the petitioner obtained knowledge of the described
25 condition;

26 (c) for lack of capacity to consent because of force, duress, or fraud, no later than 2 years after
27 the petitioner obtained knowledge of the described condition;

28 (d) for the reason set forth in subsection (1)(b), by either party, no later than 4 years after the
29 petitioner obtained knowledge of the described condition;

30 (e) for the reason set forth in subsection (1)(c), by the underaged party or the party's parent or

1 guardian, ~~prior to~~ before the time that the underaged party reaches the age at which the party could have
2 married without satisfying the omitted requirement.

3 (3) A declaration of invalidity for the reason set forth in subsection (1)(d) may be sought by either
4 party, the legal spouse in case of a bigamous marriage, the county attorney, or a child of either party, at
5 any time ~~prior to~~ before the death of one of the parties.

6 (4) Children born of a marriage declared invalid are legitimate.

7 (5) Unless the court finds, after a consideration of all relevant circumstances, including the effect
8 of a retroactive decree on third parties, that the interests of justice would be served by making the decree
9 not retroactive, it shall declare the marriage invalid as of the date of the marriage. The provisions of chapter
10 4 relating to property rights of the spouses, maintenance, support, and ~~eustedy~~ parenting of children on
11 dissolution of marriage are applicable to nonretroactive decrees of invalidity.

12 (6) The clerk of the court shall give notice of the entry of a decree declaring the invalidity of a
13 marriage:

14 (a) if the marriage is registered in this state, to the clerk of the district court of the county where
15 the marriage is registered, who shall enter the fact of invalidity in the book in which the marriage license
16 and certificate are recorded; or

17 (b) if the marriage is registered in another jurisdiction, to the appropriate official of that jurisdiction,
18 with the request that the official enter the fact of invalidity in the appropriate record."

19

20 **Section 5.** Section 40-4-103, MCA, is amended to read:

21 **"40-4-103. Application of the Montana Rules of Civil Procedure.** (1) Except for proceedings
22 coming under the Uniform Child Custody Jurisdiction Act, the Montana Rules of Civil Procedure apply to
23 all proceedings under this chapter, except as otherwise provided in this chapter.

24 (2) A proceeding for dissolution of marriage or legal separation ~~shall~~ must be entitled, "In re the
25 Marriage of and". A ~~eustedy~~ parenting or support proceeding ~~shall~~ must be entitled, "In
26 re the ~~(eustedy)~~ (parenting) (support) of".

27 (3) The initial pleading in all proceedings under this chapter ~~shall~~ must be denominated a petition.
28 A responsive pleading ~~shall~~ must be denominated a response. Other pleadings, and all pleadings in other
29 matters under this chapter, ~~shall~~ must be denominated as provided in the Montana Rules of Civil Procedure.

30 (4) In this chapter, "decree" includes "judgment".

1 (5) A decree of dissolution or of legal separation, if made, ~~shall~~ may not be awarded to one of the
 2 parties but ~~shall~~ must provide that it affects the status previously existing between the parties in the
 3 manner decreed."

4
 5 **Section 6.** Section 40-4-104, MCA, is amended to read:

6 **"40-4-104. Dissolution of marriage -- legal separation.** (1) The district court shall enter a decree
 7 of dissolution of marriage if:

8 (a) the court finds that one of the parties, at the time the action was commenced, was domiciled
 9 in this state or was stationed in this state while a member of the armed services and that the domicile or
 10 military presence has been maintained for 90 days ~~next~~ preceding the making of the findings;

11 (b) the court finds that the marriage is irretrievably broken, which findings ~~shall~~ must be supported
 12 by evidence:

13 (i) that the parties have lived separate and apart for a period of more than 180 days ~~next~~ preceding
 14 the commencement of this proceeding; or

15 (ii) that there is serious marital discord ~~which~~ that adversely affects the attitude of one or both of
 16 the parties towards the marriage;

17 (c) the court finds that the conciliation provisions of the Montana Conciliation Law and of 40-4-107
 18 either do not apply or have been met; and

19 (d) to the extent it has jurisdiction to do so, the court has considered, approved, or made provision
 20 for ~~child custody~~ parenting, the support of any child entitled to support, the maintenance of either spouse,
 21 and the disposition of property.

22 (2) If a party requests a decree of legal separation rather than a decree of dissolution of marriage,
 23 the court shall grant the decree in that form unless the other party objects."

24
 25 **Section 7.** Section 40-4-105, MCA, is amended to read:

26 **"40-4-105. Procedure -- commencement -- pleadings -- abolition of existing defenses.** (1) The
 27 verified petition in a proceeding for dissolution of marriage or legal separation ~~shall~~ must allege that the
 28 marriage is irretrievably broken and ~~shall~~ must set forth:

29 (a) the age, occupation, and residence of each party and ~~his~~ the party's length of residence in this
 30 state;

- 1 (b) the date of the marriage and the place at which it was registered;
- 2 (c) that the jurisdictional requirements of 40-4-104 exist and that the marriage is irretrievably
3 broken in that either:
- 4 (i) the parties have lived separate and apart for a period of more than 180 days ~~next~~ preceding the
5 commencement of this proceeding; or
- 6 (ii) there is serious marital discord ~~which~~ that adversely affects the attitude of one or both of the
7 parties towards the marriage, and there is no reasonable prospect of reconciliation;
- 8 (d) the names, ages, and addresses of all living children of the marriage and whether the wife is
9 pregnant;
- 10 (e) any arrangements as to support, ~~custody, and visitation~~ of the children and maintenance of a
11 spouse; ~~and~~
- 12 (f) a proposed parenting plan, if applicable; and
- 13 (g) the relief sought.
- 14 (2) Either or both parties to the marriage may initiate the proceeding.
- 15 (3) If a proceeding is commenced by one of the parties, the other party must be served in the
16 manner provided by the Montana Rules of Civil Procedure and may within 20 days after the date of service
17 file a verified response. ~~No~~ A decree may not be entered until 20 days after the date of service.
- 18 (4) Previously existing defenses to divorce and legal separation, including but not limited to
19 condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.
- 20 (5) The court may join additional parties proper for the exercise of its authority to implement this
21 chapter."

22

23 **Section 8.** Section 40-4-109, MCA, is amended to read:

24 **"40-4-109. Independence of provisions of decree or temporary order.** If a party fails to comply
25 with a provision of a decree or temporary order or injunction, the obligation of the other party to make
26 payments for support or maintenance or to permit ~~visitation~~ parental contact with the child is not suspended
27 but ~~he~~ the party may move the court to grant an appropriate order."

28

29 **SECTION 9. SECTION 40-4-110, MCA, IS AMENDED TO READ:**

30 **"40-4-110. Costs -- attorney's professional fees. (1) The court from time to time, after considering**

1 the financial resources of both parties, may order a party to pay a reasonable amount for the cost to the
 2 other party of maintaining or defending any proceeding under chapters 1 and 4 ~~of this title~~ and for
 3 ~~attorney's~~ professional fees, including sums for legal and professional services rendered and costs incurred
 4 prior to the commencement of the proceeding or after entry of judgment. The court may order that the
 5 amount be paid directly to the ~~attorney~~ professional, who may enforce the order in ~~his~~ the professional's
 6 name.

7 (2) The purpose of this section is to ensure that both parties have timely and equitable access to
 8 marital financial resources for costs incurred before, during, and after a proceeding under chapters 1 and
 9 4."

10

11 **Section 10.** Section 40-4-123, MCA, is amended to read:

12 **"40-4-123. Jurisdiction and venue.** (1) District courts, municipal courts, justices' courts, and city
 13 courts have concurrent jurisdiction to hear and issue orders under 40-4-121.

14 (2) The municipal judge, justice of the peace, or city court judge shall on motion suspend all further
 15 proceedings in the action and certify the pleading and any orders to the clerk of the district court of the
 16 county where the action was begun if an action for declaration of invalidity of a marriage, legal separation,
 17 or dissolution of marriage or for ~~child custody~~ parenting is pending between the parties. From the time of
 18 the certification of the pleadings and any orders to the clerk, the district court has the same jurisdiction over
 19 the action as if it had been commenced in district court.

20 (3) An action brought under 40-4-121 may be tried in the county in which either party resides or
 21 in which the physical abuse was committed.

22 (4) The right to petition for relief may not be denied because the plaintiff has vacated the residence
 23 or household to avoid abuse."

24

25 **Section 11.** Section 40-4-201, MCA, is amended to read:

26 **"40-4-201. Separation agreement.** (1) To promote amicable settlement of disputes between parties
 27 to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into
 28 a written separation agreement containing provisions for disposition of any property owned by either of
 29 them, maintenance of either of them, and support, ~~custody~~ parenting, and ~~visitation of~~ parental contact
 30 with their children. In cases in which children are involved, the separation agreement ~~must~~ MAY contain

1 a parenting plan as required in [section 19 20].

2 (2) In a proceeding for dissolution of marriage or for legal separation, the terms of the separation
3 agreement, except those providing for the support, ~~custody parenting~~, and ~~visitation of parental contact~~
4 with children, are binding upon the court unless it finds, after considering the economic circumstances of
5 the parties and any other relevant evidence produced by the parties, on their own motion or on request of
6 the court, that the separation agreement is unconscionable.

7 (3) If the court finds the separation agreement unconscionable, it may request that the parties ~~to~~
8 submit a revised separation agreement or it may make orders for the disposition of property, maintenance,
9 and support.

10 (4) If the court finds that the separation agreement is not unconscionable as to disposition of
11 property or maintenance and not unsatisfactory as to support:

12 (a) unless the separation agreement provides to the contrary, its terms ~~shall~~ must be set forth in
13 the decree of dissolution or legal separation and the parties ~~shall be~~ ordered to perform them; or

14 (b) if the separation agreement provides that its terms ~~shall~~ may not be set forth in the decree, the
15 decree ~~shall~~ must identify the separation agreement and state that the court has found the terms not
16 unconscionable.

17 (5) Terms of the agreement set forth in the decree are enforceable by all remedies available for
18 enforcement of a judgment, including contempt, and are enforceable as contract terms.

19 (6) Except for terms concerning the support, ~~custody parenting~~, or ~~visitation of parental contact~~
20 with the children, the decree may expressly preclude or limit modification of terms set forth in the decree
21 if provided for in the separation agreement ~~so provides~~. Otherwise, terms of a separation agreement set
22 forth in the decree are automatically modified by modification of the decree."
23

24 **Section 12.** Section 40-4-204, MCA, is amended to read:

25 **"40-4-204. Child support -- orders to address health insurance -- withholding of child support.** (1)
26 In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall
27 order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary
28 for the child's support, without regard to marital misconduct.

29 (2) The court shall consider all relevant factors, including:

30 (a) the financial resources of the child;

- 1 (b) the financial resources of the ~~custodial parent~~ parents;
- 2 (c) the standard of living that the child would have enjoyed had the marriage not been dissolved;
- 3 (d) the physical and emotional condition of the child and the child's educational and medical needs;
- 4 (e) ~~the financial resources and needs of the noncustodial parent~~;
- 5 ~~(f)~~ the age of the child;
- 6 ~~(g)~~(f) the cost of day care for the child;
- 7 ~~(h)~~(g) any ~~custody arrangement~~ parenting plan that is ordered or decided upon; and
- 8 ~~(i)~~(h) the needs of any person, other than the child, whom either parent is legally obligated to
- 9 support.

10 (3) (a) Whenever a court issues or modifies an order concerning child support, the court shall

11 determine the child support obligation by applying the standards in this section and the uniform child

12 support guidelines adopted by the department of public health and human services pursuant to 40-5-209.

13 The guidelines must be used in all cases, including cases in which the order is entered upon the default of

14 a party and those in which the parties have entered into an agreement regarding the support amount. A

15 verified representation of the defaulting parent's income, based on the best information available, may be

16 used when a parent fails to provide financial information for use in applying the guidelines. The amount

17 determined under the guidelines is presumed to be an adequate and reasonable support award, unless the

18 court finds by clear and convincing evidence that the application of the standards and guidelines is unjust

19 to the child or to any of the parties or that it is inappropriate in that particular case.

20 (b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall

21 state its reasons for that finding. Similar reasons must also be stated in a case in which the parties have

22 agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the

23 guideline amount must include a statement of the amount of support that would have ordinarily been

24 ordered under the guidelines.

25 (c) If the court does not order a parent owing a duty of support to a child to pay any amount for

26 the child's support, the court shall state its reasons for not ordering child support.

27 (4) Each temporary or final district court judgment, decree, or order establishing a child support

28 obligation under this title and each modification of a final order for child support must include a medical

29 support order as provided for in Title 40, chapter 5, part 8.

30 (5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception

1 is included in the support order, a support obligation established by judgment, decree, or order under this
2 section, whether temporary or final, and each modification of an existing support obligation under 40-4-208
3 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part
4 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides
5 for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the
6 payment of support without need for an amendment to the support order or for any further action by the
7 court.

8 (b) If an obligor is exempt from immediate income withholding, the district court judgment or order
9 must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's
10 income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to
11 include a warning statement in a judgment or order does not preclude the use of withholding procedures.

12 (c) If a support order subject to income withholding is expressed in terms of a monthly obligation,
13 the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's
14 regular pay period. When an order is annualized and withheld on a weekly or biweekly basis under this
15 section, the support withheld from the obligor may be retained by the obligee when it exceeds the obligor's
16 monthly support obligation if the excess support is a result of annualized withholding.

17 (6) For the purposes of income withholding under subsection (5), each district court judgment,
18 decree, or order that establishes or modifies a child support obligation must include a provision requiring
19 the parent obligated to pay support to inform the court and, if the department of public health and human
20 services is providing services under Title IV-D of the Social Security Act for the enforcement of the
21 judgment, decree, or order, the department, of the following:

22 (a) the name and address of the parent's current employer;

23 (b) whether the parent has access to health insurance through an employer or other group; and

24 (c) if insurance coverage is available, the health insurance policy information.

25 (7) Each district court judgment, decree, or order establishing a final child support obligation under
26 this part and each modification of a final order for child support must contain a statement that the order
27 is subject to review and modification by the department of public health and human services upon the
28 request of the department or a party under 40-5-271 through 40-5-273 when the department is providing
29 services under Title IV-D of the Social Security Act for the enforcement of the order.

30 (8) (a) A district court judgment, decree, or order that establishes or modifies a child support

1 obligation must include a provision requiring the child support OBLIGATION to be paid, WITHOUT NEED
 2 FOR FURTHER COURT ORDER:

3 (I) TO THE PERSON WITH WHOM THE CHILD RESIDES BY LEGAL ORDER;

4 (II) IF THE PERSON WITH WHOM THE CHILD LEGALLY RESIDES VOLUNTARILY OR
 5 INVOLUNTARILY RELINQUISHES PHYSICAL CARE AND CONTROL OF THE CHILD TO ANOTHER PERSON,
 6 ORGANIZATION, OR AGENCY, TO THE PERSON, ORGANIZATION, OR AGENCY TO WHOM PHYSICAL
 7 CUSTODY HAS BEEN RELINQUISHED;

8 (III) IF ANY OTHER PERSON, ORGANIZATION, OR AGENCY IS ENTITLED BY LAW, ASSIGNMENT,
 9 OR SIMILAR REASON TO RECEIVE OR COLLECT THE CHILD SUPPORT OBLIGATION, TO THE PERSON,
 10 ORGANIZATION, OR AGENCY HAVING THE RIGHT TO RECEIVE OR COLLECT THE PAYMENT; OR

11 (IV) TO THE COURT FOR THE BENEFIT OF THE MINOR CHILD to:

12 ~~(i) the legal custodian of the minor child;~~

13 ~~(ii) (A) any other person, organization, or agency having legal physical custody of the minor child~~
 14 ~~under a legal assignment of rights; or~~

15 ~~(B) the court for the benefit of the minor child;~~

16 ~~(iii) any other person or agency designated as caretaker of the minor child by agreement of the legal~~
 17 ~~custodian; or~~

18 ~~(iv) any assignee or other person, organization, or agency authorized to receive or collect child~~
 19 ~~support pursuant to the child support guidelines adopted under 40-5-209.~~

20 (b) A judgment, decree, or order that omits the provision required by subsection (8)(a) is subject
 21 to the requirements of subsection (8)(a) without need for an amendment to the judgment, decree, or order
 22 or for any further action by the court."
 23

24 **Section 13.** Section 40-4-205, MCA, is amended to read:

25 "**40-4-205. Representation of child Guardian ad litem.** (1) The court may appoint a guardian ad
 26 litem to represent the interests of a minor dependent child with respect to the child's support, ~~custody~~
 27 ~~parenting,~~ and ~~visitation~~ parental contact. The guardian ad litem may be an attorney. The county attorney,
 28 a deputy county attorney, if any, or the department of public health and human services or any of its staff
 29 may not be appointed for this purpose.

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

1 (a) to conduct investigations that the guardian ad litem considers necessary to ascertain the facts
2 related to the child's support, ~~custody~~ parenting, and ~~visitation~~ parental contact;

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

4 (c) to make written reports to the court concerning the child's support, ~~custody~~ parenting, and
5 ~~visitation~~ parental contact;

6 (d) to appear and participate in all proceedings to the degree necessary to adequately represent
7 the child and make recommendations to the court concerning the child's support, ~~custody~~ parenting, and
8 ~~visitation~~ parental contact; and

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

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

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

16
17 **Section 14.** Section 40-4-211, MCA, is amended to read:

18 "**40-4-211. ~~Child custody jurisdiction~~ Jurisdiction -- commencement of parenting proceedings.** (1)
19 A court of this state competent to decide ~~child custody~~ parenting matters has jurisdiction to make a ~~child~~
20 ~~custody parenting authority~~ determination by initial or ~~modification~~ amended decree if:

21 (a) this state:

22 (i) is the home state of the child at the time of commencement of the proceedings; or

23 (ii) had been the child's home state within 6 months before commencement of the ~~proceeding~~
24 proceedings and the child is absent from this state because of ~~his~~ the child's removal or retention by a any
25 person ~~claiming his custody or for other reason~~ and a parent or person acting as parent continues to live
26 in this state; or

27 (b) it is in the best interest of the child that a court of this state assume jurisdiction because:

28 (i) the child and ~~his~~ the parents or the child and at least one contestant have a significant
29 connection with this state; and

30 (ii) there is available in this state substantial evidence concerning the child's present or future care,

1 protection, training, and personal relationships; or

2 (c) the child is physically present in this state and:

3 (i) has been abandoned; or

4 (ii) it is necessary in an emergency to protect ~~him~~ the child because ~~he~~ the child has been subjected
5 to or threatened with mistreatment or abuse or is neglected or dependent; or

6 (d) (i) no other state has jurisdiction under prerequisites substantially in accordance with subsection
7 (1)(a), (1)(b), or (1)(c) or another state has declined to exercise jurisdiction on the ground that this state
8 is the more appropriate forum to determine ~~custody of parenting authority over~~ OF the child; and

9 (ii) it is in ~~his~~ the child's best interest that the court assume jurisdiction.

10 (2) Except under subsections (1)(c) and (1)(d), physical presence in this state of the child or of the
11 child and one of the contestants is not alone sufficient to confer jurisdiction on a court of this state to make
12 a ~~child custody parenting authority~~ determination.

13 (3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine
14 ~~his custody parenting authority~~ OF THE CHILD.

15 (4) A ~~child custody parenting plan~~ proceeding is commenced in the district court:

16 (a) by a parent, by filing a petition:

17 (i) for dissolution or legal separation; or

18 (ii) for ~~custody of the child parenting authority~~ in the county in which ~~he~~ the child is permanently
19 resident or found; or

20 (b) by a person other than a parent, by filing a petition for ~~custody of the child parenting authority~~
21 in the county in which ~~he~~ the child is permanently resident or found, but only if ~~he~~ the child is not in the
22 ~~physical custody of~~ physically residing with one of ~~his~~ the child's parents.

23 (5) Notice of a ~~child custody parenting~~ proceeding ~~shall~~ must be given to the child's parent,
24 guardian, ~~custodian caretaker~~, those persons ~~having physical custody of~~ with whom the child is physically
25 residing, and all other contestants, who may appear, be heard, and file a responsive pleading. The court,
26 upon a showing of good cause, may permit intervention of other interested parties."

27

28 **Section 15.** Section 40-4-212, MCA, is amended to read:

29 "**40-4-212. Best interest ~~interests~~ INTEREST of child.** (1) The court shall determine ~~custody~~ the
30 parenting plan in accordance with the best ~~interest interests~~ INTEREST of the child. The court shall consider

- 1 all relevant parenting factors, ~~including~~ WHICH MAY INCLUDE but ARE not limited to:
- 2 (a) the wishes of the child's parent or parents ~~as to custody~~;
- 3 (b) the wishes of the child ~~as to a custodian~~;
- 4 (c) the interaction and interrelationship of the child with the child's parent or parents and siblings
- 5 and with any other person who ~~may~~ significantly ~~affect~~ affects the child's best interest;
- 6 (d) the child's adjustment to home, school, and community;
- 7 (e) the mental and physical health of all individuals involved;
- 8 (f) physical abuse or threat of physical abuse by one parent against the other parent or the child;
- 9 and
- 10 (g) chemical dependency, as defined in 53-24-103, or chemical abuse on the part of either parent;
- 11 (h) continuity and stability of care;
- 12 (i) developmental needs of the child;
- 13 (j) whether a parent has knowingly failed to pay birth-related costs that the parent is able to pay,
- 14 which is considered to be not in the child's best interests;
- 15 (k) whether a parent has knowingly failed to financially support a child that the parent is able to
- 16 support, which is considered to be not in the child's best interests;
- 17 (l) whether the child has frequent and continuing contact with both parents, which is considered
- 18 to be in the child's best interests unless the court determines, after a hearing, that contact with a parent
- 19 would be detrimental to the child's best interests. In making that determination, the court shall consider
- 20 evidence of physical abuse or threat of physical abuse by one parent against the other parent or the child,
- 21 including but not limited to whether a parent or other person residing in that parent's household has been
- 22 convicted of any of the crimes enumerated in 40-4-219(8)(b).
- 23 (m) adverse effects on the child resulting from continuous and vexatious parenting plan amendment
- 24 actions.
- 25 (2) A de facto ~~custody~~ parenting arrangement, in the absence of a prior ~~custody~~ parenting decree,
- 26 does not require the child's parent or parents to prove the factors set forth in 40-4-219.
- 27 (3) The following are rebuttable presumptions and apply unless contrary to the best interest of the
- 28 child:
- 29 (a) ~~Custody should be granted to the parent who has provided most of the primary care during the~~
- 30 ~~child's life.~~

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

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

6 ~~(4) The following are rebuttable presumptions:~~

7 ~~(a) A knowing failure to pay birth-related costs that the person is able to pay is not in the best~~
8 ~~interest of the child.~~

9 ~~(b) Failure to pay child support that the person is able to pay is not in the best interest of a child~~
10 ~~in need of the child support."~~

11
12 **Section 16.** Section 40-4-213, MCA, is amended to read:

13 "**40-4-213. Temporary orders Interim parenting plan.** (1) A party to a ~~custody parenting~~ proceeding
14 may move for ~~a temporary custody order~~ an interim parenting plan. The motion must be supported by an
15 affidavit as provided in 40-4-220(1). The court may ~~award temporary custody~~ adopt an interim parenting
16 plan under the standards of 40-4-212 after a hearing or under the standards of 40-4-212 and 40-4-220(2)
17 before a hearing. If there is no objection, the court may act solely on the basis of the affidavits.

18 (2) If a proceeding for dissolution of marriage or legal separation is dismissed, any ~~temporary~~
19 ~~custody order~~ interim parenting plan is vacated unless a parent ~~or the child's custodian~~ moves that the
20 proceeding continue as a ~~custody parenting~~ proceeding and the court finds, after a hearing, that the
21 circumstances of the parents and the best interest interests of the child require that a ~~custody decree~~
22 parenting plan be ~~issued~~ adopted. A CHILD SUPPORT DELINQUENCY EXISTING AT THE TIME THAT AN
23 INTERIM PARENTING PLAN IS VACATED REMAINS A JUDGMENT SUBJECT TO COLLECTION.

24 (3) If a ~~custody parenting~~ proceeding commenced in the absence of a petition for dissolution of
25 marriage or legal separation is dismissed, any ~~temporary custody order~~ interim parenting plan is vacated.
26 A CHILD SUPPORT DELINQUENCY EXISTING AT THE TIME THAT AN INTERIM PARENTING PLAN IS
27 VACATED REMAINS A JUDGMENT SUBJECT TO COLLECTION.

28 (4) Adoption of a final parenting plan under [section 19 20] vacates any interim parenting plan
29 adopted under this section. A CHILD SUPPORT DELINQUENCY EXISTING AT THE TIME THAT AN INTERIM
30 PARENTING PLAN IS VACATED REMAINS A JUDGMENT SUBJECT TO COLLECTION."

1 **Section 17.** Section 40-4-214, MCA, is amended to read:

2 "**40-4-214. Interviews.** (1) The court may interview the child in chambers to ascertain the child's
3 wishes as to ~~his custodian residence~~ and as to visitation parental contact. The court may permit counsel
4 to be present at the interview. The court shall cause a record of the interview to be made and to be part
5 of the record in the case.

6 (2) The court may seek the advice of professional personnel, whether or not employed by the court
7 on a regular basis. The advice given ~~shall~~ must be in writing and made available by the court to counsel
8 upon request. Counsel may examine as a witness any professional personnel consulted by the court."

9

10 **Section 18.** Section 40-4-215, MCA, is amended to read:

11 "**40-4-215. Investigations and reports.** (1) ~~In contested custody proceedings and in other custody~~
12 ~~proceedings if~~ If a parent or the child's custodian a court-appointed third party requests, or if the court finds
13 that a parenting proceeding is contested, the court may order an investigation and report concerning
14 ~~custodial parenting~~ parenting arrangements for the child. The investigator may be the child's guardian ad litem or
15 other professional considered appropriate by the court. The department of public health and human services
16 may not be ordered to conduct the investigation or draft a report unless the ~~parent or the child's custodian~~
17 person requesting the investigation is a recipient of ~~aid to families with dependent children~~ CASH
18 ASSISTANCE UNDER THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BLOCK GRANT, food stamps,
19 or public assistance and all reasonable options for payment of the investigation, if conducted by a person
20 not employed by the department, are exhausted. The department may consult with any investigator and
21 share information relevant to the child's best interests. The cost of the investigation and report must be
22 paid according to the final order. The cost of the educational evaluation under subsection (2)(a) must be
23 paid from the fees for filing petitions for contested amendment of a parenting plan, as provided in
24 25-1-201(9).

25 (2) The court shall determine, if appropriate, the level of evaluation necessary for adequate
26 investigation and preparation of the report, which may include one or more of the following:

27 (a) parenting education;

28 (b) mediation pursuant to ~~40-4-303~~ 40-4-301;

29 (c) factfinding by the investigator; and

30 (d) psychological evaluation of the parties.

1 ~~(2)~~(3) In preparing a report concerning a child, the investigator may consult any person who ~~may~~
 2 ~~have~~ has information about the child and the child's potential ~~custodial~~ parenting arrangements. Upon order
 3 of the court, the investigator may refer the child to professional personnel for diagnosis. ~~The~~ Except as
 4 required for children 16 years of age or older, the investigator may consult with and obtain information from
 5 medical, psychiatric, or other expert persons who have served the child in the past without obtaining the
 6 consent of the ~~parent or the child's custodian~~ persons or entities authorized by law to grant or withhold
 7 access to the records. The child's consent must be obtained if the child has reached the age of 16 unless
 8 the court finds that the child lacks mental capacity to consent. If the requirements of subsection ~~(3)~~ (4) are
 9 fulfilled, the investigator's report may be received in evidence at the hearing.

10 ~~(3)~~(4) The court shall mail the investigator's report to counsel and to any party not represented by
 11 counsel at least 10 days prior to the hearing. ~~The~~ When consistent with state and federal law, the
 12 investigator shall make available to counsel and to any party not represented by counsel the investigator's
 13 file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant
 14 to the provisions of subsection ~~(2)~~ (3), and the names and addresses of all persons whom the investigator
 15 has consulted. Any party to the proceeding may call the investigator and any person the investigator has
 16 consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing.
 17 The results of the investigation must be included in the court record and may, without objection, be
 18 sealed."

19
 20 **NEW SECTION. Section 19. Final parenting plan -- purpose and objectives.** The objectives of a
 21 final parenting plan are to:

- 22 (1) protect the best interest of the child ~~of a marriage~~, consistent with 40-4-212;
- 23 (2) provide for the physical care of the child;
- 24 (3) maintain the child's emotional stability and minimize the child's exposure to parental conflict;
- 25 (4) provide for the child's changing needs as the child grows and matures, in a way that minimizes
 26 the need for future amendment to the final parenting plan;
- 27 (5) set forth the authority and responsibilities of each parent with respect to the child, consistent
 28 with the criteria in [section ~~19~~ 20]; and
- 29 (6) encourage the parents, when appropriate under [section ~~19~~ 20], to meet their responsibilities
 30 to their minor children through agreements in the parenting plan rather than through judicial intervention.

1 NEW SECTION. Section 20. Final parenting plan criteria. (1) In every dissolution proceeding,
 2 proceeding for declaration of invalidity of marriage, parenting plan proceeding, or legal separation
 3 proceeding that involves a child, each parent or both parents jointly shall submit to the court, in good faith,
 4 a proposed final plan for parenting the child, which ~~must~~ MAY include the allocation of parenting functions.
 5 A final parenting plan must be incorporated into any final decree or amended decree, including cases of
 6 dissolution by default. As used in this section, parenting functions means those aspects of the parent-child
 7 relationship in which the parent makes decisions and performs functions necessary for the care and growth
 8 of the child, ~~including~~ WHICH MAY INCLUDE:

9 (a) maintaining a loving, stable, consistent, and nurturing relationship with the child;

10 (b) attending to the daily needs of the child such as feeding, physical care, DEVELOPMENT, and
 11 grooming, supervision, SPIRITUAL GROWTH AND DEVELOPMENT, health care, day care, and engaging in
 12 other activities that are appropriate to the developmental level of the child and that are within the social
 13 and economic circumstances of the particular family;

14 (c) attending to adequate education for the child, including remedial or other education essential
 15 to the best ~~interests~~ INTEREST of the child;

16 (d) ~~assisting the child in developing and maintaining appropriate interpersonal relationships~~
 17 ENSURING THE INTERACTIONS AND INTERRELATIONSHIP OF THE CHILD WITH THE CHILD'S PARENTS
 18 AND SIBLINGS AND WITH ANY OTHER PERSON WHO SIGNIFICANTLY AFFECTS THE CHILD'S BEST
 19 INTEREST; and

20 (e) exercising appropriate judgment regarding the child's welfare, consistent with the child's
 21 developmental level and the family's social and economic circumstances.

22 (2) Based on the best interest of the child, a final parenting plan ~~must~~ MAY include, at a minimum,
 23 provisions for:

24 (a) designation of a parent as custodian of the child, solely for the purposes of all other state and
 25 federal statutes that require a designation or determination of custody, but the designation may not affect
 26 either parent's rights and responsibilities under the parenting plan;

27 (b) designation of the legal residence of both parents and the child, except as provided in 40-4-217;

28 (c) a residential schedule specifying the periods of time during which the child will reside with each
 29 parent, including provisions for holidays, birthdays of family members, vacations, and other special
 30 occasions;

- 1 (d) finances to provide for the child's needs; ~~and~~
- 2 (e) any other factors affecting the physical and emotional health and well-being of the child;
- 3 ~~(3) Based on the best interest of the child, a parenting plan may include:~~
- 4 ~~(a) provisions for (F) periodic review of the parenting plan when requested by either parent or the~~
 5 child or when circumstances arise that are foreseen by the parents as triggering a need for review, such
 6 as attainment by the child of a certain age or if a change in the child's residence is necessitated;
- 7 ~~(b)(G) sanctions that will apply if a parent fails to follow the terms of the parenting plan, including~~
 8 contempt of court;
- 9 ~~(c)(H) allocation of parental decisionmaking authority regarding the child's:~~
- 10 (i) education;
- 11 (ii) ~~religious upbringing~~ SPIRITUAL DEVELOPMENT; and
- 12 (iii) health care AND PHYSICAL GROWTH;
- 13 ~~(d)(I) the method by which future disputes concerning the child will be resolved between the~~
 14 parents, other than court action; and
- 15 ~~(e) other provisions applicable to (J) the unique circumstances of the child or the family situation~~
 16 that the parents agree will facilitate a meaningful, ongoing relationship between the child and parents.
- 17 ~~(4)(3) The court may in its discretion order the parties to participate in a dispute resolution process~~
 18 to assist in resolving any conflicts between the parties regarding adoption of the parenting plan. The dispute
 19 resolution process may include counseling or mediation by a specified person or agency, or court action.
- 20 ~~(5)(4) Each parent may make decisions regarding the day-to-day care and control of the child while~~
 21 the child is residing with that parent, ~~and, regardless of the allocation of decisionmaking in the parenting~~
 22 ~~plan,~~ either parent may make emergency decisions affecting the child's safety or health. When mutual
 23 decisionmaking is designated in the parenting plan but cannot be achieved regarding a particular issue, the
 24 parents shall make a good faith effort to resolve the issue through any dispute resolution process provided
 25 for in the final parenting plan.
- 26 ~~(6)(5) If a parent fails to comply with a provision of the parenting plan, the other parent's~~
 27 obligations under the parenting plan are not affected.
- 28 ~~(7)(6) THE COURT MAY SHALL ORDER THAT THE PARENTING PLAN BE SEALED IF PRIVACY OF~~
 29 THE PLAN IS NECESSARY TO PROTECT THE BEST INTEREST OF THE CHILD EXCEPT FOR ACCESS BY
 30 THE PARENTS, GUARDIAN, OR OTHER PERSON HAVING CUSTODY OF THE CHILD.

1 **Section 21.** Section 40-4-216, MCA, is amended to read:

2 "**40-4-216. Hearings.** (1) Custody Parenting plan proceedings shall receive priority in being set for
3 hearing.

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

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

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

14

15 **Section 22.** Section 40-4-217, MCA, is amended to read:

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

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

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

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

30 ~~(5) The~~ A parent who intends to change residence shall, unless precluded under [section 19 20],

1 provide written notice required by subsection (4) to the other parent.

2 (2) If a parent's change in residence will significantly affect the child's contact with the other
3 parent, as defined in 40-4-219(1)(e), notice must be served personally or given by certified mail not less
4 than 30 days before the proposed change in residence and must include a proposed revised residential
5 schedule. Proof of service must be filed with the court that issued the custody order adopted the parenting
6 plan. The purpose of the notice is to allow the noncustodial parent to seek a modification of the parent's
7 visitation schedule. Failure of the parent who receives notice to respond to the written notice or to seek
8 amendment of the residential schedule pursuant to 40-4-219 within the 30-day period constitutes
9 acceptance of the proposed revised residential schedule.

10 ~~(6) (a) If a noncustodial parent or other person residing in the noncustodial parent's household has~~
11 ~~been convicted of any of the crimes listed in subsection (6)(c), the custodial parent or any other person~~
12 ~~who has been granted custody of the child pursuant to court order may file an objection to visitation with~~
13 ~~the court. The custodial parent or other person having custody shall give notice to the noncustodial parent~~
14 ~~of the objection as provided by the Montana Rules of Civil Procedure, and the noncustodial parent has 20~~
15 ~~days from the notice to respond. If the noncustodial parent fails to respond within 20 days, the visitation~~
16 ~~rights of the noncustodial parent are suspended until further order of the court. If the noncustodial parent~~
17 ~~responds and objects, a hearing must be held within 30 days of the response.~~

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

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

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

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

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

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

26 ~~(v) deviate sexual conduct with an animal, as described in 45-2-101 and prohibited under~~
27 ~~45-5-506;~~

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

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

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

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

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

3
4 **Section 23.** Section 40-4-219, MCA, is amended to read:

5 "**40-4-219. ~~Modification~~ Amendment of parenting plan -- mediation.** (1) The court may in its
6 discretion ~~modify~~ amend a prior ~~eustody decree~~ parenting plan if it finds, upon the basis of facts that have
7 arisen since the prior ~~decree~~ plan or that were unknown to the court at the time of entry of the prior ~~decree~~
8 plan, that a change has occurred in the circumstances of the child ~~or the child's custodian~~ and that the
9 ~~modification~~ amendment is necessary to serve the best interest of the child, ~~and if it further finds that~~ In
10 determining the child's best interest under this section, the court may, in addition to the criteria in
11 40-4-212, also consider whether:

12 (a) ~~the custodian agrees~~ parents agree to the ~~modification~~ amendment;

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

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

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

19 ~~(e)(d)~~ the custodian one parent has willfully and consistently:

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

21 (ii) ~~attempts~~ attempted to frustrate or deny contact with the child by the noncustodial parent's
22 ~~exercise of visitation rights~~ other parent; or

23 ~~(f)(e)~~ the custodial parent one parent has changed or intends to change the child's residence to
24 another state in a manner that significantly affects the child's contact with the other parent. A change in
25 residence of more than 30 miles from the child's present residence constitutes a significant effect on
26 parent-child contact.

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

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

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

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

7 (6) A ~~custody decree~~ parenting plan may be ~~modified~~ amended upon the death of the ~~custodial~~ one
8 parent pursuant to 40-4-221.

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

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

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

26 ~~(e)~~ This subsection (8) applies to the following crimes:

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

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

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

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

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

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

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

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

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

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

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

13
14 **Section 24.** Section 40-4-220, MCA, is amended to read:

15 **"40-4-220. Affidavit practice.** (1) A Unless the parties agree to an interim parenting plan or an
16 amended parenting plan, the moving party seeking a temporary custody order an interim parenting plan or
17 modification amendment of a custody decree final parenting plan shall submit, together with his the moving
18 papers, an affidavit setting forth facts supporting the requested order plan or modification amendment and
19 shall give notice, together with a copy of his the affidavit, to other parties to the proceeding, who may file
20 opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the
21 motion is established by the affidavits, based on the best interests of the child, in which case it shall set
22 a date for hearing on an order to show cause why the requested order plan or modification amendment
23 should not be granted.

24 (2) (a) A party seeking a temporary custody order an interim parenting plan may request that the
25 court grant a temporary assignment of custody order providing for living arrangements for the child ex
26 parte. ~~He~~ The party shall so make the request in his the moving papers and shall submit an affidavit
27 showing that:

28 (i) no previous determination of custody parenting plan has been made ordered by a court and it
29 would be in the child's best interest under the standards of 40-4-212 if temporary custody were placed
30 with the person designated living arrangements for the child were as proposed by the moving party; or

1 (ii) although a previous ~~determination of custody~~ parenting plan has been ~~made~~ ordered, an
 2 emergency situation has arisen in the child's present environment ~~endangers his physical or emotional~~
 3 health that is detrimental to the child's best interests and an immediate change ~~of custody would serve in~~
 4 the parenting plan is necessary to protect the ~~child's physical or emotional health~~ child.

5 (b) If the court finds from the affidavits submitted by the moving party that ~~a temporary assignment~~
 6 ~~of custody~~ the interim parenting plan proposed by the moving party would be in the child's best interest
 7 under the standards of 40-4-212 or that the child's ~~physical or emotional health is endangered~~ present
 8 environment is detrimental to the child's best interest and would be protected by ~~a temporary assignment~~
 9 ~~of custody~~ the interim parenting plan, the court shall make an order ~~placing temporary custody with the~~
 10 ~~person designated~~ implementing the interim parenting plan proposed by the moving party ~~or with some~~
 11 ~~other person designated by the court and~~. The court shall require all parties to appear and show cause
 12 within 20 days from the execution of the ~~order~~ interim parenting plan why, ~~in the case of a temporary order~~
 13 ~~issued under subsection (2)(a)(i), the temporary order~~ interim parenting plan should not remain in effect until
 14 further order of court ~~or, in the case of a temporary order issued under subsection (2)(a)(ii), the court~~
 15 ~~should not restore the child to the custodian from whom the child was removed by the temporary order."~~

16
 17 **Section 25.** Section 40-4-221, MCA, is amended to read:

18 "**40-4-221. Determination of eustody child's care upon death of eustodial parent.** (1) Upon the
 19 death of a parent ~~granted custody of a child, custody shall pass to the noncustodial parent unless,~~ one or
 20 more parties named in subsection (2) may request a eustody parenting plan hearing. The ~~noncustodial~~
 21 surviving parent shall must be a party in any proceeding brought under this section.

22 (2) Upon the death of a parent ~~granted custody of a child~~, any of the following parties may request
 23 a eustody parenting plan hearing ~~and seek custody of the child:~~

24 (a) the ~~noncustodial~~ natural parent;

25 (b) the surviving spouse of the deceased eustodial parent;

26 (c) a person nominated by the will of the deceased eustodial parent;

27 (d) any person nominated by the child if the child is at least 12 years old;

28 (e) any other person if that person has actual physical control over the child;

29 (f) any other party whom, upon showing of good cause, the court permits to intervene as an
 30 interested party.

1 (3) The hearing and determination of ~~custody shall be~~ a parenting plan is governed by this part."

2

3 **Section 26.** Section 40-4-225, MCA, is amended to read:

4 "**40-4-225. Access to records by ~~noncustodial~~ parent.** Notwithstanding any other provision of law,
5 access to records and information pertaining to a minor child, including but not limited to medical, dental,
6 law enforcement, and school records, may not be denied to a parent ~~because such parent is not the child's~~
7 custodial parent who is a party to a parenting plan."

8

9 **Section 27.** Section 40-4-226, MCA, is amended to read:

10 "**40-4-226. ~~Court-ordered~~ COURT-SANCTIONED educational program on effects of dissolution of**
11 **marriage on children.** (1) In a proceeding for dissolution of marriage involving a minor child or in a ~~custody~~
12 ~~modification~~ parenting plan proceeding involving a minor child, a court shall inform the parties, excluding
13 the minor child, of available educational programs concerning the effects of dissolution of marriage on
14 children and, if the court finds that it would be in the best interest of the minor child, ~~may~~ shall order the
15 parties to attend a ~~court-sponsored~~ COURT-SANCTIONED program. The program may be divided into
16 sessions. The program must be educational in nature and may not be designed for individual therapy.

17 (2) ~~Any facts presented at an educational session resulting from a referral under this section may~~
18 ~~not be considered in a dissolution of a marriage or a custody modification proceeding, nor may a report~~
19 ~~resulting from an educational session become part of the record of the dissolution or proceeding unless the~~
20 ~~parties have stipulated in writing to the contrary.~~

21 (3) ~~The fees or costs of an educational session under this section must be borne by the parties and~~
22 ~~may be assessed by the court in an equitable manner. The cost of implementing the court-sponsored~~
23 COURT-SANCTIONED educational program for each district court, provided for in subsection (1), must be
24 paid from the fees for filing petitions for contested amendment of a parenting plan, provided for in
25 25-1-201(9). COSTS MAY INCLUDE PARENTING EVALUATION AND GUARDIAN AD LITEM SERVICES."

26

27 **Section 28.** Section 40-4-302, MCA, is amended to read:

28 "**40-4-302. Mediation proceeding -- tolling of statute of limitations.** (1) The purpose of a mediation
29 proceeding is to reduce the acrimony that may exist between the parties and to develop an agreement that
30 is supportive of the best interests of a child involved in the proceeding.

1 (2) The mediator shall attempt to effect a settlement of the ~~child custody parenting~~, child support,
 2 ~~visitation~~ parental contact with the child, maintenance, or property settlement dispute. The mediator may
 3 not use coercive measures to effect the settlement. The mediator may recommend that a party obtain
 4 assistance from other resources in the community.

5 (3) Subject to 40-4-301(1), the mediator may exclude attorneys from the mediation sessions. The
 6 parties' attorneys may confer with the mediator prior to the mediation session and may review and approve
 7 any agreement.

8 (4) An applicable statute of limitations is tolled as to the participants during the period of mediation.
 9 The tolling commences on the date the parties agree in writing to participate in the mediation or when the
 10 court orders mediation, whichever is later, and ends on the date the mediation is officially terminated by
 11 the mediator."
 12

13 **Section 29.** Section 40-4-307, MCA, is amended to read:

14 "**40-4-307. Mediator qualifications.** A mediator ~~shall~~ must meet the following minimum
 15 qualifications:

16 (1) knowledge of the court system and the procedures used in family law matters;

17 (2) knowledge of other resources in the community to which the parties may be referred for
 18 assistance;

19 (3) if applicable, knowledge of child development, clinical issues relating to children, the effects
 20 of marriage dissolution on children, and ~~child custody parenting~~ research; and

21 (4) knowledge of the mediation process."
 22

23 **Section 30.** Section 40-6-211, MCA, is amended to read:

24 "**40-6-211. Obligations of parents for the support and education of their children.** The parent or
 25 parents ~~entitled to the custody~~ of a child ~~must~~ shall give him the child support and education suitable to
 26 his the child's circumstances."
 27

28 **Section 31.** Section 40-6-221, MCA, is amended to read:

29 "**40-6-221. Custody Parenting, services, and earnings of child.** The father and mother of an
 30 unmarried minor child are equally entitled to the ~~custody parenting~~, services, and earnings of the child. If

1 either parent ~~be is~~ dead or unable or refuses to ~~take the custody~~ exercise parenting or has abandoned his
 2 ~~or her~~ the family, the other parent is entitled to the custody parenting, services, and earnings of the child,
 3 unless ~~custody~~ care of the child is determined otherwise pursuant to 40-4-221."

4
 5 **Section 32.** Section 40-9-101, MCA, is amended to read:

6 **"40-9-101. Application of Montana Rules of Civil Procedure.** (1) Except as otherwise provided,
 7 the Montana Rules of Civil Procedure apply to all proceedings under this section and 40-9-102.

8 (2) A proceeding for ~~grandparent~~ grandparent-grandchild contact ~~visitation~~ under this section and
 9 40-9-102 ~~shall~~ must be entitled, "In re the ~~visitation~~ grandparent-grandchild contact of"

10 (3) The initial pleading in all proceedings under this section and 40-9-102 ~~shall~~ must be
 11 denominated a petition. A responsive pleading ~~shall~~ must be denominated a response. Other pleadings ~~shall~~
 12 must be denominated as provided in the Montana Rules of Civil Procedure."

13
 14 **Section 33.** Section 40-9-102, MCA, is amended to read:

15 **"40-9-102. ~~Grandparent~~ Grandparent-grandchild contact ~~visitation rights~~.** (1) Except as provided
 16 in subsection (5), the district court may grant to a grandparent of a child reasonable ~~visitation~~ rights to
 17 contact with the child, including but not limited to ~~visitation~~ rights regarding a child who is the subject of,
 18 or as to whom a disposition has been made during, an administrative or court proceeding under Title 41
 19 or this title. The department of public health and human services must be given notice of a petition for
 20 ~~grandparent~~ grandparent-grandchild contact ~~visitation~~ regarding a child who is the subject of, or as to
 21 whom a disposition has been made during, an administrative or court proceeding under Title 41 or this title.

22 (2) ~~Visitation rights~~ Grandparent-grandchild contact granted under this section may be granted only
 23 upon a finding by the court, after a hearing, that the ~~visitation~~ contact would be in the best interest of the
 24 child.

25 (3) A person may not petition the court under this section more often than once every 2 years
 26 unless there has been a significant change in the circumstances of:

- 27 (a) the child;
 28 (b) the child's parent, guardian, or custodian; or
 29 (c) the child's grandparent.

30 (4) The court may appoint an attorney to represent the interests of a child with respect to ~~visitation~~

1 grandparent-grandchild contact when the interests are not adequately represented by the parties to the
2 proceeding.

3 (5) This section does not apply if the child has been adopted by a person other than a stepparent
4 or a grandparent. ~~Visitation rights~~ Grandparent-grandchild contact granted under this section ~~terminate~~
5 terminates upon the adoption of the child by a person other than a stepparent or a grandparent."

6
7 **Section 34.** Section 45-5-304, MCA, is amended to read:

8 **"45-5-304. Custodial interference.** (1) A person commits the offense of custodial interference if,
9 knowing that the person has no legal right to do so, the person:

10 ~~(a) takes, entices, or withholds from lawful custody any child, incompetent person, or other person~~
11 ~~entrusted by authority of law to the custody of another person or institution;~~

12 ~~(b) prior to the entry of a court order determining custodial rights, takes, entices, or withholds any~~
13 ~~child from the other parent when the action manifests a purpose to substantially deprive that parent of~~
14 ~~parental rights; or~~

15 ~~(c) is one of two persons who has joint custody of a child under a court order and takes, entices,~~
16 ~~or withholds the child from the other when the action manifests a purpose to substantially deprive the other~~
17 ~~parent of parental rights.~~

18 (2) A person convicted of the offense of custodial interference shall be imprisoned in the state
19 prison for any term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both.

20 (3) With respect to the first alleged commission of the offense only, a person who has not left the
21 state does not commit an offense under this section if the person voluntarily returns the child, incompetent
22 person, or other person to lawful custody ~~prior to~~ before arraignment. With respect to the first alleged
23 commission of the offense only, a person who has left the state does not commit an offense under this
24 section if the person voluntarily returns the child, incompetent person, or other person to lawful custody
25 ~~prior to~~ before arrest."

26

27 **NEW SECTION. Section 35. Parenting interference.** (1) A person commits the offense of parenting
28 interference if, knowing that the person has no legal right to do so, the person:

29 (a) before the entry of a court order determining parenting rights, takes, entices, or withholds a
30 child from the other parent when the action manifests a purpose to substantially deprive that parent of

1 parenting rights; or

2 (b) is one of two persons who has parenting authority of a child under a court order and takes,
3 entices, or withholds the child from the other when the action manifests a purpose to substantially deprive
4 the other parent of parenting rights.

5 (2) A person convicted of the offense of parenting interference shall be imprisoned in the state
6 prison for any term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both.

7 (3) With respect to the first alleged commission of the offense only, a person who has not left the
8 state does not commit an offense under this section if the person voluntarily returns the child before
9 arraignment. With respect to the first alleged commission of the offense only, a person who has left the
10 state does not commit an offense under this section if the person voluntarily returns the child before arrest.

11

12 **Section 36.** Section 45-5-631, MCA, is amended to read:

13 **"45-5-631. ~~Visitation interference~~ Interference with parent-child contact.** (1) A person who has
14 ~~legal custody of a minor child~~ been granted parent-child contact under a parenting plan commits the offense
15 of ~~visitation~~ interference with parent-child contact if ~~he~~ the person knowingly or purposely prevents,
16 obstructs, or frustrates the ~~visitation~~ rights of a another person entitled to ~~visitation~~ parent-child contact
17 under an existing court order.

18 (2) A person convicted of the offense of ~~visitation~~ interference with parent-child contact shall be
19 fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 5 days,
20 or both."

21

22 **Section 37.** Section 45-5-632, MCA, is amended to read:

23 **"45-5-632. ~~Aggravated visitation interference~~ with parent-child contact.** (1) A person who
24 commits the offense of ~~visitation~~ interference with parent-child contact by changing the residence of the
25 minor child ~~ever when he has legal custody~~ to another state without giving written notice as required in
26 40-4-217, unless the notice requirement has been precluded under [section 49 20], or without written
27 consent of the person entitled to ~~visitation~~ parent-child contact pursuant to an existing court order commits
28 the offense of aggravated ~~visitation~~ interference with parent-child contact.

29 (2) A person convicted of the offense of aggravated ~~visitation~~ interference with parent-child contact
30 shall be fined an amount not to exceed \$1,000 or be imprisoned in the state prison for a term not to exceed

1 18 months, or both."

2

3 **Section 38.** Section 45-5-633, MCA, is amended to read:

4 "**45-5-633. Defenses to ~~visitation~~ interference with parent-child contact and aggravated ~~visitation~~**
5 **interference with parent-child contact.** (1) A person does not commit the offense of ~~visitation~~ interference
6 with parent-child contact or aggravated ~~visitation~~ interference with parent-child contact if ~~he~~ the person
7 acts:

8 (a) with the consent of the person entitled to ~~visitation~~ parent-child contact;

9 (b) under an existing court order; or

10 (c) with reasonable cause.

11 (2) Return of the child ~~prior to~~ before arrest is a defense only with respect to the first commission
12 of ~~visitation~~ interference with parent-child contact or aggravated ~~visitation~~ interference with parent-child
13 contact."

14

15 **NEW SECTION. Section 39. Repealer.** Sections 40-4-222, 40-4-223, 40-4-224, 40-6-222,
16 40-6-223, 40-6-224, and 40-6-231, MCA, are repealed.

17

18 **NEW SECTION. Section 40. Codification instruction.** (1) [Sections ~~18 and 19~~ AND 20] are
19 intended to be codified as an integral part of Title 40, chapter 4, part 2, and the provisions of Title 40,
20 chapter 4, part 2, apply to [sections ~~18 and 19~~ AND 20].

21 (2) [Section ~~34~~ 35] is intended to be codified as an integral part of Title 45, chapter 5, part 6, and
22 the provisions of Title 45, chapter 5, part 6, apply to [section ~~34~~ 35].

23

24 **NEW SECTION. Section 41. Saving clause.** [This act] does not affect rights and duties that
25 matured, penalties that were incurred, or proceedings that were begun before October 1, 1997.

26

27 **NEW SECTION. Section 42. Severability.** If a part of [this act] is invalid, all valid parts that are
28 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
29 applications, the part remains in effect in all valid applications that are severable from the invalid
30 applications.

1 HOUSE BILL NO. 231

2 INTRODUCED BY BARNHART, BROOKE, ECK, WATERMAN, DOWELL, COCCHIARELLA, SANDS,
3 WYATT, KOTTEL, HALLIGAN, HARGROVE, BURNETT
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING DOMESTIC RELATIONS STATUTES
6 REGARDING THE CUSTODY AND VISITATION OF CHILDREN INVOLVED IN A MARRIAGE DISSOLUTION;
7 REVISING APPLICABLE TERMINOLOGY; REQUIRING ADOPTION OF A FINAL PARENTING PLAN THAT
8 INCLUDES SPECIFIC PROVISIONS IN THE BEST INTERESTS OF THE CHILD, AN OPTION FOR DISPUTE
9 RESOLUTION OR MEDIATION EXCEPT IN CASES OF PROVEN CHILD OR SPOUSAL ABUSE, AND AN
10 OPTION FOR PERIODIC REVIEW OF THE PARENTING PLAN; ALLOWING ADOPTION OF AN INTERIM
11 PARENTING PLAN DURING THE TIME DISSOLUTION PROCEEDINGS ARE PENDING; REQUIRING
12 DESIGNATION OF ONE PARENT AS CUSTODIAN FOR APPLICABILITY OF FEDERAL OR STATE LAWS;
13 REQUIRING THAT PARENTS RECEIVE INFORMATION REGARDING PARENTAL RESPONSIBILITY AND
14 CONTACT WITH THE CHILD IN DISPUTED CASES; ALLOWING THE TRIAL COURT TO DETERMINE THE
15 APPROPRIATE LEVEL OF EVALUATION NECESSARY TO ESTABLISH PARENTING ARRANGEMENTS;
16 PROVIDING A FEE FOR FILING A PETITION FOR CONTESTED AMENDMENT OF A PARENTING PLAN TO
17 DEFRAID THE COSTS OF IMPLEMENTING THE ~~COURT ORDERED~~ COURT-SANCTIONED EDUCATIONAL
18 PROGRAM ON THE EFFECTS OF DIVORCE ON CHILDREN IN DISPUTED CASES AND THE COST OF
19 PARENTING EDUCATION WHEN ORDERED FOR THE INVESTIGATION AND PREPARATION OF A REPORT
20 CONCERNING PARENTING ARRANGEMENTS; REVISING APPROPRIATE TERMINOLOGY IN GRANDPARENT
21 VISITATION STATUTES AND APPLICABLE CRIMINAL STATUTES; AMENDING SECTIONS 25-1-201,

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE
REPRINTED. PLEASE REFER TO THIRD READING COPY
(BLUE) FOR COMPLETE TEXT.**

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8 INCLUDES SPECIFIC PROVISIONS IN THE BEST INTERESTS OF THE CHILD, AN OPTION FOR DISPUTE
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10 OPTION FOR PERIODIC REVIEW OF THE PARENTING PLAN; ALLOWING ADOPTION OF AN INTERIM
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12 DESIGNATION OF ONE PARENT AS CUSTODIAN FOR APPLICABILITY OF FEDERAL OR STATE LAWS;
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14 CONTACT WITH THE CHILD IN DISPUTED CASES; ALLOWING THE TRIAL COURT TO DETERMINE THE
15 APPROPRIATE LEVEL OF EVALUATION NECESSARY TO ESTABLISH PARENTING ARRANGEMENTS;
16 PROVIDING A FEE FOR FILING A PETITION FOR CONTESTED AMENDMENT OF A PARENTING PLAN TO
17 DEFRAY THE COSTS OF IMPLEMENTING THE ~~COURT-ORDERED~~ COURT-SANCTIONED EDUCATIONAL
18 PROGRAM ON THE EFFECTS OF DIVORCE ON CHILDREN IN DISPUTED CASES AND THE COST OF
19 PARENTING EDUCATION WHEN ORDERED FOR THE INVESTIGATION AND PREPARATION OF A REPORT
20 CONCERNING PARENTING ARRANGEMENTS; REVISING APPROPRIATE TERMINOLOGY IN GRANDPARENT
21 VISITATION STATUTES AND APPLICABLE CRIMINAL STATUTES; AMENDING SECTIONS 25-1-201,
22 40-1-105, 40-1-213, 40-1-402, 40-4-103, 40-4-104, 40-4-105, 40-4-109, 40-4-110, 40-4-123, 40-4-201,
23 40-4-204, 40-4-205, 40-4-211, 40-4-212, 40-4-213, 40-4-214, 40-4-215, 40-4-216, 40-4-217, 40-4-219,
24 40-4-220, 40-4-221, 40-4-225, 40-4-226, 40-4-302, 40-4-307, 40-6-211, 40-6-221, 40-9-101, 40-9-102,
25 45-5-304, 45-5-631, 45-5-632, AND 45-5-633, MCA; REPEALING SECTIONS 40-4-222, 40-4-223,
26 40-4-224, 40-6-222, 40-6-223, 40-6-224, AND 40-6-231, MCA; AND PROVIDING AN APPLICABILITY
27 DATE."

28
29 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

30

1 **Section 1.** Section 25-1-201, MCA, is amended to read:

2 **"25-1-201. Fees of clerk of district court.** (1) The clerk of the district court shall collect the
3 following fees:

4 (a) at the commencement of each action or proceeding, except a petition for dissolution of
5 marriage, from the plaintiff or petitioner, \$80; for filing a complaint in intervention, from the intervenor,
6 \$80; for filing a petition for dissolution of marriage, a fee of \$120; ~~and~~ for filing a petition for legal
7 separation, a fee of \$120; and for filing a petition for a contested amendment of a final parenting plan, a
8 fee of \$120;

9 (b) from each defendant or respondent, on appearance, \$60;

10 (c) on the entry of judgment, from the prevailing party, \$45;

11 (d) for preparing copies of papers on file in the clerk's office, 50 cents per page for the first five
12 pages of each file, per request, and 25 cents per additional page;

13 (e) for each certificate, with seal, \$2;

14 (f) for oath and jurat, with seal, \$1;

15 (g) for search of court records, 50 cents for each year searched, not to exceed a total of \$25;

16 (h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts,
17 the fee for entry of judgment provided for in subsection (1)(c);

18 (i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;

19 (j) for transmission of records or files or transfer of a case to another court, \$5;

20 (k) for filing and entering papers received by transfer from other courts, \$10;

21 (l) for issuing a marriage license, \$30;

22 (m) on the filing of an application for informal, formal, or supervised probate or for the appointment
23 of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from
24 the applicant or petitioner, \$70, which includes the fee for filing a will for probate;

25 (n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative
26 of the estate of a nonresident decedent, \$55;

27 (o) for filing a declaration of marriage without solemnization, \$30;

28 (p) for filing a motion for substitution of a judge, \$100.

29 (2) Except as provided in subsections (3) through ~~(8)~~ (9), 32% of all fees collected by the clerk of
30 the district court must be deposited in and credited to the district court fund. If no district court fund exists,

1 that portion of the fees must be deposited in the general fund for district court operations. The remaining
2 portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

3 (3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage
4 without solemnization, \$14 must be deposited in and credited to the state general fund, \$6.40 must be
5 deposited in and credited to the county general fund, and \$9.60 must be remitted to the state to be
6 deposited as provided in 19-5-404.

7 (4) Of the fee for filing a petition for dissolution of marriage or legal separation, \$40 must be
8 deposited in the state general fund, \$35 must be remitted to the state to be deposited as provided in
9 19-5-404, \$5 must be deposited in the children's trust fund account established by 41-3-702, and \$20
10 must be deposited in and credited to the district court fund. If no district court fund exists, the \$20 must
11 be deposited in the general fund for district court operations.

12 (5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the
13 district court fund or the county general fund or remitted to the state, the clerk of the district court shall
14 deduct from the following fees the amounts indicated:

15 (i) at the commencement of each action or proceeding and for filing a complaint in intervention as
16 provided in subsection (1)(a), \$35;

17 (ii) from each defendant or respondent, on appearance, as provided in subsection (1)(b), \$25;

18 (iii) on the entry of judgment as provided in subsection (1)(c), \$15; and

19 (iv) from the applicant or petitioner, on the filing of an application for probate or for the appointment
20 of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as
21 provided in subsection (1)(m), \$15.

22 (b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the
23 county general fund for district court operations unless the county has a district court fund. If the county
24 has a district court fund, the money must be deposited in that fund.

25 (6) The fee for filing a motion for substitution of a judge as provided in subsection (1)(p) must be
26 remitted to the state to be deposited as provided in 19-5-404.

27 (7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court
28 fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

29 (8) The clerk of the district court shall remit to the credit of the state general fund \$20 of each fee
30 collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion of

1 judicial salaries.

2 (9) The fee for filing a petition for a contested amendment of a parenting plan must be remitted by
 3 the clerk of the district court to the credit of the district court to defray the costs of the ~~court-sponsored~~
 4 COURT-SANCTIONED educational program concerning the effects of dissolution of marriage on children,
 5 as required in 40-4-226, and to defray the expense of education when ordered for the investigation and
 6 preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a)."

7

8 **Section 2.** Section 40-1-105, MCA, is amended to read:

9 **"40-1-105. Application of the Montana Rules of Civil Procedure.** (1) Except for proceedings
 10 ~~coming~~ under the Uniform Child Custody Jurisdiction Act, the Montana Rules of Civil Procedure apply to
 11 all proceedings under this chapter, except as otherwise provided in this chapter.

12 (2) A proceeding for declaration of invalidity of marriage ~~shall~~ must be entitled, "In re the Marriage
 13 of and". A ~~custody~~ parenting or support proceeding ~~shall~~ must be entitled, "In re the
 14 ~~custody~~ (parenting) (support) of".

15 (3) The initial pleading in all proceedings under this chapter ~~shall~~ must be denominated a petition.
 16 A responsive pleading ~~shall~~ must be denominated a response. Other pleadings, and all pleadings in other
 17 matters under this chapter, ~~shall~~ must be denominated as provided in the Montana Rules of Civil Procedure.

18 (4) In this chapter, "decree" includes "judgment".

19

20 **Section 3.** Section 40-1-213, MCA, is amended to read:

21 **"40-1-213. Judicial approval.** (1) The district court may order the clerk of the district court to
 22 issue a marriage license and a marriage certificate form to a party ~~aged~~ 16 or 17 years of age who has no
 23 parent capable of consenting to ~~his~~ the party's marriage or has the consent of both parents or of the parent
 24 having the actual care, ~~custody~~ parenting authority, and control to ~~his~~ the party's marriage, if capable of
 25 giving consent, or of ~~his~~ the party's guardian. The court must require both parties to participate in a period
 26 of marriage counseling involving at least two separate counseling sessions not less than 10 days apart with
 27 a designated counselor as a condition of the order for issuance of a marriage license and a marriage
 28 certificate form under this section.

29 (2) A marriage license and a marriage certificate form may be issued under this section only if the
 30 court finds that the underaged party is capable of assuming the responsibilities of marriage and the marriage

1 will serve ~~his~~ the party's best interest interests. Pregnancy alone does not establish that the best ~~interest~~
2 interests of the party will be served.

3 (3) The district court shall authorize performance of a marriage by proxy upon the showing required
4 by the provisions on solemnization."
5

6 **Section 4.** Section 40-1-402, MCA, is amended to read:

7 **"40-1-402. Declaration of invalidity.** (1) The district court shall enter its decree declaring the
8 invalidity of a marriage entered into under the following circumstances:

9 (a) a party lacked capacity to consent to the marriage at the time that the marriage was entered
10 into, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other
11 incapacitating substances, or a party was induced to enter into a marriage by force or duress or by fraud
12 involving the essentials of marriage;

13 (b) a party lacks the physical capacity to consummate the marriage by sexual intercourse, and at
14 the time that the marriage was entered into, the other party did not know of the incapacity;

15 (c) a party was under ~~the age of~~ 16 years of age or was ~~aged~~ 16 or 17 years of age and did not
16 have the consent of the party's parents or guardian or judicial approval; or

17 (d) the marriage is prohibited.

18 (2) A declaration of invalidity under subsections (1)(a) through (1)(c) may be sought by any of the
19 following persons and must be commenced within the times specified, but ~~in no event may~~ a declaration
20 of invalidity may not be sought after the death of either party to the marriage:

21 (a) for lack of capacity to consent because of mental incapacity or infirmity, no later than 1 year
22 after the petitioner obtained knowledge of the described condition;

23 (b) for lack of capacity to consent because of the influence of alcohol, drugs, or other
24 incapacitating substances, no later than 1 year after the petitioner obtained knowledge of the described
25 condition;

26 (c) for lack of capacity to consent because of force, duress, or fraud, no later than 2 years after
27 the petitioner obtained knowledge of the described condition;

28 (d) for the reason set forth in subsection (1)(b), by either party, no later than 4 years after the
29 petitioner obtained knowledge of the described condition;

30 (e) for the reason set forth in subsection (1)(c), by the underaged party or the party's parent or

1 guardian, ~~prior to~~ before the time that the underaged party reaches the age at which the party could have
2 married without satisfying the omitted requirement.

3 (3) A declaration of invalidity for the reason set forth in subsection (1)(d) may be sought by either
4 party, the legal spouse in case of a bigamous marriage, the county attorney, or a child of either party, at
5 any time ~~prior to~~ before the death of one of the parties.

6 (4) Children born of a marriage declared invalid are legitimate.

7 (5) Unless the court finds, after a consideration of all relevant circumstances, including the effect
8 of a retroactive decree on third parties, that the interests of justice would be served by making the decree
9 not retroactive, it shall declare the marriage invalid as of the date of the marriage. The provisions of chapter
10 4 relating to property rights of the spouses, maintenance, support, and ~~custody~~ parenting of children on
11 dissolution of marriage are applicable to nonretroactive decrees of invalidity.

12 (6) The clerk of the court shall give notice of the entry of a decree declaring the invalidity of a
13 marriage:

14 (a) if the marriage is registered in this state, to the clerk of the district court of the county where
15 the marriage is registered, who shall enter the fact of invalidity in the book in which the marriage license
16 and certificate are recorded; or

17 (b) if the marriage is registered in another jurisdiction, to the appropriate official of that jurisdiction,
18 with the request that the official enter the fact of invalidity in the appropriate record."
19

20 **Section 5.** Section 40-4-103, MCA, is amended to read:

21 **"40-4-103. Application of the Montana Rules of Civil Procedure.** (1) Except for proceedings
22 coming under the Uniform Child Custody Jurisdiction Act, the Montana Rules of Civil Procedure apply to
23 all proceedings under this chapter, except as otherwise provided in this chapter.

24 (2) A proceeding for dissolution of marriage or legal separation ~~shall~~ must be entitled, "In re the
25 Marriage of and". A ~~custody~~ parenting or support proceeding ~~shall~~ must be entitled, "In
26 re the ~~(custody)~~ (parenting) (support) of".

27 (3) The initial pleading in all proceedings under this chapter ~~shall~~ must be denominated a petition.
28 A responsive pleading ~~shall~~ must be denominated a response. Other pleadings, and all pleadings in other
29 matters under this chapter, ~~shall~~ must be denominated as provided in the Montana Rules of Civil Procedure.

30 (4) In this chapter, "decree" includes "judgment".

1 (5) A decree of dissolution or of legal separation, if made, ~~shall~~ may not be awarded to one of the
 2 parties but ~~shall~~ must provide that it affects the status previously existing between the parties in the
 3 manner decreed."

4
 5 **Section 6.** Section 40-4-104, MCA, is amended to read:

6 **"40-4-104. Dissolution of marriage -- legal separation.** (1) The district court shall enter a decree
 7 of dissolution of marriage if:

8 (a) the court finds that one of the parties, at the time the action was commenced, was domiciled
 9 in this state or was stationed in this state while a member of the armed services and that the domicile or
 10 military presence has been maintained for 90 days ~~next~~ preceding the making of the findings;

11 (b) the court finds that the marriage is irretrievably broken, which findings ~~shall~~ must be supported
 12 by evidence:

13 (i) that the parties have lived separate and apart for a period of more than 180 days ~~next~~ preceding
 14 the commencement of this proceeding; or

15 (ii) that there is serious marital discord ~~which~~ that adversely affects the attitude of one or both of
 16 the parties towards the marriage;

17 (c) the court finds that the conciliation provisions of the Montana Conciliation Law and of 40-4-107
 18 either do not apply or have been met; and

19 (d) to the extent it has jurisdiction to do so, the court has considered, approved, or made provision
 20 for ~~child custody~~ parenting, the support of any child entitled to support, the maintenance of either spouse,
 21 and the disposition of property.

22 (2) If a party requests a decree of legal separation rather than a decree of dissolution of marriage,
 23 the court shall grant the decree in that form unless the other party objects."

24
 25 **Section 7.** Section 40-4-105, MCA, is amended to read:

26 **"40-4-105. Procedure -- commencement -- pleadings -- abolition of existing defenses.** (1) The
 27 verified petition in a proceeding for dissolution of marriage or legal separation ~~shall~~ must allege that the
 28 marriage is irretrievably broken and ~~shall~~ must set forth:

29 (a) the age, occupation, and residence of each party and ~~his~~ the party's length of residence in this
 30 state;

- 1 (b) the date of the marriage and the place at which it was registered;
- 2 (c) that the jurisdictional requirements of 40-4-104 exist and that the marriage is irretrievably
3 broken in that either:
- 4 (i) the parties have lived separate and apart for a period of more than 180 days ~~next~~ preceding the
5 commencement of this proceeding; or
- 6 (ii) there is serious marital discord ~~which~~ that adversely affects the attitude of one or both of the
7 parties towards the marriage, and there is no reasonable prospect of reconciliation;
- 8 (d) the names, ages, and addresses of all living children of the marriage and whether the wife is
9 pregnant;
- 10 (e) any arrangements as to support, ~~custody, and visitation~~ of the children and maintenance of a
11 spouse; ~~and~~
- 12 (f) a proposed parenting plan, if applicable; and
- 13 (g) the relief sought.
- 14 (2) Either or both parties to the marriage may initiate the proceeding.
- 15 (3) If a proceeding is commenced by one of the parties, the other party must be served in the
16 manner provided by the Montana Rules of Civil Procedure and may within 20 days after the date of service
17 file a verified response. ~~No~~ A decree may not be entered until 20 days after the date of service.
- 18 (4) Previously existing defenses to divorce and legal separation, including but not limited to
19 condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.
- 20 (5) The court may join additional parties proper for the exercise of its authority to implement this
21 chapter."

22

23 **Section 8.** Section 40-4-109, MCA, is amended to read:

24 **"40-4-109. Independence of provisions of decree or temporary order.** If a party fails to comply
25 with a provision of a decree or temporary order or injunction, the obligation of the other party to make
26 payments for support or maintenance or to permit ~~visitation~~ parental contact with the child is not suspended
27 but ~~he~~ the party may move the court to grant an appropriate order."

28

29 **SECTION 9. SECTION 40-4-110, MCA, IS AMENDED TO READ:**

30 **"40-4-110. Costs -- ~~attorney's professional fees.~~ (1)** The court from time to time, after considering

1 the financial resources of both parties, may order a party to pay a reasonable amount for the cost to the
 2 other party of maintaining or defending any proceeding under chapters 1 and 4 ~~of this title~~ and for
 3 ~~attorney's~~ professional fees, including sums for legal and professional services rendered and costs incurred
 4 prior to the commencement of the proceeding or after entry of judgment. The court may order that the
 5 amount be paid directly to the ~~attorney~~ professional, who may enforce the order in ~~his~~ the professional's
 6 name.

7 (2) The purpose of this section is to ensure that both parties have timely and equitable access to
 8 marital financial resources for costs incurred before, during, and after a proceeding under chapters 1 and
 9 4."

10
 11 **Section 10.** Section 40-4-123, MCA, is amended to read:

12 **"40-4-123. Jurisdiction and venue.** (1) District courts, municipal courts, justices' courts, and city
 13 courts have concurrent jurisdiction to hear and issue orders under 40-4-121.

14 (2) The municipal judge, justice of the peace, or city court judge shall on motion suspend all further
 15 proceedings in the action and certify the pleading and any orders to the clerk of the district court of the
 16 county where the action was begun if an action for declaration of invalidity of a marriage, legal separation,
 17 or dissolution of marriage or for ~~child custody~~ parenting is pending between the parties. From the time of
 18 the certification of the pleadings and any orders to the clerk, the district court has the same jurisdiction over
 19 the action as if it had been commenced in district court.

20 (3) An action brought under 40-4-121 may be tried in the county in which either party resides or
 21 in which the physical abuse was committed.

22 (4) The right to petition for relief may not be denied because the plaintiff has vacated the residence
 23 or household to avoid abuse."

24
 25 **Section 11.** Section 40-4-201, MCA, is amended to read:

26 **"40-4-201. Separation agreement.** (1) To promote amicable settlement of disputes between parties
 27 to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into
 28 a written separation agreement containing provisions for disposition of any property owned by either of
 29 them, maintenance of either of them, and support, ~~custody~~ parenting, and ~~visitation of~~ parental contact
 30 with their children. In cases in which children are involved, the separation agreement ~~must~~ MAY contain

1 a parenting plan as required in [section 49 20].

2 (2) In a proceeding for dissolution of marriage or for legal separation, the terms of the separation
3 agreement, except those providing for the support, ~~custody parenting~~, and ~~visitation of parental contact~~
4 with children, are binding upon the court unless it finds, after considering the economic circumstances of
5 the parties and any other relevant evidence produced by the parties, on their own motion or on request of
6 the court, that the separation agreement is unconscionable.

7 (3) If the court finds the separation agreement unconscionable, it may request that the parties ~~to~~
8 submit a revised separation agreement or it may make orders for the disposition of property, maintenance,
9 and support.

10 (4) If the court finds that the separation agreement is not unconscionable as to disposition of
11 property or maintenance and not unsatisfactory as to support:

12 (a) unless the separation agreement provides to the contrary, its terms ~~shall~~ must be set forth in
13 the decree of dissolution or legal separation and the parties ~~shall be~~ ordered to perform them; or

14 (b) if the separation agreement provides that its terms ~~shall~~ may not be set forth in the decree, the
15 decree ~~shall~~ must identify the separation agreement and state that the court has found the terms not
16 unconscionable.

17 (5) Terms of the agreement set forth in the decree are enforceable by all remedies available for
18 enforcement of a judgment, including contempt, and are enforceable as contract terms.

19 (6) Except for terms concerning the support, ~~custody parenting~~, or ~~visitation of parental contact~~
20 with the children, the decree may expressly preclude or limit modification of terms set forth in the decree
21 if provided for in the separation agreement ~~so provides~~. Otherwise, terms of a separation agreement set
22 forth in the decree are automatically modified by modification of the decree."
23

24 **Section 12.** Section 40-4-204, MCA, is amended to read:

25 **"40-4-204. Child support -- orders to address health insurance -- withholding of child support.** (1)
26 In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall
27 order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary
28 for the child's support, without regard to marital misconduct.

29 (2) The court shall consider all relevant factors, including:

30 (a) the financial resources of the child;

1 (b) the financial resources of the ~~custodial parent~~ parents;

2 (c) the standard of living that the child would have enjoyed had the marriage not been dissolved;

3 (d) the physical and emotional condition of the child and the child's educational and medical needs;

4 (e) ~~the financial resources and needs of the noncustodial parent;~~

5 ~~(f)~~ the age of the child;

6 ~~(g)~~(f) the cost of day care for the child;

7 ~~(h)~~(g) any ~~custody arrangement~~ parenting plan that is ordered or decided upon; and

8 ~~(i)~~(h) the needs of any person, other than the child, whom either parent is legally obligated to
9 support.

10 (3) (a) Whenever a court issues or modifies an order concerning child support, the court shall
11 determine the child support obligation by applying the standards in this section and the uniform child
12 support guidelines adopted by the department of public health and human services pursuant to 40-5-209.
13 The guidelines must be used in all cases, including cases in which the order is entered upon the default of
14 a party and those in which the parties have entered into an agreement regarding the support amount. A
15 verified representation of the defaulting parent's income, based on the best information available, may be
16 used when a parent fails to provide financial information for use in applying the guidelines. The amount
17 determined under the guidelines is presumed to be an adequate and reasonable support award, unless the
18 court finds by clear and convincing evidence that the application of the standards and guidelines is unjust
19 to the child or to any of the parties or that it is inappropriate in that particular case.

20 (b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall
21 state its reasons for that finding. Similar reasons must also be stated in a case in which the parties have
22 agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the
23 guideline amount must include a statement of the amount of support that would have ordinarily been
24 ordered under the guidelines.

25 (c) If the court does not order a parent owing a duty of support to a child to pay any amount for
26 the child's support, the court shall state its reasons for not ordering child support.

27 (4) Each temporary or final district court judgment, decree, or order establishing a child support
28 obligation under this title and each modification of a final order for child support must include a medical
29 support order as provided for in Title 40, chapter 5, part 8.

30 (5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception

1 is included in the support order, a support obligation established by judgment, decree, or order under this
2 section, whether temporary or final, and each modification of an existing support obligation under 40-4-208
3 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part
4 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides
5 for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the
6 payment of support without need for an amendment to the support order or for any further action by the
7 court.

8 (b) If an obligor is exempt from immediate income withholding, the district court judgment or order
9 must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's
10 income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to
11 include a warning statement in a judgment or order does not preclude the use of withholding procedures.

12 (c) If a support order subject to income withholding is expressed in terms of a monthly obligation,
13 the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's
14 regular pay period. When an order is annualized and withheld on a weekly or biweekly basis under this
15 section, the support withheld from the obligor may be retained by the obligee when it exceeds the obligor's
16 monthly support obligation if the excess support is a result of annualized withholding.

17 (6) For the purposes of income withholding under subsection (5), each district court judgment,
18 decree, or order that establishes or modifies a child support obligation must include a provision requiring
19 the parent obligated to pay support to inform the court and, if the department of public health and human
20 services is providing services under Title IV-D of the Social Security Act for the enforcement of the
21 judgment, decree, or order, the department, of the following:

22 (a) the name and address of the parent's current employer;

23 (b) whether the parent has access to health insurance through an employer or other group; and

24 (c) if insurance coverage is available, the health insurance policy information.

25 (7) Each district court judgment, decree, or order establishing a final child support obligation under
26 this part and each modification of a final order for child support must contain a statement that the order
27 is subject to review and modification by the department of public health and human services upon the
28 request of the department or a party under 40-5-271 through 40-5-273 when the department is providing
29 services under Title IV-D of the Social Security Act for the enforcement of the order.

30 (8) (a) A district court judgment, decree, or order that establishes or modifies a child support

1 obligation must include a provision requiring the child support OBLIGATION to be paid, WITHOUT NEED
 2 FOR FURTHER COURT ORDER:

3 (I) TO THE PERSON WITH WHOM THE CHILD RESIDES BY LEGAL ORDER;

4 (II) IF THE PERSON WITH WHOM THE CHILD LEGALLY RESIDES VOLUNTARILY OR
 5 INVOLUNTARILY RELINQUISHES PHYSICAL CARE AND CONTROL OF THE CHILD TO ANOTHER PERSON,
 6 ORGANIZATION, OR AGENCY, TO THE PERSON, ORGANIZATION, OR AGENCY TO WHOM PHYSICAL
 7 CUSTODY HAS BEEN RELINQUISHED;

8 (III) IF ANY OTHER PERSON, ORGANIZATION, OR AGENCY IS ENTITLED BY LAW, ASSIGNMENT,
 9 OR SIMILAR REASON TO RECEIVE OR COLLECT THE CHILD SUPPORT OBLIGATION, TO THE PERSON,
 10 ORGANIZATION, OR AGENCY HAVING THE RIGHT TO RECEIVE OR COLLECT THE PAYMENT; OR

11 (IV) TO THE COURT FOR THE BENEFIT OF THE MINOR CHILD ~~to:~~

12 ~~(i) the legal custodian of the minor child;~~

13 ~~(iii) (A) any other person, organization, or agency having legal physical custody of the minor child~~
 14 ~~under a legal assignment of rights; or~~

15 ~~(B) the court for the benefit of the minor child;~~

16 ~~(iii) any other person or agency designated as caretaker of the minor child by agreement of the legal~~
 17 ~~custodian; or~~

18 ~~(iv) any assignee or other person, organization, or agency authorized to receive or collect child~~
 19 ~~support pursuant to the child support guidelines adopted under 40-5-209.~~

20 (b) A judgment, decree, or order that omits the provision required by subsection (8)(a) is subject
 21 to the requirements of subsection (8)(a) without need for an amendment to the judgment, decree, or order
 22 or for any further action by the court."
 23

24 **Section 13.** Section 40-4-205, MCA, is amended to read:

25 **"40-4-205. Representation of child Guardian ad litem.** (1) The court may appoint a guardian ad
 26 litem to represent the interests of a minor dependent child with respect to the child's support, ~~custody~~
 27 parenting, and ~~visitation~~ parental contact. The guardian ad litem may be an attorney. The county attorney,
 28 a deputy county attorney, if any, or the department of public health and human services or any of its staff
 29 may not be appointed for this purpose.

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

1 (a) to conduct investigations that the guardian ad litem considers necessary to ascertain the facts
2 related to the child's support, ~~custody~~ parenting, and ~~visitation~~ parental contact;

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

4 (c) to make written reports to the court concerning the child's support, ~~custody~~ parenting, and
5 ~~visitation~~ parental contact;

6 (d) to appear and participate in all proceedings to the degree necessary to adequately represent
7 the child and make recommendations to the court concerning the child's support, ~~custody~~ parenting, and
8 ~~visitation~~ parental contact; and

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

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

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

16
17 **Section 14.** Section 40-4-211, MCA, is amended to read:

18 **"40-4-211. ~~Child custody jurisdiction~~ Jurisdiction -- commencement of parenting proceedings. (1)**

19 A court of this state competent to decide ~~child custody~~ parenting matters has jurisdiction to make a ~~child~~
20 ~~custody~~ parenting authority determination by initial or ~~modification~~ amended decree if:

21 (a) this state:

22 (i) is the home state of the child at the time of commencement of the proceedings; or

23 (ii) had been the child's home state within 6 months before commencement of the ~~proceeding~~
24 proceedings and the child is absent from this state because of ~~his~~ the child's removal or retention by a any
25 person ~~claiming his custody or for other reason~~ and a parent or person acting as parent continues to live
26 in this state; or

27 (b) it is in the best interest of the child that a court of this state assume jurisdiction because:

28 (i) the child and ~~his~~ the parents or the child and at least one contestant have a significant
29 connection with this state; and

30 (ii) there is available in this state substantial evidence concerning the child's present or future care,

1 protection, training, and personal relationships; or

2 (c) the child is physically present in this state and:

3 (i) has been abandoned; or

4 (ii) it is necessary in an emergency to protect ~~him~~ the child because ~~he~~ the child has been subjected
5 to or threatened with mistreatment or abuse or is neglected or dependent; or

6 (d) (i) no other state has jurisdiction under prerequisites substantially in accordance with subsection
7 (1)(a), (1)(b), or (1)(c) or another state has declined to exercise jurisdiction on the ground that this state
8 is the more appropriate forum to determine ~~custody of~~ parenting authority over OF the child; and

9 (ii) it is in ~~his~~ the child's best interest that the court assume jurisdiction.

10 (2) Except under subsections (1)(c) and (1)(d), physical presence in this state of the child or of the
11 child and one of the contestants is not alone sufficient to confer jurisdiction on a court of this state to make
12 a ~~child-custody parenting authority~~ determination.

13 (3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine
14 ~~his-custody parenting authority~~ OF THE CHILD.

15 (4) A ~~child-custody parenting plan~~ proceeding is commenced in the district court:

16 (a) by a parent, by filing a petition:

17 (i) for dissolution or legal separation; or

18 (ii) for ~~custody of the child parenting authority~~ in the county in which ~~he~~ the child is permanently
19 resident or found; or

20 (b) by a person other than a parent, by filing a petition for ~~custody of the child parenting authority~~
21 in the county in which ~~he~~ the child is permanently resident or found, but only if ~~he~~ the child is not in the
22 ~~physical custody of~~ physically residing with one of ~~his~~ the child's parents.

23 (5) Notice of a ~~child-custody parenting~~ proceeding ~~shall~~ must be given to the child's parent,
24 guardian, ~~custodian caretaker~~, those persons ~~having physical custody of~~ with whom the child is physically
25 residing, and all other contestants, who may appear, be heard, and file a responsive pleading. The court,
26 upon a showing of good cause, may permit intervention of other interested parties."

27
28 **Section 15.** Section 40-4-212, MCA, is amended to read:

29 **"40-4-212. ~~Best interest interests~~ INTEREST of child.** (1) The court shall determine ~~custody~~ the
30 parenting plan in accordance with the best ~~interest interests~~ INTEREST of the child. The court shall consider

1 all relevant parenting factors, ~~including~~ WHICH MAY INCLUDE but ARE not limited to:

2 (a) the wishes of the child's parent or parents ~~as to custody~~;

3 (b) the wishes of the child ~~as to a custodian~~;

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

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

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

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

9 ~~and~~

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

11 (h) continuity and stability of care;

12 (i) developmental needs of the child;

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

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

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

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

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

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

29 (a) ~~Custody should be granted to the parent who has provided most of the primary care during the~~
30 ~~child's life.~~

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

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

6 ~~(4) The following are rebuttable presumptions:~~

7 ~~(a) A knowing failure to pay birth related costs that the person is able to pay is not in the best~~
8 ~~interest of the child.~~

9 ~~(b) Failure to pay child support that the person is able to pay is not in the best interest of a child~~
10 ~~in need of the child support."~~

11
12 Section 16. Section 40-4-213, MCA, is amended to read:

13 "**40-4-213. Temporary orders Interim parenting plan.** (1) A party to a ~~custody~~ parenting proceeding
14 may move for a ~~temporary custody order~~ an interim parenting plan. The motion must be supported by an
15 affidavit as provided in 40-4-220(1). The court may ~~award temporary custody~~ adopt an interim parenting
16 plan under the standards of 40-4-212 after a hearing or under the standards of 40-4-212 and 40-4-220(2)
17 before a hearing. If there is no objection, the court may act solely on the basis of the affidavits.

18 (2) If a proceeding for dissolution of marriage or legal separation is dismissed, any ~~temporary~~
19 ~~custody order~~ interim parenting plan is vacated unless a parent ~~or the child's custodian~~ moves that the
20 proceeding continue as a ~~custody~~ parenting proceeding and the court finds, after a hearing, that the
21 circumstances of the parents and the ~~best interest~~ interests of the child require that a ~~custody decree~~
22 parenting plan be issued adopted. A CHILD SUPPORT DELINQUENCY EXISTING AT THE TIME THAT AN
23 INTERIM PARENTING PLAN IS VACATED REMAINS A JUDGMENT SUBJECT TO COLLECTION.

24 (3) If a ~~custody~~ parenting proceeding commenced in the absence of a petition for dissolution of
25 marriage or legal separation is dismissed, any ~~temporary custody order~~ interim parenting plan is vacated.
26 A CHILD SUPPORT DELINQUENCY EXISTING AT THE TIME THAT AN INTERIM PARENTING PLAN IS
27 VACATED REMAINS A JUDGMENT SUBJECT TO COLLECTION.

28 (4) Adoption of a final parenting plan under [section 49 20] vacates any interim parenting plan
29 adopted under this section. A CHILD SUPPORT DELINQUENCY EXISTING AT THE TIME THAT AN INTERIM
30 PARENTING PLAN IS VACATED REMAINS A JUDGMENT SUBJECT TO COLLECTION."

1 **Section 17.** Section 40-4-214, MCA, is amended to read:

2 **"40-4-214. Interviews.** (1) The court may interview the child in chambers to ascertain the child's
3 wishes as to ~~his custodian residence and as to visitation~~ parental contact. The court may permit counsel
4 to be present at the interview. The court shall cause a record of the interview to be made and to be part
5 of the record in the case.

6 (2) The court may seek the advice of professional personnel, whether or not employed by the court
7 on a regular basis. The advice given ~~shall~~ must be in writing and made available by the court to counsel
8 upon request. Counsel may examine as a witness any professional personnel consulted by the court."

9

10 **Section 18.** Section 40-4-215, MCA, is amended to read:

11 **"40-4-215. Investigations and reports.** (1) ~~In contested custody proceedings and in other custody~~
12 ~~proceedings if~~ If a parent or the child's custodian a court-appointed third party requests, or if the court finds
13 that a parenting proceeding is contested, the court may order an investigation and report concerning
14 ~~custodial~~ parenting arrangements for the child. The investigator may be the child's guardian ad litem or
15 other professional considered appropriate by the court. The department of public health and human services
16 may not be ordered to conduct the investigation or draft a report unless the ~~parent or the child's custodian~~
17 person requesting the investigation is a recipient of ~~aid to families with dependent children~~ CASH
18 ASSISTANCE UNDER THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BLOCK GRANT, food stamps,
19 or public assistance and all reasonable options for payment of the investigation, if conducted by a person
20 not employed by the department, are exhausted. The department may consult with any investigator and
21 share information relevant to the child's best interests. The cost of the investigation and report must be
22 paid according to the final order. The cost of the educational evaluation under subsection (2)(a) must be
23 paid from the fees for filing petitions for contested amendment of a parenting plan, as provided in
24 25-1-201(9).

25 (2) The court shall determine, if appropriate, the level of evaluation necessary for adequate
26 investigation and preparation of the report, which may include one or more of the following:

27 (a) parenting education;

28 (b) mediation pursuant to ~~40-4-303~~ 40-4-301;

29 (c) factfinding by the investigator; and

30 (d) psychological evaluation of the parties.

1 ~~(2)~~(3) In preparing a report concerning a child, the investigator may consult any person who ~~may~~
 2 ~~have~~ has information about the child and the child's potential ~~custodial~~ parenting arrangements. Upon order
 3 of the court, the investigator may refer the child to professional personnel for diagnosis. ~~The~~ Except as
 4 required for children 16 years of age or older, the investigator may consult with and obtain information from
 5 medical, psychiatric, or other expert persons who have served the child in the past without obtaining the
 6 consent of the ~~parent or the child's custodian~~ persons or entities authorized by law to grant or withhold
 7 access to the records. The child's consent must be obtained if the child has reached the age of 16 unless
 8 the court finds that the child lacks mental capacity to consent. If the requirements of subsection ~~(3)~~ (4) are
 9 fulfilled, the investigator's report may be received in evidence at the hearing.

10 ~~(3)~~(4) The court shall mail the investigator's report to counsel and to any party not represented by
 11 counsel at least 10 days prior to the hearing. ~~The~~ When consistent with state and federal law, the
 12 investigator shall make available to counsel and to any party not represented by counsel the investigator's
 13 file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant
 14 to the provisions of subsection ~~(2)~~ (3), and the names and addresses of all persons whom the investigator
 15 has consulted. Any party to the proceeding may call the investigator and any person the investigator has
 16 consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing.
 17 The results of the investigation must be included in the court record and may, without objection, be
 18 sealed."

19
 20 **NEW SECTION. Section 19. Final parenting plan -- purpose and objectives.** The objectives of a
 21 final parenting plan are to:

- 22 (1) protect the best interest of the child ~~of a marriage~~, consistent with 40-4-212;
 23 (2) provide for the physical care of the child;
 24 (3) maintain the child's emotional stability and minimize the child's exposure to parental conflict;
 25 (4) provide for the child's changing needs as the child grows and matures, in a way that minimizes
 26 the need for future amendment to the final parenting plan;
 27 (5) set forth the authority and responsibilities of each parent with respect to the child, consistent
 28 with the criteria in [section ~~19~~ 20]; and
 29 (6) encourage the parents, when appropriate under [section ~~19~~ 20], to meet their responsibilities
 30 to their minor children through agreements in the parenting plan rather than through judicial intervention.

1 NEW SECTION. Section 20. Final parenting plan criteria. (1) In every dissolution proceeding,
 2 proceeding for declaration of invalidity of marriage, parenting plan proceeding, or legal separation
 3 proceeding that involves a child, each parent or both parents jointly shall submit to the court, in good faith,
 4 a proposed final plan for parenting the child, which ~~must~~ MAY include the allocation of parenting functions.
 5 A final parenting plan must be incorporated into any final decree or amended decree, including cases of
 6 dissolution by default. As used in this section, parenting functions means those aspects of the parent-child
 7 relationship in which the parent makes decisions and performs functions necessary for the care and growth
 8 of the child, ~~including~~ WHICH MAY INCLUDE:

9 (a) maintaining a loving, stable, consistent, and nurturing relationship with the child;

10 (b) attending to the daily needs of the child such as feeding, physical care, DEVELOPMENT, and
 11 grooming, supervision, SPIRITUAL GROWTH AND DEVELOPMENT, health care, day care, and engaging in
 12 other activities that are appropriate to the developmental level of the child and that are within the social
 13 and economic circumstances of the particular family;

14 (c) attending to adequate education for the child, including remedial or other education essential
 15 to the best ~~interests~~ INTEREST of the child;

16 (d) ~~assisting the child in developing and maintaining appropriate interpersonal relationships~~
 17 ENSURING THE INTERACTIONS AND INTERRELATIONSHIP OF THE CHILD WITH THE CHILD'S PARENTS
 18 AND SIBLINGS AND WITH ANY OTHER PERSON WHO SIGNIFICANTLY AFFECTS THE CHILD'S BEST
 19 INTEREST; and

20 (e) exercising appropriate judgment regarding the child's welfare, consistent with the child's
 21 developmental level and the family's social and economic circumstances.

22 (2) Based on the best interest of the child, a final parenting plan ~~must~~ MAY include, at a minimum,
 23 provisions for:

24 (a) designation of a parent as custodian of the child, solely for the purposes of all other state and
 25 federal statutes that require a designation or determination of custody, but the designation may not affect
 26 either parent's rights and responsibilities under the parenting plan;

27 (b) designation of the legal residence of both parents and the child, except as provided in 40-4-217;

28 (c) a residential schedule specifying the periods of time during which the child will reside with each
 29 parent, including provisions for holidays, birthdays of family members, vacations, and other special
 30 occasions;

- 1 (d) finances to provide for the child's needs; ~~and~~
- 2 (e) any other factors affecting the physical and emotional health and well-being of the child;
- 3 ~~(3) Based on the best interest of the child, a parenting plan may include:~~
- 4 ~~(a) provisions for (F) periodic review of the parenting plan when requested by either parent or the~~
 5 child or when circumstances arise that are foreseen by the parents as triggering a need for review, such
 6 as attainment by the child of a certain age or if a change in the child's residence is necessitated;
- 7 ~~(b)(G) sanctions that will apply if a parent fails to follow the terms of the parenting plan, including~~
 8 contempt of court;
- 9 ~~(c)(H) allocation of parental decisionmaking authority regarding the child's:~~
- 10 (i) education;
- 11 (ii) ~~religious upbringing~~ SPIRITUAL DEVELOPMENT; and
- 12 (iii) health care AND PHYSICAL GROWTH;
- 13 ~~(d)(I) the method by which future disputes concerning the child will be resolved between the~~
 14 parents, other than court action; and
- 15 ~~(e) other provisions applicable to (J) the unique circumstances of the child or the family situation~~
 16 that the parents agree will facilitate a meaningful, ongoing relationship between the child and parents.
- 17 ~~(4)(3) The court may in its discretion order the parties to participate in a dispute resolution process~~
 18 to assist in resolving any conflicts between the parties regarding adoption of the parenting plan. The dispute
 19 resolution process may include counseling or mediation by a specified person or agency, or court action.
- 20 ~~(5)(4) Each parent may make decisions regarding the day-to-day care and control of the child while~~
 21 the child is residing with that parent, ~~and, regardless of the allocation of decisionmaking in the parenting~~
 22 ~~plan,~~ either parent may make emergency decisions affecting the child's safety or health. When mutual
 23 decisionmaking is designated in the parenting plan but cannot be achieved regarding a particular issue, the
 24 parents shall make a good faith effort to resolve the issue through any dispute resolution process provided
 25 for in the final parenting plan.
- 26 ~~(6)(5) If a parent fails to comply with a provision of the parenting plan, the other parent's~~
 27 obligations under the parenting plan are not affected.
- 28 ~~(7)(6) THE COURT MAY SHALL ORDER THAT THE PARENTING PLAN BE SEALED IF PRIVACY OF~~
 29 ~~THE PLAN IS NECESSARY TO PROTECT THE BEST INTEREST OF THE CHILD EXCEPT FOR ACCESS BY~~
 30 ~~THE PARENTS, GUARDIAN, OR OTHER PERSON HAVING CUSTODY OF THE CHILD.~~

1 **Section 21.** Section 40-4-216, MCA, is amended to read:

2 "**40-4-216. Hearings.** (1) ~~Custody~~ Parenting plan proceedings shall receive priority in being set for
3 hearing.

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

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

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

14

15 **Section 22.** Section 40-4-217, MCA, is amended to read:

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

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

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

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

30 ~~(6) The A parent who intends to change residence shall, unless precluded under (section 19 20),~~

1 provide written notice required by subsection (4) to the other parent.

2 (2) If a parent's change in residence will significantly affect the child's contact with the other
 3 parent, as defined in 40-4-219(1)(e), notice must be served personally or given by certified mail not less
 4 than 30 days before the proposed change in residence and must include a proposed revised residential
 5 schedule. Proof of service must be filed with the court that issued the custody order adopted the parenting
 6 plan. The purpose of the notice is to allow the noncustodial parent to seek a modification of the parent's
 7 visitation schedule. Failure of the parent who receives notice to respond to the written notice or to seek
 8 amendment of the residential schedule pursuant to 40-4-219 within the 30-day period constitutes
 9 acceptance of the proposed revised residential schedule.

10 ~~(6) (a) If a noncustodial parent or other person residing in the noncustodial parent's household has~~
 11 ~~been convicted of any of the crimes listed in subsection (6)(c), the custodial parent or any other person~~
 12 ~~who has been granted custody of the child pursuant to court order may file an objection to visitation with~~
 13 ~~the court. The custodial parent or other person having custody shall give notice to the noncustodial parent~~
 14 ~~of the objection as provided by the Montana Rules of Civil Procedure, and the noncustodial parent has 20~~
 15 ~~days from the notice to respond. If the noncustodial parent fails to respond within 20 days, the visitation~~
 16 ~~rights of the noncustodial parent are suspended until further order of the court. If the noncustodial parent~~
 17 ~~responds and objects, a hearing must be held within 30 days of the response.~~

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

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

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

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

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

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

26 ~~(v) deviate sexual conduct with an animal, as described in 45-2-101 and prohibited under~~
 27 ~~45-5-506;~~

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

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

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

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

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

3
4 **Section 23.** Section 40-4-219, MCA, is amended to read:

5 **"40-4-219. ~~Modification~~ Amendment of parenting plan -- mediation.** (1) The court may in its
6 discretion ~~modify~~ amend a prior ~~custody decree~~ parenting plan if it finds, upon the basis of facts that have
7 arisen since the prior ~~decree plan~~ or that were unknown to the court at the time of entry of the prior ~~decree~~
8 plan, that a change has occurred in the circumstances of the child ~~or the child's custodian~~ and that the
9 ~~modification~~ amendment is necessary to serve the best interest of the child, ~~and if it further finds that in~~
10 determining the child's best interest under this section, the court may, in addition to the criteria in
11 40-4-212, also consider whether:

12 (a) the ~~custodian~~ agrees ~~parents agree~~ to the ~~modification~~ amendment;

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

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

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

19 ~~(e)(d)~~ the ~~custodian~~ one parent has willfully and consistently:

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

21 (ii) ~~attempts~~ attempted to frustrate or deny contact with the child by the ~~noncustodial~~ parent's
22 ~~exercise of visitation rights~~ other parent; or

23 ~~(f)(e)~~ the ~~custodial parent~~ one parent has changed or intends to change the child's residence ~~to~~
24 ~~another state~~ in a manner that significantly affects the child's contact with the other parent. A change in
25 residence of more than 30 miles from the child's present residence constitutes a significant effect on
26 parent-child contact.

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

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

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

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

7 (6) A ~~custody decree~~ parenting plan may be ~~modified~~ amended upon the death of ~~the custodial one~~
 8 parent pursuant to 40-4-221.

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

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

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

26 ~~(a)~~ This subsection (8) applies to the following crimes:

- 27 (i) deliberate homicide, as described in 45-5-102;
- 28 (ii) mitigated deliberate homicide, as described in 45-5-103;
- 29 (iii) sexual assault, as described in 45-5-502;
- 30 (iv) sexual intercourse without consent, as described in 45-5-503;

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

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

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

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

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

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

8 (9) Except in cases of physical abuse or threat of physical abuse by one parent against the other
9 parent or the child, or when a parent has been convicted of a crime enumerated in subsection (8)(b), the
10 court may, in its discretion, order the parties to participate in a dispute resolution process to assist in
11 resolving any conflicts between the parties regarding amendment of the parenting plan. The dispute
12 resolution process may include counseling or mediation by a specified person or agency, and court action."
13

14 **Section 24.** Section 40-4-220, MCA, is amended to read:

15 **"40-4-220. Affidavit practice.** (1) A Unless the parties agree to an interim parenting plan or an
16 amended parenting plan, the moving party seeking a temporary custody order an interim parenting plan or
17 modification amendment of a custody decree final parenting plan shall submit, together with ~~his~~ the moving
18 papers, an affidavit setting forth facts supporting the requested ~~order~~ plan or modification amendment and
19 shall give notice, together with a copy of ~~his~~ the affidavit, to other parties to the proceeding, who may file
20 opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the
21 motion is established by the affidavits, based on the best interests of the child, in which case it shall set
22 a date for hearing on an order to show cause why the requested ~~order~~ plan or modification amendment
23 should not be granted.

24 (2) (a) A party seeking ~~a temporary custody order~~ an interim parenting plan may request that the
25 court grant a temporary ~~assignment of custody~~ order providing for living arrangements for the child ex
26 parte. ~~He~~ The party shall ~~so~~ make the request in ~~his~~ the moving papers and shall submit an affidavit
27 showing that:

28 (i) no previous ~~determination of custody~~ parenting plan has been ~~made~~ ordered by a court and it
29 would be in the child's best interest under the standards of 40-4-212 if temporary ~~custody~~ were placed
30 ~~with the person designated~~ living arrangements for the child were as proposed by the moving party; or

1 (iii) although a previous ~~determination of custody~~ parenting plan has been ~~made~~ ordered, an
 2 emergency situation has arisen in the child's present environment ~~endangers his physical or emotional~~
 3 health that is detrimental to the child's best interests and an immediate change of custody would serve in
 4 the parenting plan is necessary to protect the ~~child's physical or emotional health~~ child.

5 (b) If the court finds from the affidavits submitted by the moving party that a ~~temporary assignment~~
 6 of custody the interim parenting plan proposed by the moving party would be in the child's best interest
 7 under the standards of 40-4-212 or that the child's ~~physical or emotional health is endangered~~ present
 8 environment is detrimental to the child's best interest and would be protected by a ~~temporary assignment~~
 9 of custody the interim parenting plan, the court shall make an order ~~placing temporary custody with the~~
 10 person designated implementing the interim parenting plan proposed by the moving party ~~or with some~~
 11 other person designated by the court and. The court shall require all parties to appear and show cause
 12 within 20 days from the execution of the ~~order~~ interim parenting plan why, in the case of a temporary order
 13 ~~issued under subsection (2)(a)(i), the temporary order~~ interim parenting plan should not remain in effect until
 14 further order of court ~~or, in the case of a temporary order issued under subsection (2)(a)(iii), the court~~
 15 ~~should not restore the child to the custodian from whom the child was removed by the temporary order."~~

16
 17 **Section 25.** Section 40-4-221, MCA, is amended to read:

18 **"40-4-221. Determination of custody child's care upon death of custodial parent.** (1) Upon the
 19 death of a parent ~~granted custody of a child, custody shall pass to the noncustodial parent unless~~, one or
 20 more parties named in subsection (2) may request a custody parenting plan hearing. The ~~noncustodial~~
 21 surviving parent shall must be a party in any proceeding brought under this section.

22 (2) Upon the death of a parent ~~granted custody of a child~~, any of the following parties may request
 23 a custody parenting plan hearing ~~and seek custody of the child~~:

24 (a) the ~~noncustodial~~ natural parent;

25 (b) the surviving spouse of the deceased custodial parent;

26 (c) a person nominated by the will of the deceased custodial parent;

27 (d) any person nominated by the child if the child is at least 12 years old;

28 (e) any other person if that person has actual physical control over the child;

29 (f) any other party whom, upon showing of good cause, the court permits to intervene as an
 30 interested party.

1 (3) The hearing and determination of ~~custody shall be~~ a parenting plan is governed by this part."

2
3 **Section 26.** Section 40-4-225, MCA, is amended to read:

4 "40-4-225. **Access to records by ~~noncustodial parent~~**. Notwithstanding any other provision of law,
5 access to records and information pertaining to a minor child, including but not limited to medical, dental,
6 law enforcement, and school records; may not be denied to a parent ~~because such parent is not the child's~~
7 ~~custodial parent~~ who is a party to a parenting plan."

8
9 **Section 27.** Section 40-4-226, MCA, is amended to read:

10 "40-4-226. ~~Court-ordered~~ **COURT-SANCTIONED** educational program on effects of dissolution of
11 marriage on children. (1) In a proceeding for dissolution of marriage involving a minor child or in a ~~custody~~
12 ~~modification~~ parenting plan proceeding involving a minor child, a court shall inform the parties, excluding
13 the minor child, of available educational programs concerning the effects of dissolution of marriage on
14 children and, if the court finds that it would be in the best interest of the minor child, ~~may~~ shall order the
15 parties to attend a ~~court-sponsored~~ **COURT-SANCTIONED** program. The program may be divided into
16 sessions. The program must be educational in nature and may not be designed for individual therapy.

17 (2) ~~Any facts presented at an educational session resulting from a referral under this section may~~
18 ~~not be considered in a dissolution of a marriage or a custody modification proceeding, nor may a report~~
19 ~~resulting from an educational session become part of the record of the dissolution or proceeding unless the~~
20 ~~parties have stipulated in writing to the contrary.~~

21 (3) ~~The fees or costs of an educational session under this section must be borne by the parties and~~
22 ~~may be assessed by the court in an equitable manner.~~ The cost of implementing the ~~court-sponsored~~
23 **COURT-SANCTIONED educational program for each district court, provided for in subsection (1), must be**
24 **paid from the fees for filing petitions for contested amendment of a parenting plan, provided for in**
25 **25-1-201(9). COSTS MAY INCLUDE PARENTING EVALUATION AND GUARDIAN AD LITEM SERVICES.**"

26
27 **Section 28.** Section 40-4-302, MCA, is amended to read:

28 "40-4-302. **Mediation proceeding -- tolling of statute of limitations.** (1) The purpose of a mediation
29 proceeding is to reduce the acrimony that may exist between the parties and to develop an agreement that
30 is supportive of the best interests of a child involved in the proceeding.

1 (2) The mediator shall attempt to effect a settlement of the ~~child custody~~ parenting, child support,
2 ~~visitation~~ parental contact with the child, maintenance, or property settlement dispute. The mediator may
3 not use coercive measures to effect the settlement. The mediator may recommend that a party obtain
4 assistance from other resources in the community.

5 (3) Subject to 40-4-301(1), the mediator may exclude attorneys from the mediation sessions. The
6 parties' attorneys may confer with the mediator prior to the mediation session and may review and approve
7 any agreement.

8 (4) An applicable statute of limitations is tolled as to the participants during the period of mediation.
9 The tolling commences on the date the parties agree in writing to participate in the mediation or when the
10 court orders mediation, whichever is later, and ends on the date the mediation is officially terminated by
11 the mediator."

12
13 **Section 29.** Section 40-4-307, MCA, is amended to read:

14 **"40-4-307. Mediator qualifications.** A mediator ~~shall~~ must meet the following minimum
15 qualifications:

16 (1) knowledge of the court system and the procedures used in family law matters;

17 (2) knowledge of other resources in the community to which the parties may be referred for
18 assistance;

19 (3) if applicable, knowledge of child development, clinical issues relating to children, the effects
20 of marriage dissolution on children, and ~~child custody~~ parenting research; and

21 (4) knowledge of the mediation process."
22

23 **Section 30.** Section 40-6-211, MCA, is amended to read:

24 **"40-6-211. Obligations of parents for the support and education of their children.** The parent or
25 parents ~~entitled to the custody~~ of a child ~~must~~ shall give ~~him~~ the child support and education suitable to
26 ~~his~~ the child's circumstances."
27

28 **Section 31.** Section 40-6-221, MCA, is amended to read:

29 **"40-6-221. Custody Parenting, services, and earnings of child.** The father and mother of an
30 unmarried minor child are equally entitled to the ~~custody~~ parenting, services, and earnings of the child. If

1 either parent ~~be is~~ dead or unable or refuses to ~~take the custody~~ exercise parenting or has abandoned his
 2 ~~or her~~ the family, the other parent is entitled to the ~~custody~~ parenting, services, and earnings of the child,
 3 unless ~~custody~~ care of the child is determined otherwise pursuant to 40-4-221."

4
 5 **Section 32.** Section 40-9-101, MCA, is amended to read:

6 **"40-9-101. Application of Montana Rules of Civil Procedure.** (1) Except as otherwise provided,
 7 the Montana Rules of Civil Procedure apply to all proceedings under this section and 40-9-102.

8 (2) A proceeding for ~~grandparent~~ grandparent-grandchild contact ~~visitation~~ under this section and
 9 40-9-102 ~~shall~~ must be entitled, "In re the ~~visitation~~ grandparent-grandchild contact of"

10 (3) The initial pleading in all proceedings under this section and 40-9-102 ~~shall~~ must be
 11 denominated a petition. A responsive pleading ~~shall~~ must be denominated a response. Other pleadings ~~shall~~
 12 must be denominated as provided in the Montana Rules of Civil Procedure."

13
 14 **Section 33.** Section 40-9-102, MCA, is amended to read:

15 **"40-9-102. Grandparent Grandparent-grandchild contact ~~visitation rights~~.** (1) Except as provided
 16 in subsection (5), the district court may grant to a grandparent of a child reasonable ~~visitation~~ rights to
 17 contact with the child, including but not limited to ~~visitation~~ rights regarding a child who is the subject of,
 18 or as to whom a disposition has been made during, an administrative or court proceeding under Title 41
 19 or this title. The department of public health and human services must be given notice of a petition for
 20 ~~grandparent~~ grandparent-grandchild contact ~~visitation~~ regarding a child who is the subject of, or as to
 21 whom a disposition has been made during, an administrative or court proceeding under Title 41 or this title.

22 (2) ~~Visitation rights~~ Grandparent-grandchild contact granted under this section may be granted only
 23 upon a finding by the court, after a hearing, that the ~~visitation~~ contact would be in the best interest of the
 24 child.

25 (3) A person may not petition the court under this section more often than once every 2 years
 26 unless there has been a significant change in the circumstances of:

- 27 (a) the child;
 28 (b) the child's parent, guardian, or custodian; or
 29 (c) the child's grandparent.

30 (4) The court may appoint an attorney to represent the interests of a child with respect to ~~visitation~~

1 grandparent-grandchild contact when the interests are not adequately represented by the parties to the
 2 proceeding.

3 (5) This section does not apply if the child has been adopted by a person other than a stepparent
 4 or a grandparent. ~~Visitation rights~~ Grandparent-grandchild contact granted under this section ~~terminate~~
 5 terminates upon the adoption of the child by a person other than a stepparent or a grandparent."

6

7 **Section 34.** Section 45-5-304, MCA, is amended to read:

8 **"45-5-304. Custodial interference.** (1) A person commits the offense of custodial interference if,
 9 knowing that the person has no legal right to do so, the person:

10 ~~(a) takes, entices, or withholds from lawful custody any child, incompetent person, or other person~~
 11 ~~entrusted by authority of law to the custody of another person or institution;~~

12 ~~(b) prior to the entry of a court order determining custodial rights, takes, entices, or withholds any~~
 13 ~~child from the other parent when the action manifests a purpose to substantially deprive that parent of~~
 14 ~~parental rights; or~~

15 ~~(c) is one of two persons who has joint custody of a child under a court order and takes, entices,~~
 16 ~~or withholds the child from the other when the action manifests a purpose to substantially deprive the other~~
 17 ~~parent of parental rights.~~

18 (2) A person convicted of the offense of custodial interference shall be imprisoned in the state
 19 prison for any term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both.

20 (3) With respect to the first alleged commission of the offense only, a person who has not left the
 21 state does not commit an offense under this section if the person voluntarily returns the child, incompetent
 22 person, or other person to lawful custody ~~prior to~~ before arraignment. With respect to the first alleged
 23 commission of the offense only, a person who has left the state does not commit an offense under this
 24 section if the person voluntarily returns the child, incompetent person, or other person to lawful custody
 25 ~~prior to~~ before arrest."

26

27 **NEW SECTION. Section 35. Parenting interference.** (1) A person commits the offense of parenting
 28 interference if, knowing that the person has no legal right to do so, the person:

29 (a) before the entry of a court order determining parenting rights, takes, entices, or withholds a
 30 child from the other parent when the action manifests a purpose to substantially deprive that parent of

1 parenting rights; or

2 (b) is one of two persons who has parenting authority of a child under a court order and takes,
3 entices, or withholds the child from the other when the action manifests a purpose to substantially deprive
4 the other parent of parenting rights.

5 (2) A person convicted of the offense of parenting interference shall be imprisoned in the state
6 prison for any term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both.

7 (3) With respect to the first alleged commission of the offense only, a person who has not left the
8 state does not commit an offense under this section if the person voluntarily returns the child before
9 arraignment. With respect to the first alleged commission of the offense only, a person who has left the
10 state does not commit an offense under this section if the person voluntarily returns the child before arrest.

11

12 **Section 36.** Section 45-5-631, MCA, is amended to read:

13 "**45-5-631. ~~Visitation interference~~ Interference with parent-child contact.** (1) A person who has
14 ~~legal custody of a minor child~~ been granted parent-child contact under a parenting plan commits the offense
15 of ~~visitation~~ interference with parent-child contact if ~~he~~ the person knowingly or purposely prevents,
16 obstructs, or frustrates the ~~visitation~~ rights of a another person entitled to ~~visitation~~ parent-child contact
17 under an existing court order.

18 (2) A person convicted of the offense of ~~visitation~~ interference with parent-child contact shall be
19 fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 5 days,
20 or both."

21

22 **Section 37.** Section 45-5-632, MCA, is amended to read:

23 "**45-5-632. ~~Aggravated visitation~~ interference with parent-child contact.** (1) A person who
24 commits the offense of ~~visitation~~ interference with parent-child contact by changing the residence of the
25 minor child ~~over whom he has legal custody~~ to another state without giving written notice as required in
26 40-4-217, unless the notice requirement has been precluded under [section 19 20], or without written
27 consent of the person entitled to ~~visitation~~ parent-child contact pursuant to an existing court order commits
28 the offense of aggravated ~~visitation~~ interference with parent-child contact.

29 (2) A person convicted of the offense of aggravated ~~visitation~~ interference with parent-child contact
30 shall be fined an amount not to exceed \$1,000 or be imprisoned in the state prison for a term not to exceed

1 18 months, or both."

2
3 Section 38. Section 45-5-633, MCA, is amended to read:

4 "45-5-633. Defenses to visitation interference with parent-child contact and aggravated visitation
5 interference with parent-child contact. (1) A person does not commit the offense of ~~visitation~~ interference
6 with parent-child contact or aggravated ~~visitation~~ interference with parent-child contact if ~~he~~ the person
7 acts:

8 (a) with the consent of the person entitled to ~~visitation~~ parent-child contact;

9 (b) under an existing court order; or

10 (c) with reasonable cause.

11 (2) Return of the child ~~prior to~~ before arrest is a defense only with respect to the first commission
12 of ~~visitation~~ interference with parent-child contact or aggravated ~~visitation~~ interference with parent-child
13 contact."

14
15 NEW SECTION. Section 39. Repealer. Sections 40-4-222, 40-4-223, 40-4-224, 40-6-222,
16 40-6-223, 40-6-224, and 40-6-231, MCA, are repealed.

17
18 NEW SECTION. Section 40. Codification instruction. (1) [Sections ~~18 and 19~~ AND 20] are
19 intended to be codified as an integral part of Title 40, chapter 4, part 2, and the provisions of Title 40,
20 chapter 4, part 2, apply to [sections ~~18 and 19~~ AND 20].

21 (2) [Section ~~34~~ 35] is intended to be codified as an integral part of Title 45, chapter 5, part 6, and
22 the provisions of Title 45, chapter 5, part 6, apply to [section ~~34~~ 35].

23
24 NEW SECTION. Section 41. Saving clause. [This act] does not affect rights and duties that
25 matured, penalties that were incurred, or proceedings that were begun before October 1, 1997.

26
27 NEW SECTION. Section 42. Severability. If a part of [this act] is invalid, all valid parts that are
28 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
29 applications, the part remains in effect in all valid applications that are severable from the invalid
30 applications.

