

HOUSE BILL NO. 561

INTRODUCED BY D. ZOLNIKOV

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CHILD CUSTODY LAWS PERTAINING TO THE BEST
5 INTEREST OF A CHILD; CREATING A REBUTTABLE PRESUMPTION THAT JOINT PHYSICAL CUSTODY
6 IS IN THE BEST INTEREST OF A CHILD; REVISING THE PARENTING FACTORS THAT A COURT
7 CONSIDERS IN DETERMINING A PARENTING PLAN; AND AMENDING SECTION 40-4-212, MCA."

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

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11 **Section 1.** Section 40-4-212, MCA, is amended to read:
12 **"40-4-212. Best interest of child.** (1) The court shall determine the parenting plan in accordance with
13 the best interest of the child, and equal consideration must be given to each parent. The court shall consider all
14 relevant parenting factors, which may include but are not limited to:
15 (a) the wishes of the child's parent or parents;
16 (b) the wishes of the child, with due consideration given to the influence a parent may have over the
17 child's wishes;
18 (c) the interaction and interrelationship of the child with the child's parent or parents and siblings and with
19 any other person who significantly affects the child's best interest;
20 (d) the motivation of the adults participating in the parenting plan proceeding;
21 ~~(d)~~(e) the child's adjustment and continuing proximity to home, school, and community;
22 ~~(e)~~(f) the mental and physical health of all individuals involved;
23 ~~(f)~~(g) physical abuse or threat of physical abuse by one parent against the other parent or the child;
24 ~~(g)~~(h) chemical dependency, as defined in 53-24-103, or chemical abuse on the part of either parent;
25 ~~(h)~~(i) continuity and stability of care;
26 ~~(i)~~(j) developmental needs of the child;
27 ~~(j)~~(k) whether a parent has knowingly failed to pay birth-related costs that the parent is able to pay, which
28 is considered to be not in the child's best interests;
29 (l) the likelihood a parent will allow the child frequent, meaningful, and continuing contact with the other
30 parent;

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

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

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

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

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

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

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

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

22 (c) Joint custody and equally shared parenting time are in the best interest of the child. If a deviation
23 from equal parenting time is warranted, the court shall construct a parenting plan that maximizes the time each
24 parent has with the child and is consistent with ensuring the best interest of the child."

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