

SENATE BILL NO. 180

INTRODUCED BY S. WEBBER, S. NOVAK, C. NEUMANN, W. CURDY, M. DUNWELL, J. ELLIS, J. MORIGEAU, D. FERN, D. HARVEY, J. WINDY BOY, P. FLOWERS, D. HAYMAN, S. MORIGEAU, A. OLSEN, C. POPE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE DETERMINATION OF THE BEST INTERESTS OF THE CHILD IN CUSTODY AND ADOPTION PROCEEDINGS; AMENDING SECTIONS 40-4-212 AND 42-5-107, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 40-4-212, MCA, is amended to read:

"40-4-212. Best interest of child. (1) The court shall determine the parenting plan in accordance with the best interest of the child. The court shall consider all relevant parenting factors, which may include but are not limited to:

- (a) the wishes of the child's parent or parents;
(b) the wishes of the child;
(c) the interaction and interrelationship of the child with the child's parent or parents and siblings and with any other person who significantly affects the child's best interest;
(d) the child's adjustment to home, school, and community;
(e) the mental and physical health of all individuals involved;
(f) physical abuse or threat of physical abuse by one parent against the other parent or the child;
(g) chemical dependency, as defined in 53-24-103, or chemical abuse on the part of either parent;
(h) continuity and stability of care;
(i) developmental needs of the child;
(j) whether a parent has knowingly failed to pay birth-related costs that the parent is able to pay,

which is considered to be not in the child's best interests;

1 (k) 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 (l) 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
6 physical abuse or threat of physical abuse by one parent against the other parent or the child, including but not
7 limited to whether a parent or other person residing in that parent's household has been convicted of any of the
8 crimes enumerated in 40-4-219(8)(b).

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

11 (n) the credal, cultural, ethnic, or religious needs of the child related to the child's heritage,
12 including the child's Indian heritage regardless of the child's tribal enrollment status or Indian blood quantum.

13 (2) When considering the needs of a child related to the child's heritage, including Indian heritage,
14 the court shall consider the traditions and customs of any social group or peoples to which the child has a direct
15 social, familial, or ancestral connection. These traditions and customs must include but are not limited to:

16 (a) sacred and secular beliefs;

17 (b) social, political, and economic practices; and

18 (c) historical and contemporary connections to a recognized geographic site or area.

19 ~~(2)~~(3) When determining the best interest of the child of a parent in military service, the court shall
20 consider all relevant parenting factors provided in subsection (1) and may not determine the best interest of the
21 child based only ~~upon~~on the parent's military service.

22 ~~(3)~~(4) A de facto parenting arrangement, in the absence of a prior parenting decree, does not require
23 the child's parent or parents to prove the factors set forth in 40-4-219.

24 ~~(4)~~(5) The following are rebuttable presumptions and apply unless contrary to the best interest of the
25 child:

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

28 (b) A motion to amend a final parenting plan pursuant to 40-4-219 is vexatious if a parent seeks to

1 amend a final parenting plan without making a good faith effort to comply with the provisions of the parenting
2 plan or with dispute resolution provisions of the final parenting plan."

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4 **Section 2.** Section 42-5-107, MCA, is amended to read:

5 **"42-5-107. (Temporary) Best interests of child.** (1) ~~In determining whether to grant a petition to~~
6 ~~adopt, the court shall consider all relevant factors in determining the best interests of the child. The court shall~~
7 ~~consider factors relevant to the determination of a prospective adoptive parent's parenting ability, the future~~
8 ~~security for a child, and familial stability.~~

9 (2) ~~— In a contested adoption proceeding involving a child, the court shall consider the factors set out~~
10 ~~in subsection (1) and shall also consider:~~

11 (a) ~~— the nature and length of any relationship already established between a child and any person~~
12 ~~seeking to adopt the child;~~

13 (b) ~~— the nature of any family relationship between the child and any person seeking to adopt the~~
14 ~~child and whether that person has established a positive emotional relationship with the child;~~

15 (c) ~~— the harm that could result to the child from a change in placement;~~

16 (d) ~~— whether any person seeking to adopt the child has adopted a sibling or half-sibling of the child;~~

17 (e) ~~— which, if any, of the persons seeking to adopt the child were selected by the placing parent or~~
18 ~~the department or agency whose consent to the adoption is required.~~

19 (3) ~~— In an Indian child placement, the court shall determine if the requirements of the federal Indian~~
20 ~~Child Welfare Act, 25 U.S.C. 1901, et seq., and the Montana Indian Child Welfare Act provided for in Title 41,~~
21 ~~chapter 3, part 13, have been met. (Terminates June 30, 2025—sec. 55, Ch. 716, L. 2023.)~~

22 **42-5-107. (Effective July 1, 2025) Best interests of child.** (1) In determining whether to grant a
23 petition to adopt, the court shall consider all relevant factors in determining the best interests of the child. The
24 court shall consider factors relevant to the determination of a prospective adoptive parent's parenting ability, the
25 future security for a child, and familial stability.

26 (2) In a contested adoption proceeding involving a child, the court shall consider the factors set out
27 in subsection (1) and shall also consider:

28 (a) the nature and length of any relationship already established between a child and any person

1 seeking to adopt the child;

2 (b) the nature of any family relationship between the child and any person seeking to adopt the
3 child and whether that person has established a positive emotional relationship with the child;

4 (c) the harm that could result to the child from a change in placement;

5 (d) whether any person seeking to adopt the child has adopted a sibling or half-sibling of the child;

6 (e) which, if any, of the persons seeking to adopt the child were selected by the placing parent or
7 the department or agency whose consent to the adoption is required; and

8 (f) the credal, cultural, ethnic, or religious needs of the child related to the child's heritage,
9 including the child's Indian heritage regardless of the child's tribal enrollment status or Indian blood quantum.

10 (3) When considering the needs of a child related to the child's heritage, including Indian heritage,
11 the court shall consider the traditions and customs of any social group or peoples to which the child has a direct
12 social, familial, or ancestral connection. These traditions and customs must include but are not limited to:

13 (a) sacred and secular beliefs;

14 (b) social, political, and economic practices; and

15 (c) historical and contemporary connections to a recognized geographic site or area.

16 (3)(4) In an Indian child placement, the court shall determine if the requirements of the Indian Child
17 Welfare Act, 25 U.S.C. 1901, et seq., have been met."

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19 **NEW SECTION. Section 3. Notification to tribal governments.** The secretary of state shall send a
20 copy of [this act] to each federally recognized tribal government in Montana.

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22 **NEW SECTION. Section 4. Effective date.** [This act] is effective July 1, 2025.

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