

Child and Family Services Policy Manual: Investigation Dissolution Proceedings – General Information

Introduction The 1997 Legislature revised statutes regarding custody and visitation of children in a marriage dissolution, required the adoption of a parenting plan that includes specific provisions in the best interests of a child, provided an option for mediation for dispute resolution, and provided a fee to help defray the cost of court-sanctioned educational programs on the effects of divorce on children. While the Department is rarely involved directly in cases of divorce and custody, it is important to be aware of the statutory changes and the impact those changes may have on the families we deal with.

Appointment of a Guardian Ad Litem The court may appoint a guardian ad litem to represent the interests of a minor dependent child with respect to the child's support, parenting and parental contact. The guardian ad litem has the following duties:

- to conduct investigations necessary to ascertain the facts related to the child's support, parenting, and parental contact;
- interview or observe the child;
- make written reports to the court concerning the child's support, parenting, and parental contact;
- appear and participate in all proceedings; and
- perform other duties as directed by the court.

The guardian ad litem has access to court, medical, psychological, law enforcement, social services and school records pertaining to the child, the child's siblings and parents or caretakers. In a domestic relations proceeding under Title 40 Chapter 4, the information should not be released without a court order. When giving a GAL appointed for a custody dispute access or copies of information in a CPS file, the GAL should be cautioned about the confidentiality of such document pursuant to Mont. Code Ann. §41-3-205.

The guardian ad litem may be an attorney, but may not be the county attorney, deputy county attorney or the Department of Public Health and Human Services or any of its staff.

Divorce/Custody Home Studies The court may order an investigation and report (divorce/custody home study) concerning the parenting

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arrangements for the child. **The Department of Public Health and Human Services may not be ordered to conduct the investigation unless the person involved is a recipient of cash assistance under the temporary assistance for needy families block grant, FAIM financial assistance as defined in Mont. Code Ann. §53-2-902, food stamps or general relief.** Other reasonable options for payment of the study by the parents must be exhausted. Verification of receiving public assistance can be obtained by the worker from the TEAMS system. If the person is a recipient of public assistance, and the Department has been ordered to conduct that investigation, see policy Section 204-2, Dissolution - Child Custody Investigation/Report for home study procedures.

Parenting Plan

The court shall determine the parenting plan in accordance with the best interest of the child. The court shall consider all relevant parenting factors including (but not limited to):

- the wishes of the child's parents;
- the wishes of the child;
- the interactions of the child with the child's parents, siblings and other significant persons;
- the child's adjustment to home, school and community;
- the mental and physical health of all individuals involved;
- physical abuse or threat of physical abuse by one parent against the other or the child
- chemical dependency or chemical abuse on the part of either parent;
- continuity and stability of care;
- developmental needs of a child;
- failure, by a parent, to pay birth related costs and/or financial support for a child;
- whether the child has had frequent and continuing contact with both parents, and if that is in the best

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interest of the child; and

- adverse effects on the child from continuous and vexatious parenting plan amendment actions. Examples of vexatious actions include amendments filed within six months after a child support action against one parent is brought, and filing amendment actions without making good faith efforts to comply with the provisions of the parenting plan.

Interim Parenting Plan

The court may adopt an interim parenting plan proposed by one of the parties. That interim plan is in effect until the proceeding for dissolution is dismissed, or the dissolution is finalized along with an approved final parenting plan.

Final Parenting Plan

Objectives

The objectives of the final parenting plan are to:

- protect the best interests of the child;
- provide for the physical care of the child;
- maintain the child's emotional stability and minimize the child's exposure to parental conflict;
- provide for the child's changing needs, in a way that minimizes the need for future amendments to the parenting plan;
- set forth the authority and responsibilities of each parent; and
- encourage parents to meet their responsibilities to their minor children through agreements in the parenting plan rather than through judicial intervention.

Criteria

The parenting plan may address parenting functions such as:

- maintaining a loving, stable, consistent, and nurturing relationship with the child;
- attending to the daily needs of the child including physical, developmental, spiritual, and supervision/guidance needs;
- attending to adequate education for the child;

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- ensuring the interactions and interrelationships of the child with the child's parent(s) and siblings and any other person who significantly affects the child's best interest; and
- exercising appropriate judgment regarding the child's welfare.

Provisions

The final parenting plan may include provisions, consistent with the best interests of the child, for:

- designation of a parent as custodian of the child;
- designation of the legal residence of both parents and the child;
- a residential schedule specifying the periods of time during which the child will reside with each parent, including provisions for holidays and special occasions;
- finances to provide for the child's needs;
- any other factors affecting the physical and emotional health and well-being of the child;
- periodic review of the parenting plan when foreseeable circumstances arise;
- sanctions that apply if a parent fails to follow the terms of the parenting plan;
- allocation of parental decision making;
- the method of resolving future disputes concerning the child between the parents (other than court action); and
- the unique circumstances of the child or the family situation that the parents agree will facilitate a meaningful, ongoing relationship between the child and parents.

The court may order the parties to participate in a dispute resolution process to resolve conflicts between parties

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regarding the adoption of the parenting plan.

Each parent may make decisions regarding the day-to-day care and control of the child while the child is residing with that parent. Either parent may make emergency decisions affecting the child's safety or health.

The court shall order that the parenting plan be sealed except for access by the parents, guardian, or other person having custody of the child.

Parent(s) Change of Residence

If a parent's change in residence will significantly affect the child's contact with the other parent, notice must be served no less than thirty days before the proposed change in residence and must include a proposed revised residential schedule.

Amendment of the Parenting Plan

The court may amend a parenting plan if it finds that a change has occurred in the circumstances of the child, and that amendment is necessary to serve the best interests of the child. The court, in making a decision to amend the parenting plan may also consider whether:

- the parents agree to the amendment;
- the child is 14 years of age or older and desires the amendment; or
- one parent has willfully and consistently refused to allow the child contact with the other parent, attempted to frustrate or deny contact with the child by the other parent, or one parent has changed or intends to change the child's residence in a manner which significantly affects the child's contact with the other parent.

Court-Sanctioned Educational Programs

In a proceeding for dissolution of marriage involving a minor child or in a parenting plan proceeding involving a minor child, the court shall inform the parents of available educational programs concerning the effects of divorce on children. The court may order the parents to attend such a program. The program must be educational in nature and not be designed for individual therapy. The cost of such a program must be paid for from the fees for filing petitions for contested amendments of a parenting plan.

Mediation

The purpose of mediation is to reduce the acrimony that may exist between the parties and to develop an agreement that is

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supportive of the best interests of a child in the proceeding. The mediator shall attempt to effect a settlement of the parenting, child support, parental contact with the child, maintenance, or property settlement dispute.

A mediator must meet the following minimum qualifications:

- knowledge of the court system and the procedures used in family law matters;
- knowledge of other resources in the community to which the parties may be referred for assistance;
- if applicable, knowledge of child development, clinical issues related to children, the effects of marriage dissolution on children, and parenting research; and
- knowledge of the mediation process.

Court-Ordered Supervision

The court may also order supervised visitation by the noncustodial parent, if without such an order, the visitation would endanger the child's physical health or significantly impair the child's emotional development. **The court may not order the Department of Public Health and Human Services to supervise the visitation.**

Grandparent-Grandchild Contact

The district court may grant to a grandparent of a child reasonable rights to contact with the child during any proceeding, including divorce and custody proceedings and child abuse and neglect proceedings. **If the grandparents petition for contact with a grandchild and the Department is involved in a child abuse and neglect proceeding, the Department must be served notice of this petition.** Under these circumstances, the court may only grant this contact upon finding, after a hearing, that the contact would be in the best interest of the child.

A grandparent may not petition the court more often than once every two years unless there has been a significant change in the circumstances of the child, the child's parent(s)/guardian, or the child's grandparent.

If the child has been adopted by a person other than a stepparent or a grandparent, the grandparent may not petition for contact and any existing court-ordered visitation becomes

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void.

**Custodial
Interference**

A person commits the offense of custodial interference if knowing that the person has no legal right to do so, the person takes, entices, or withholds from the lawful custody any child, incompetent person, or other person entrusted by authority of law to the custody of another person or institution.

**Parenting
Interference**

A person commits the offense of parenting interference if, knowing that the person has no legal right to do so, the person:

- before the entry of a court order determining parenting rights, takes, entices, or withholds a child from the other parent when the action manifests a purpose to substantially deprive that parent of parenting rights; or
- is one of two persons who has the parenting authority of a child under a court order and takes, entices, or withholds the child from the other when the action manifests a purpose to substantially deprive the other parent of parenting rights.

**Interfering with
Parent/Child
Contact**

A person who has been granted parent-child contact under a parenting plan commits the offense of interference with the parent-child contact if the person knowingly or purposely prevents, obstructs, or frustrates the rights of another person entitled to parent-child contact under an existing court order.

**Aggravated
Interference with
Parent/Child
Contact**

A person who commits the offense of interference with parent-child contact by changing the residence of the minor child to another state without giving written notice as required in Mont. Code Ann. § 40-4-217 or without written consent of the person entitled to parent-child contact pursuant to an existing court order commits the offense of aggravated interference with parent-child contact.

**Defenses to
Interference**

A person does not commit the offense of interference with parent-child contact or aggravated interference with parent-child contact if the person acts:

- with the consent of the person entitled to parent-child contact;
- under an existing court order; or
- with reasonable cause.

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Return of the child prior to arrest is a defense only with respect to the first commission of interference with the parent-child contact or aggravated interference with the parent-child contact.

References

Mont. Code Ann. § 40-4-205.

Mont. Code Ann. §§ 40-4-212, 213, 215, 217, 218, and 219.

Mont. Code Ann. §§ 40-4-226 and 227.

Mont. Code Ann. §§ 40-4-233 and 234.

Mont. Code Ann. § 40-4-301 et seq.

Mont. Code Ann. § 40-9-102.

Mont. Code Ann. §§ 45-5-304, 331, 332, and 45-5-333.