

Introduction

Both parents have the right and the duty to care for their minor child. Unless a court order is in effect, married parents have equal rights regarding parenting. If the parents are not married, the father does not have specific parenting rights until paternity is established.

What is parenting?

Montana law does not use the words “custody” and “visitation.” Instead it uses the word “parenting” to promote the idea that both parents should be involved in the children’s lives.

What is a parenting plan?

Every dissolution (divorce) or other court proceeding concerning the parenting of a child must include a parenting plan. The parenting plan will establish where the child will live, how much contact the child will have with the other parent, and how decisions will be made about the child. The plan is intended to protect the child’s best interest, to set out parental authority and responsibility, and to help prevent future court action.

Parents may or may not agree on a plan. If the parents agree, they may be able to avoid a long and expensive court case. If the parents cannot agree, the judge will hear both sides and decide what is best for the child.

Do I need a parenting plan?

A parenting plan will help resolve disputes about your child when you and the other parent disagree. You and the other parent may already have an agreement about how to parent your child, but your agreement cannot be enforced without a court order. For example, without a court-ordered parenting plan, you cannot necessarily force the other parent to return your child after a visit or prevent the other parent from moving to another state.

How does the court decide?

To determine which parent a child should live with most of the time and how much contact the child should have with the other parent, the court considers what is best for the child. Some of the factors the court considers when trying to determine what is in the best interests of the child include:

- The wishes of the child and the parents;
- The relationship between the child and the parents or the child and his/her siblings;
- Whether one parent has physically abused or threatened to physically abuse either the child or the parent;
- If one parent has a problem with alcohol or drugs; and
- Whether one parent has refused to pay financial support for the child.

Can parental contact be limited?

Montana law assumes that it is usually best for the child if both parents have significant and frequent contact with the child. Sometimes, however, it is not in the best interests of the child to have frequent contact with a parent. The court may decide to limit contact with that parent if it is necessary to protect the child from harm.

What if a parent violates the parenting plan?

Once a parenting plan has been ordered by the court, both parents have an obligation to follow the plan. If one parent violates the plan, the other parent must still follow the plan. Violation of the plan is punishable by contempt of court and can be a criminal offense.

When can I get a parenting plan changed?

If the child’s circumstances have changed and you think it would be best for the child if the parenting plan was changed, you can ask the court to modify the parenting plan. Some factors that the court will consider are:

- Whether both parents agree to the change;
- Whether one parent has changed or intends to change the child’s residence;

- Whether one parent has refused contact with the other parent; and
- Whether one parent has been convicted of certain crimes, such as murder, rape, child abuse, or domestic violence.

How to change a parenting plan?

You must file a request for an amended parenting plan in the same court that issued your original parenting plan. You must give the other parent proper notice of the action. A judge may order you to go through some form of dispute resolution, such as mediation, before returning to court. Dispute resolution may not be appropriate if one of the parties has abused the other and they do not have equal power. In that case, court action may be the only appropriate way to change the plan.

How is child support established?

When the court establishes a final parenting plan, it also will order one or both parents to pay child support. If you already have a Child Support and Medical Support Order through the Montana Child Support Enforcement Division (CSED) or another appropriate agency, the court may simply refer to that order. The court will determine a child support amount based on Montana's guidelines. You may also apply for child support by contacting the CSED directly at 1-800-346-KIDS (or in Helena 444-9767.)

How do I get more help?

Montana Legal Services Association (MLSA) provides free civil legal help to low-income people. Contact us to see if you qualify:

- Apply anytime online at mtlsa.org;
- Call our Helpline at 1-800-666-6899 (Helpline hours are limited).

What help can I find at MLSA?

- Legal advice and representation;
- Referrals to volunteer attorneys and other providers;
- Self-help clinics and materials.

www.MontanaLawHelp.org

Need legal information or forms? Visit www.MontanaLawHelp.org.

Can't find what you want? Use LiveHelp. Click on the LiveHelp picture and get help finding the information you need.

www.MTLSA.org

Find copies of all our brochures online. They are all available for free download!

This pamphlet is meant to give basic legal information, not legal advice about your problem. The law changes often and each case is different. We recommend you talk to an attorney about your legal problem.

Montana Legal Services

Association

Families and Kids:

Parenting Plans



Providing, protecting, and enhancing access to justice.

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