

HOUSE BILL NO. 288

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A BILL FOR AN ACT ENTITLED: "AN ACT RECOGNIZING THAT A FATHER'S OBLIGATION TO SUPPORT A CHILD BEGINS AT CONCEPTION AND PROVIDING FOR FINANCIAL SUPPORT DURING PREGNANCY; PROVIDING THAT A MOTHER MAY OBJECT TO PATERNITY GENETIC TESTING DURING PREGNANCY; AMENDING SECTIONS 40-4-204, 40-5-225, 40-5-226, 40-5-232, 40-5-233, 40-6-107, 40-6-112, AND 40-6-116, MCA; AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, there are expenses and financial impacts associated with pregnancy that start at conception; and

WHEREAS, both the father and mother of a child should reasonably participate in the financial responsibilities, starting at conception.

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

Section 1. Section 40-4-204, MCA, is amended to read:

"40-4-204. Child support -- orders to address health insurance -- withholding of child support.

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

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

(a) the financial resources of the child;

(b) the financial resources of the parents;

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

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

(e) the age of the child;

(f) the cost of day care for the child;

(g) any parenting plan that is ordered or decided upon; and

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

(3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the parties have entered into an agreement regarding the support amount. A verified representation of the defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or that it is inappropriate in that particular case.

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

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

(d) Child support obligations established under this section are subject to the registration and processing provisions of Title 40, chapter 5, part 9.

(4) Each temporary or final district court judgment, decree, or order establishing a child support obligation under this title and each modification of a final order for child support must include a medical support

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

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

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

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

(d) If an obligor is exempted from paying support through income withholding, the support order must include a requirement that whenever the case is receiving services under Title IV-D of the Social Security Act, support payments must be paid through the department of public health and human services as provided in 40-5-909.

(6) (a) Each district court judgment, decree, or order that establishes paternity or establishes or modifies a child support obligation must include a provision requiring the parties to promptly file with the court and to update, as necessary, information on:

(i) the party's identity, residential and mailing addresses, telephone number, [social security number,] and driver's license number;

(ii) the name, address, and telephone number of the party's employer; and

(iii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier

1 or health benefit plan, the policy identification number, the names of the persons covered, and any other
2 pertinent information regarding coverage or, if the child is not covered, information as to the availability of
3 coverage for the child through the party's employer.

4 (b) The court shall keep the information provided under subsection (6)(a) confidential except that
5 the information may be provided to the department of public health and human services for use in administering
6 Title IV-D of the Social Security Act, to the parties, and to each party's counsel of record. The information
7 provided under subsection (6)(a) may be included on the case registry and vital statistics reporting form filed
8 with the court pursuant to 40-5-908(1).

9 (c) The order must also require that in any subsequent child support enforcement action, upon
10 sufficient showing that diligent effort has been made to ascertain the location of the party, the district court or
11 the department of public health and human services, if the department is providing services under Title IV-D of
12 the Social Security Act, may consider due process requirements for notice and service of process met with
13 respect to the party upon delivery of written notice by regular mail to the most recent address of the party or the
14 party's employer's address reported to the court.

15 (7) A judgment, decree, or order establishing a child support obligation under this part may be
16 modified or adjusted as provided in 40-4-208 or, if the department of public health and human services is
17 providing services under Title IV-D of the Social Security Act, may be modified or adjusted by the department
18 as provided for in 40-5-271 through 40-5-273, 40-5-277, and 40-5-278.

19 (8) (a) A district court judgment, decree, or order that establishes or modifies a child support
20 obligation must include a provision requiring the child support obligation to be paid, without need for further
21 court order:

22 (i) to the person with whom the child resides by legal order;

23 (ii) if the person with whom the child legally resides voluntarily or involuntarily relinquishes physical
24 care and control of the child to another person, organization, or agency, to the person, organization, or agency
25 to whom physical custody has been relinquished;

26 (iii) if any other person, organization, or agency is entitled by law, assignment, or similar reason to
27 receive or collect the child support obligation, to the person, organization, or agency having the right to receive
28 or collect the payment; or

(iv) to the court for the benefit of the minor child.

(b) When the department of public health and human services is providing services under Title IV-D of the Social Security Act, payment of support must be made through the department for distribution to the person, organization, or agency entitled to the payment.

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

(9) A judgment, decree, or order that establishes or modifies a child support obligation must include a provision that if a parent or guardian is the obligee under a child support order and is obligated to pay a contribution for the same child under 41-3-438, the parent or guardian assigns and transfers to the department of public health and human services all rights that the parent or guardian may have to child support that are not otherwise assigned under 53-2-613.

(10) The court shall seal any qualified domestic relations order, as defined in section 414(p) of the Internal Revenue Code, 26 U.S.C. 414(p), that is issued under this part except for access by the pension plan administrator of the plan for which benefits are being distributed by the order, the child support enforcement division, the parties, and each party's counsel of record.

(11) (a) A proceeding for child support may be commenced before the birth of the child. Except as provided in subsection (11)(b) and subject to subsection (11)(c), the court shall enter an order or judgment awarding support from the month of the child's conception, as determined by a licensed health care provider, before or after the birth of the child.

(b) If paternity is contested and the mother objects to paternity genetic testing while pregnant, the court may not enter an order awarding support before the child is born. When the child is born and paternity is determined, the court shall enter the order and may award support retroactively to the month of the child's conception. Payments for the owed retroactive support must be paid in equal payments over a period of no more than 12 months from the date paternity is established and must be paid in addition to any support ordered by the court for the child from the date of birth onward.

(c) If an order or judgment awarding support is entered before the child's birth and if the pregnancy terminates and the unborn child does not survive unborn child dies:

(i) the support obligation terminates; and

(ii) the mother shall notify the court of the ~~termination of the pregnancy death of the unborn child.~~

(Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)"

Section 2. Section 40-5-225, MCA, is amended to read:

"40-5-225. Notice of financial responsibility -- temporary and final support obligations --

administrative procedure. (1) In the absence of an existing support order, when the requirements of this section are met, the department may enter an order requiring a child's parent or parents to pay an amount each month for the support of the child. An order issued under this section must include a medical support order as required by 40-5-208.

(2) The department shall begin an action to establish a support order by serving a notice of financial responsibility on the parent or parents. The notice must include a statement:

(a) of the names of the child or the projected date of birth if the child has not yet been born, the obligee, and, if different than the obligee, the child's guardian or caretaker relative;

(b) of the dollar amount of the support obligation to be paid each month for the child, if any;

(c) that the monthly support obligation, if any, is effective on the date of service of the notice, unless an objection is made and a hearing is requested, and may be collected during the proceeding that establishes the support obligation by any remedy available to the department for the enforcement of child support obligations;

(d) that in addition to or independent of child support, the parent or parents may be ordered to provide for the child's medical support needs;

(e) that any party may request a hearing to contest the amount of child support shown in the notice or to contest the establishment of a medical support order;

(f) that if a party does not file a request for a hearing in a timely manner, support, including medical support, will be ordered as declared in the notice or in accordance with the child support guidelines adopted under 40-5-209;

(g) that if a party does request a hearing, the other parties may refuse to participate in the proceedings and that the child support and medical support order will be determined using the information

available to the department or provided at the hearing;

(h) that a party's refusal to participate is equivalent to consenting to entry of a child support and medical support order consistent with the department's determination; and

(i) that the parties are entitled to a fair hearing under 40-5-226.

(3) (a) The department may enter an order requiring a child's parent or parents to pay an amount each month for the temporary support of the child pending entry of a support order by the district court if:

(i) a support action is pending in district court and a temporary or permanent support obligation has not been ordered; or

(ii) a paternity action is pending and there is clear and convincing evidence of paternity based on paternity genetic tests or other evidence.

(b) The temporary support order must include a medical support order as required by 40-5-208.

(c) A temporary support order may be modified by the department as provided in 40-5-272, 40-5-273, 40-5-277, and 40-5-278 but remains a temporary support order subject to the provisions of this section.

(4) The department shall begin an action to establish a temporary support order by serving a notice of temporary support obligation on the parent or parents. In addition to the statements required in subsection (2), the notice must include a statement that:

(a) a party may request a hearing to show that a temporary support obligation is inappropriate under the circumstances; and

(b) the temporary support order will terminate upon the entry of a final support order or an order of nonpaternity. If the final order is retroactive, any amount paid for a particular period under the temporary support order must be credited against the amounts due under the final order for the same period, but excess amounts may not be refunded. If an order of nonpaternity is issued or if the final support order states that periodic support obligation is not proper, the obligee shall refund to the obligor any improper amounts paid under the temporary support order, plus any costs that the obligor incurs in recovering the amount to be refunded.

(5) (a) If a temporary support order is entered or if proceedings are commenced under this section for a married obligor, the department shall vacate any support order or dismiss any proceeding under this part if it finds that the parties to the marriage have:

(i) reconciled without the marriage having been dissolved;

(ii) made joint application to the department to vacate the order or dismiss the proceeding; and

(iii) provided proof that the marriage has been resumed.

(b) The department may not vacate a support order or dismiss a proceeding under this subsection (5) if it determines that the rights of a third person or the child are affected. The department may issue a new notice of temporary support obligation under this section if the parties subsequently separate.

(6) A notice of financial responsibility and the notice of temporary support obligation may be served either by certified mail or in the manner prescribed for the service of a summons in a civil action in accordance with the Montana Rules of Civil Procedure.

(7) If prior to service of a notice under this section the department has sufficient financial information, the department's allegation of the obligor's monthly support responsibility, whether temporary or final, must be based on the child support guidelines established under 40-5-214. If the information is unknown to the department, the allegations of the parent's or parents' monthly support responsibility must be based on the greater of:

(a) the maximum amount of public assistance that could be payable to the child under Title 53 if the child was otherwise eligible for assistance; or

(b) the child's actual need as alleged by the custodial parent, guardian, or caretaker of the child.

(8) (a) A party who objects to a notice of financial responsibility or notice of temporary support obligation may file a written request for a hearing with the department:

(i) within 20 days from the date of service of a notice of financial responsibility; and

(ii) within 10 days from the date of service of a notice of temporary support obligation.

(b) If the department receives a timely request for a hearing, it shall conduct one under 40-5-226.

(c) If the department does not receive a timely request for a hearing, it shall order the parent or parents to pay child support, if any, and to provide for the child's medical needs as stated in the notice. The child support obligation must be the amount stated in the notice or determined in accordance with the child support guidelines adopted under 40-5-209.

(9) If the department is unable to enter an obligation in accordance with the child support guidelines because of default of a party, the department may, upon notice to the parties to the original order,

1 substitute a support order made in accordance with the guidelines for the defaulted order.

2 (10) After establishment of an order under this section, the department may initiate a subsequent
3 action on the original order to establish a child support or medical support obligation for another child of the
4 same parents.

5 (11) A child support and medical support order under subsection (1) is effective as of the date of
6 service of a notice of financial responsibility on the parent or parents and may be collected by any remedy
7 available to the department for the enforcement of child support obligations. A final order is retroactive to the
8 date of service of the notice of financial responsibility as provided in this subsection, except that the final order
9 may also determine child support for a prior period as provided in 40-5-226(3).

10 (12) A child support and medical support order under subsection (1) continues until the child
11 reaches 18 years of age or until the child's graduation from high school, whichever occurs later, but not later
12 than the child's 19th birthday unless the child is emancipated by court order at an earlier time. A temporary
13 support obligation established under subsection (3) continues until terminated as provided in subsection (5) or
14 until the temporary support order is superseded by a final order, judgment, or decree."

15
16 **Section 3.** Section 40-5-226, MCA, is amended to read:

17 **"40-5-226. Administrative hearing -- nature -- place -- time -- determinations -- failure to appear**
18 **-- entry of final decision and order.** (1) The administrative hearing is defined as a "contested case".

19 (2) If a hearing is requested, it must initially be conducted by teleconference methods and is
20 subject to the Montana Administrative Procedure Act. At the request of a party or upon a showing that the
21 party's case was substantially prejudiced by the lack of an in-person hearing, the hearings officer shall grant a
22 de novo in-person hearing.

23 (3) The hearings officer shall determine the liability and responsibility, if any, of the parent or
24 parents under the notice and shall enter a final decision and order in accordance with the determination. The
25 order may award support from the date of:

26 (a) the child's birth month of the child's conception, as determined by a licensed health care
27 provider, if paternity was established under 40-5-231 through 40-5-238 or under Title 40, chapter 6, part 1,
28 subject to the limitation in 40-6-108(3)(b);

(b) date of the parties' separation if support is initially established under 40-5-225; or

(c) date of notice to the parties of a support modification request under 40-5-273.

(4) (a) Except as provided in subsection (4)(b), if the parent or parents fail to appear at the hearing or to timely file a request for a hearing, the hearings officer, upon a showing of valid service, shall enter a default decision and order declaring the amount stated in the notice to be final.

(b) In a multiple party proceeding under 40-5-225, if one party files a timely request for hearing, the matter must be set for hearing. Notice of the hearing must be served on the parties. If a party refuses to appear for the hearing or participate in the proceedings, the hearings officer shall determine child support and medical support orders based on the notice, information available to the department, and evidence provided at the hearing by the appearing parties. A party's refusal to appear is a consent to entry of child and medical support orders consistent with the hearings officer's determination. However, the default order may not be for more than the support requested in the notice unless the hearings officer finds that the evidence requires a larger amount.

(5) In a hearing to determine financial responsibility, whether temporary or final, and in any proceeding to modify support under 40-5-272, 40-5-273, 40-5-277, and 40-5-278, the monthly support responsibility must be determined in accordance with the evidence presented and with reference to the uniform child support guidelines adopted by the department under 40-5-209. The hearings officer is not limited to the amounts stated in the notice. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the order is entered upon the parties' consent. A verified representation of a defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the hearings officer finds by clear and convincing evidence that the application of the guidelines is unjust to the child or to any of the parties or is inappropriate in a particular case. If the hearings officer finds that the guideline amount is unjust or inappropriate in a particular case, the hearings officer shall state the reasons for finding that the application of the guidelines is unjust to the child or a party or is inappropriate in that particular case. Similar findings must also be made in a case in which the parties have agreed to a support amount that varies from the guideline amount. The hearings officer may vary the application of the guidelines to limit the obligor's liability for past support to the proportion of expenses already incurred that the hearings officer considers just. Findings that

1 rebut and vary the guideline amount must include a statement of the amount of support that would have
2 ordinarily been ordered under the guidelines.

3 (6) In a hearing to enforce a support order or to establish paternity under this chapter, the
4 department shall send a copy of the notice of hearing to the obligee by regular mail addressed to the obligee's
5 last-known address. The obligee may attend and observe the hearing as a nonparty. This subsection does not
6 limit participation of an obligee who is a party to the proceedings or who is called as a witness to testify.

7 (7) (a) Within 60 days after the hearing has been concluded, any posthearing briefs are received,
8 and all the evidence submitted, except for good cause, the hearings officer shall enter a final decision and
9 order. The determination of the hearings officer constitutes a final agency decision, subject to judicial review
10 under 40-5-253 and the provisions of the Montana Administrative Procedure Act. A copy of the final decision
11 must be delivered or mailed to each party, each party's attorney, and the obligee if the obligee is not a party.

12 (b) A child support or medical support obligation established under this section is subject to the
13 registration and processing provisions of part 9 of this chapter.

14 (8) A child support or medical support order entered under this part must contain a statement that
15 the order is subject to review and modification by the department upon the request of the department or a party
16 under 40-5-272, 40-5-273, 40-5-277, and 40-5-278 when the department is providing services under IV-D for
17 the enforcement of the order.

18 (9) A support debt determined pursuant to this section is subject to collection action without further
19 necessity of action by the hearings officer.

20 (10) A child support or medical support obligation determined under this part by reason of the
21 obligor's failure to request a hearing under this part or failure to appear at a scheduled hearing may be vacated,
22 upon the motion of an obligor, by the hearings officer within the time provided and upon a showing of any of the
23 grounds enumerated in the Montana Rules of Civil Procedure. When issuing a support order, the department
24 shall consider whether any of the exceptions to immediate income withholding found in 40-5-411 apply, and, if
25 an exception is applicable, the department shall include the exception in the support order.

26 (11) (a) Unless the hearings officer makes a written exception under 40-5-315 or 40-5-411 and the
27 exception is included in the support order, each order establishing a child support obligation, whether temporary
28 or final, and each modification of an existing child support order under this part is enforceable by immediate or

delinquency income withholding, or both, under Title 40, chapter 5, part 4. A support order that omits that provision or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment of the support order or for any further action by the hearings officer.

(b) If an obligor is excepted from paying support through income withholding, the support order must include a requirement that whenever a party to the case is receiving IV-D services, support payments must be paid through the department as provided in 40-5-909.

(12) (a) If the department establishes paternity or establishes or modifies a child support obligation, the department's order must include a provision requiring each party other than the department to promptly file with the department and to update, as necessary, information on:

- (i) identity of the party;
- [(ii) social security number;]
- (iii) residential and mailing addresses;
- (iv) telephone number;
- (v) driver's license number;
- (vi) name, address, and telephone number of employer; and
- (vii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or health benefit plan, the policy identification number, the name of the persons covered, and any other pertinent information regarding coverage or, if the child is not covered, information as to the availability of coverage for the child through the obligor's and obligee's employer.

(b) The order must further direct that in a subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of the party, the department's due process requirements for notice and service of process are met with respect to the party upon delivery of written notice by regular mail to the most recent address of the party or the party's employer's address reported to the department.

(c) The department shall keep the information provided under subsection (12)(a) confidential except as necessary for purposes of Title IV-D of the Social Security Act.

(13) The hearings officer may:

(a) compel obedience to the hearings officer's orders, judgments, and process and to subpoenas and orders issued by the department, including income-withholding orders issued pursuant to 40-5-415;

(b) compel the attendance of witnesses at administrative hearings;

(c) compel obedience of subpoenas for paternity genetic tests;

(d) compel the production of accounts, books, documents, and other evidence;

(e) punish for civil contempt. Contempt authority does not prevent the department from proceeding in accordance with the provisions of 2-4-104.

(f) compel the production of information requested by the department or another IV-D agency under 40-5-443.

(14) A contempt occurs whenever:

(a) a person acts in disobedience of any lawful order, judgment, or process of the hearings officer or of the department;

(b) a person compelled by subpoena to appear and testify at an administrative hearing or to appear for ~~genetic~~-paternity genetic tests fails to do so;

(c) a person compelled by subpoena duces tecum to produce evidence at an administrative hearing fails to do so;

(d) an obligor or obligee subject to a discovery order issued by the hearings officer fails to comply with discovery requests;

(e) a person or entity compelled by administrative subpoena from the department or another IV-D agency to produce financial information or other information needed to establish paternity or to establish, modify, or enforce a support order fails to do so;

(f) a payor under an order to withhold issued pursuant to 40-5-415 fails to comply with the provisions of the order. In the case of a payor under an income-withholding order, a separate contempt occurs each time that income is required to be withheld and paid to the department and the payor fails to take the required action.

(g) a payor or labor union fails to provide information to the department or another IV-D agency when requested under 40-5-443[; or]

[(h) a financial institution uses information provided by the department pursuant to 40-5-924 for any

other purpose without the authorization of the department].

(15) Before initiating a contempt proceeding, the department shall give the alleged contemnor notice by personal service or certified mail of the alleged infraction and a reasonable opportunity to comply with the law and to cure the alleged infraction. In order to initiate a contempt proceeding, an affidavit of the facts constituting a contempt must be submitted to the hearings officer, who shall review it to determine whether there is cause to believe that a contempt has been committed. If cause is found, the hearings officer shall issue a citation requiring the alleged contemnor to appear and show cause why the alleged contemnor should not be determined to be in contempt and required to pay a penalty of not more than \$500 for each count of contempt. The citation, along with a copy of the affidavit, must be served upon the alleged contemnor either by personal service or by certified mail. All other interested persons may be served a copy of the citation by first-class mail.

(16) At the time and date set for hearing, the hearings officer shall proceed to hear witnesses and take evidence regarding the alleged contempt and any defenses to the contempt. If the alleged contemnor fails to appear for the hearing, the hearing may proceed in the alleged contemnor's absence. If the hearings officer finds the alleged contemnor in contempt, the hearings officer may impose a penalty of not more than \$500 for each count found. The hearings officer's decision constitutes a final agency decision, subject to judicial review under 40-5-253 and subject to the provisions of Title 2, chapter 4.

(17) An amount imposed as a penalty may be collected by any remedy available to the department for the enforcement of child support obligations, including warrant for distraint pursuant to 40-5-247, income withholding pursuant to Title 40, chapter 5, part 4, and state debt offset, pursuant to Title 17, chapter 4, part 1. The department may retain any penalties collected under this section to offset the costs of administrative hearings conducted under this chapter.

(18) The penalties charged and collected under this section must be paid into the state treasury to the credit of the child support enforcement division special revenue fund and must be accompanied by a detailed statement of the amounts collected. (Bracketed language terminates on occurrence of contingency-- sec. 1, Ch. 27, L. 1999.)"

Section 4. Section 40-5-232, MCA, is amended to read:

"40-5-232. Establishment of paternity -- notice of parental responsibility -- contents. (1) When

1 the paternity of a child has not been legally established under the provisions of Title 40, chapter 6, part 1, or
2 otherwise, the department may proceed to establish paternity under the provisions of 40-5-231 through 40-5-
3 237. An administrative hearing held under the provisions of 40-5-231 through 40-5-237 is a contested case
4 within the meaning of 2-4-102 and is subject to the provisions of Title 2, chapter 4, except as otherwise
5 provided in 40-5-231 through 40-5-237.

6 (2) It is presumed to be in the best interest of a child to legally determine and establish paternity. A
7 presumption under this subsection may be rebutted by a preponderance of the evidence.

8 (3) In a proceeding under 40-5-231 through 40-5-237, if an alleged father consents in writing to
9 entry of an order declaring the alleged father to be the legal father of a child, the department may enter an order
10 establishing legal paternity. As a part of a consent to entry of an order declaring paternity, the department shall
11 provide information to the parents regarding the rights and responsibilities of an alleged father consenting to
12 entry of an order declaring paternity. A consent to entry of an order declaring paternity is binding on a parent
13 who executes it, whether or not the parent is a minor.

14 (4) Full faith and credit must be given to a determination of paternity made by any other state,
15 whether presumed by law, established through voluntary acknowledgment, or established by administrative or
16 judicial processes.

17 (5) (a) The department shall commence proceedings to establish paternity by serving on an
18 alleged father a notice of parental responsibility. The department may not serve the notice unless it has:

19 (a)(i) a sworn statement claiming that the alleged father is the child's natural father;

20 (b)(ii) evidence of the existence of a presumption of paternity under 40-6-105; or

21 (c)(iii) any other reasonable cause to believe that the alleged father is the child's natural father.

22 (b) Proceedings may be commenced prior to the birth of the child. Proceedings must be stayed if
23 the mother objects to paternity genetic testing while pregnant.

24 (6) Regardless of whether the department has grounds to or intends to commence a paternity
25 proceeding against the alleged father, when the child support enforcement division in a case under Title IV-D of
26 the Social Security Act receives a written claim from a child's mother that names a person as the alleged
27 natural father of the child, the department shall promptly take reasonable steps to locate and notify the alleged
28 father of the existence of the claim. The notification must be given to the alleged father in a manner that places

the demands of individual privacy above the merits of public disclosure. The notification must include the name of the mother and the date of birth or the projected date of birth if the child has not yet been born.

(7) Service on the alleged father of the notice of parental responsibility must be made as provided in 40-5-231(2). The notice must include:

(a) an allegation that the alleged father is the natural father of the child involved;

(b) the child's name and place and date of birth or the projected date of birth if the child has not yet been born;

(c) the name of the child's mother and the name of the person or agency having custody of the child, if other than the mother;

(d) the probable time or period of time during which conception took place;

(e) a statement that if the alleged father fails to timely deny the allegation of paternity, the question of paternity may be resolved against the alleged father without further notice;

(f) a statement that if the alleged father timely denies the allegation of paternity:

(i) the alleged father is subject to compulsory paternity genetic testing;

(ii) a paternity genetic test may result in a presumption of paternity; and

(iii) upon receipt of the paternity genetic test results, if the alleged father continues to deny paternity, the alleged father may request the department to refer the matter to district court for a determination of paternity.

(8) The alleged father may file a written denial of paternity with the department within 20 days after service of the notice of parental responsibility.

(9) When there is more than one alleged father of a child, the department may serve a notice of parental responsibility on each alleged father in the same consolidated proceeding or in separate proceedings. Failure to serve notice on an alleged father does not prevent the department from serving notice on any other alleged father of the same child."

Section 5. Section 40-5-233, MCA, is amended to read:

"40-5-233. Establishment of paternity -- administrative hearing -- subpoena -- compulsory paternity genetic testing. (1) (a) Paternity genetic testing may be requested by the alleged father, the mother,

1 or the child through the child's custodian and may be made in conjunction with or in addition to a notice the
2 department issues under 40-5-232. The request must be in writing and must be supported by a sworn
3 statement of the requester that includes:

4 (i) an allegation of paternity and sufficient facts to establish a reasonable probability that the
5 alleged father engaged in an act with the child's mother during the probable time of the child's conception that
6 could have resulted in the child's conception; or

7 (ii) a denial of paternity and sufficient facts to establish a reasonable probability of the
8 nonexistence of contact between the alleged father and the child's mother that could have resulted in the child's
9 conception.

10 (b) If the department determines after a review of a sworn statement that there are sufficient facts
11 to establish a reasonable probability of paternity or nonpaternity as claimed by the requesting party, the
12 department shall issue a subpoena ordering the alleged father, the mother, or the child through the child's
13 custodian to submit to paternity genetic testing. If the mother objects to testing while pregnant, a test of the
14 mother or the child must be delayed until after the birth of the child.

15 (c) A pending request for paternity genetic testing under this section does not prevent the
16 department from issuing a notice of parental responsibility under 40-5-232.

17 (d) Denial of a request for paternity genetic testing under this subsection (1) is not a finding of
18 nonpaternity and does not prevent the issuance of a notice under 40-5-232. A denial does not affect the
19 completion of any pending action initiated under 40-5-232.

20 (2) (a) The department may order an alleged father to appear for an administrative hearing when:

21 (i) the department determines that the sworn statement provided in subsection (1) does not
22 contain sufficient facts to issue a genetic test subpoena and that additional examination of witnesses or
23 evidence is necessary; or

24 (ii) the department receives a timely filed written denial of paternity in response to a notice under
25 40-5-232.

26 (b) The hearing must initially be conducted by teleconferencing methods and is subject to the
27 provisions of the Montana Administrative Procedure Act. At the request of a party, the hearings officer shall, at
28 the close of a teleconference hearing, grant a de novo in-person hearing.

(c) The department may issue a subpoena ordering the alleged father to submit to paternity genetic testing if the testimony and other supplementary evidence demonstrate a reasonable probability:

(i) that the alleged father engaged in an act with the child's mother during the probable time of the child's conception that could have resulted in the child's conception; or

(ii) when the alleged father's paternity is presumed under 40-6-105, of the nonexistence of contact between the alleged father and the child's mother that could have resulted in the child's conception.

(d) For the purposes of this subsection (2), a reasonable probability of an act during the possible time of conception may be established by affidavit of the child's mother without need for the mother to appear at the hearing.

(3) Previous paternity actions under this part that did not result in a subpoena for paternity genetic testing do not prevent the department from recommencing a paternity action if the department believes it can establish any of the factors listed in subsection (2)(c) or (2)(d).

(4) When there is reasonable cause to suggest that a genetic test sample of a person submitting to a genetic test was not the sample of the alleged father, mother, or child, an additional hearing may be held. The scope of the hearing is limited to questions involving the genetic testing or the chain of custody at the genetic testing site. The hearings officer may order retesting of any party.

(5) If the department does not receive a timely filed written denial of paternity or if an alleged father fails to appear at a scheduled hearing or for a scheduled paternity genetic test, the department may enter an order declaring the alleged father the legal father of the child. The order will take effect within 10 days after entry of the default unless the alleged father before the 10th day presents good cause for failure to make a timely denial or for failure to appear at the hearing or to undergo paternity genetic testing. The department may not enter an order under this section if there is more than one alleged father unless the default applies to only one of them and all others have been excluded by the results of paternity genetic testing. An order issued under the provisions of this section may be set aside as provided in 40-5-235(3).

(6) If the rights of others and the interests of justice so require, the department may apply to any district court under the provisions of 2-4-104 for an order compelling an alleged father to submit to paternity genetic testing. The court shall hear the matter as expeditiously as possible. If the court finds reasonable cause to believe that the alleged father is the natural or presumed father of the child, the court shall enter an order

1 compelling the alleged father to submit to a paternity genetic test. Reasonable cause may be established by
2 affidavit of the child's mother."

3
4 **Section 6.** Section 40-6-107, MCA, is amended to read:

5 **"40-6-107. Determination of father and child relationship -- who may bring action.** (1) Any
6 interested party may bring an action for the purpose of determining the existence or nonexistence of the father
7 and child relationship presumed pursuant to 40-6-105.

8 (2) An action to determine the existence of the father and child relationship with respect to a child
9 who has no presumed father under 40-6-105 may be brought by the child, the mother or personal
10 representative of the child, the department of public health and human services or its appropriate local affiliate,
11 the personal representative or a parent of the mother if the mother has died, a person alleged or alleging to be
12 the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a
13 minor.

14 (3) Regardless of its terms, an agreement, other than an agreement approved by the court in
15 accordance with 40-6-114(2), between an alleged or presumed father and the mother or child does not bar an
16 action under this section.

17 (4) ~~If an action under this section is brought before the birth of the child, all proceedings must be~~
18 ~~stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony. A~~
19 ~~proceeding to adjudicate parentage may be commenced before the birth of the child and an order or judgment~~
20 ~~may be entered before the birth of the child."~~

21
22 **Section 7.** Section 40-6-112, MCA, is amended to read:

23 **"40-6-112. Paternity tests.** (1) The court may, and ~~upon~~on request of a party shall, require the child,
24 mother, or alleged father to submit to paternity tests. If the mother objects to testing while pregnant, a test of the
25 mother or child must be delayed until after the birth of the child. The tests ~~shall~~must be performed by an expert
26 qualified as an examiner of blood types, appointed by the court.

27 (2) The court, ~~upon~~on reasonable request by a party, shall order that independent tests be
28 performed by other experts qualified as examiners of blood types.

(3) In all cases the court shall determine the number and qualifications of the experts."

Section 8. Section 40-6-116, MCA, is amended to read:

"40-6-116. Judgment or order. (1) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

(2) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a substitute birth certificate be issued under 40-6-123.

(3) (a) The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child.

(b) Except when the financial responsibility of a responsible parent is in the process of being determined pursuant to the administrative procedure provided in 40-5-225, the judgment or order must contain a provision concerning the duty of child support.

(c) The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(4) (a) Support judgments or orders ordinarily must be for periodic payments, which may vary in amount.

(b) In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support.

(c) The court may award support from the month of the child's conception, as determined by a licensed health care provider, but may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the court considers just.

(5) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:

(a) the needs of the child, including medical needs;

(b) the standard of living and circumstances of the parents;

- (c) the relative financial means of the parents;
- (d) the earning ability of the parents;
- (e) the need and capacity of the child for education, including higher education;
- (f) the age of the child;
- (g) the financial resources and the earning ability of the child;
- (h) the responsibility of the parents for the support of others;
- (i) the value of services contributed by the custodial parent;
- (j) the cost of day care for the child; and
- (k) any custody arrangement that is ordered or decided upon.

(6) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the parties have entered into an agreement regarding the support amount. A verified representation of a defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

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

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

(d) Child support obligations established under this section are subject to the registration and

1 processing provisions of Title 40, chapter 5, part 9.

2 (7) The judgment or order, whether temporary or final, concerning child support and each
3 modification of a judgment or order for child support must include a medical support order as defined in 40-5-
4 804.

5 (8) (a) Unless an exception is found under 40-5-315 or 40-5-411 and the exception is included in
6 the support order, a support obligation established by judgment, decree, or order under this section, whether
7 temporary or final, and each modification of an existing support obligation made under 40-6-118 must be
8 enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A
9 support order that omits the exception or that provides for a payment arrangement inconsistent with this section
10 is nevertheless subject to withholding for the payment of support without need for an amendment to the support
11 order or for any further action by the court.

12 (b) 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 regular
14 pay period.

15 (c) If an obligor is excepted from paying support through income withholding, the support order
16 must include as part of the order a requirement that whenever the case is receiving services under Title IV-D of
17 the Social Security Act, support payments must be paid through the department of public health and human
18 services as provided in 40-5-909.

19 (9) (a) If the district court establishes paternity or establishes or modifies a child support obligation,
20 the judgment, decree, or order must include a provision requiring the parties to promptly file with the court and
21 to update, as necessary, information on:

22 (i) identity of the party;

23 [(ii) social security number;]

24 (iii) residential and mailing addresses;

25 (iv) telephone number;

26 (v) driver's license number;

27 (vi) name, address, and telephone number of the party's employer; and

28 (vii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier

1 or health benefit plan, the policy identification number, the name of the persons covered, and any other
2 pertinent information regarding coverage or, if the child is not covered, information as to the availability of
3 coverage for the child through the party's employer.

4 (b) The order must further direct that in any subsequent child support enforcement action, upon
5 sufficient showing that diligent effort has been made to ascertain the location of the party, the district court or
6 the department of public health and human services, if the department is providing services under Title IV-D of
7 the Social Security Act, may consider the due process requirements for notice and service of process to be met
8 with respect to the party upon delivery of written notice by regular mail to the most recent address of the party
9 or the party's employer's address reported to the court.

10 (10) A judgment, decree, or order establishing a child support obligation under this part may be
11 modified or adjusted as provided by 40-4-208 or, if the department of public health and human services is
12 providing services under Title IV-D of the Social Security Act, may be modified or adjusted, by the department
13 as provided for in 40-5-271 through 40-5-273, 40-5-277, and 40-5-278.

14 [(11) The social security number of a person subject to a paternity determination under this part must
15 be recorded in the records relating to the matter. The recordkeeper shall keep the social security number from
16 this source confidential, except that the number may be provided to the department of public health and human
17 services for use in administering Title IV-D of the Social Security Act.] (Bracketed language terminates on
18 occurrence of contingency--sec. 1, Ch. 27, L. 1999.)"

19
20 NEW SECTION. **Section 9. Effective date.** [This act] is effective July 1, 2025.

21 - END -