

PARENTAL RIGHTS

LEGISLATOR NOTICE

The Legislative Services Division is required to offer a brief history on the subject matter of a bill draft request prior to drafting (5-4-105, MCA; [Chapter 309, Laws of 2017](#)). The history must include related legislation introduced over the last five sessions and hyperlinks to the bill, hearing information, and fiscal notes. The legislation links below open to the page showing the status and history of bills introduced on this topic in the past. The bill text and any related fiscal notes can be accessed through the link at the top of that page.

Legislation can be complex, and this history is not intended to be exhaustive. Please contact the drafter of the requested bill for more information.

Background Materials and Research

Topic Summary: Parental rights as defined by Black’s Law Dictionary fifth edition means “The sum total of the rights of the parent or parents in and to the child as well as the rights of the child in and to the parent or parent.” Those rights included in this that are protected by the constitution to some amount include: physical possession of child, including day to day care and companionship of child; right to discipline child, which includes the right to instill in the child the parent’s moral and ethical standards; right to control and manage minor child’s earnings and property; right to be supported by adult child; right to have child bear parent’s name; and right to prevent adoption of child without parents’ consent.

The passage of HB676 in the 2023 session expanded and codified parental rights to include control of education and medical decisions and control of data, records, and privacy of the child. HB676 also guaranteed an impartial trial regardless of what party was looking to interfere with or restrict a parental decision. This is reflective of other “Parents Bill of Rights” acts passed in 22 other states and introduced at the federal level. SB518 from the same session expounded on this stating parental rights were broader than those codified in statute and constitutional guarantees at the state and federal level, rather parents retain certain unalienable rights more expansive than those explicitly listed.

Parental rights can be terminated either by the court or through a petition.ⁱ Equally, a parent whose rights were terminated under Montana law may petition the court for reinstatement of those parental rights.ⁱⁱ Factors involved in the termination of parental rights may include denial of paternity, denial in interest of paternity (adoption or waiving of parental rights), determination of an unfit parent, or no relationship with the child. The Department of Health and Human services has been directed to make reasonable efforts not to remove children from the home and in cases where separation has occurred to reunite those families when the fitness of the parents has been determined.ⁱⁱⁱ

Limited parental rights are granted to caretaker relatives to protect the rights of the child, but these are distinct from and do not usurp traditional parental rights, nor do they imply or grant legal guardianship of the minor to the caretaker relative.^{iv} Other means of obtaining parental rights include adoption, granting of legal guardianship, and conservatorship appointment.

Legislative Services Division Materials:

- Final Report: [CPS Studies: HJR 44, HJR 45, and HB 39, 2021-2022 Interim](#)

DPHHS Materials:

- [Child and Family Services Division Website](#)
- Flowchart: CFSD [Field Services Process](#), March 2022

Other Materials:

- Family Ombudsman [Website](#)
- U.S. [H.R. 5](#)

Introduced Legislation

*Chapter number assigned means bill was passed and approved.

2023

[HB560](#) – Chapter Number Assigned - AN ACT REVISING LAWS RELATED TO RELINQUISHMENT OF PARENTAL RIGHTS; ALLOWING PARENTS TO ENTER INTO AGREEMENTS TO MAINTAIN CONTACT WITH THEIR CHILDREN; AND PROVIDING EXCEPTIONS.

[HB603](#) - Chapter Number Assigned - AN ACT PROVIDING FOR THE REINSTATEMENT OF PARENTAL RIGHTS IN CHILD ABUSE AND NEGLECT PROCEEDINGS; PROVIDING THAT A CHILD PETITIONING FOR REINSTATEMENT OF PARENTAL RIGHTS HAS THE RIGHT TO COUNSEL; AMENDING SECTIONS 41-3-425 AND 41-3-602, MCA; REPEALING SECTION 41-3-601, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

[HB657](#) – Died in Standing Committee - AN ACT REVISING LAWS RELATED TO THE OFFICE OF THE CHILD AND FAMILY OMBUDSMAN; ALLOWING A PARENT, FAMILY MEMBER, OR FOSTER PARENT TO SUBMIT A REQUEST FOR ASSISTANCE TO THE OFFICE OF THE CHILD AND FAMILY OMBUDSMAN FOR RETALIATORY ACTION BY A CHILD PROTECTIVE SERVICES EMPLOYEE OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AUTHORIZING THE OFFICE OF THE CHILD AND FAMILY OMBUDSMAN TO INVESTIGATE REPORTS OF RETALIATORY ACTION; REQUIRING THAT COURTS BE NOTIFIED OF FINDINGS OF THE OFFICE OF THE CHILD AND FAMILY OMBUDSMAN; AND AMENDING SECTIONS 41-3-1209, 41-3-1211, 41-3-1212, 41-3-1213, AND 41-3-1215, MCA.

[HB676](#) - Chapter Number Assigned - AN ACT GENERALLY REVISING LAWS REGARDING FUNDAMENTAL PARENTAL RIGHTS; SPECIFYING THAT FUNDAMENTAL PARENTAL RIGHTS ARE EXCLUSIVELY RESERVED TO THE PARENT OF A CHILD WITHOUT OBSTRUCTION OR INTERFERENCE FROM A GOVERNMENT ENTITY; PROVIDING PARENTAL RIGHTS AND RESPONSIBILITIES; PROHIBITING MEDICAL CARE FOR A CHILD WITHOUT PARENTAL CONSENT SUBJECT TO EXCEPTIONS; AMENDING SECTIONS 40-6-701, 41-1-402, 41-1-403, 41-1-405, AND 41-1-407, MCA; REPEALING SECTION 41-1-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

[HB762](#) – Died in Process - AN ACT REVISING LAWS CONCERNING THE BEST INTEREST OF A CHILD IN DETERMINING A PARENTING PLAN; REQUIRING THAT COURTS DETERMINE PARENTING PLANS IN ACCORDANCE WITH THE CONSTITUTIONALLY PROTECTED RIGHTS OF PARENTS; PROVIDING THAT COURTS CONSIDER EVALUATIONS BY PHYSICIANS HEALTH CARE PROVIDERS WHEN CONSIDERING CERTAIN PARENTING FACTORS; PROVIDING A DEFINITION; AND AMENDING SECTION 40-4-212, MCA.

[HB968](#) – Veto Override failed in Legislature - AN ACT PROVIDING FOR PARENTAL CONSULTATION REGARDING A MINOR'S ABORTION; REVISING DEFINITIONS; REVISING CONSENT REQUIREMENTS; REVISING IDENTIFICATION REQUIREMENTS; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 47-1-104, 50-20-501, 50-20-502, 50-20-503, 50-20-504, 50-20-505, AND 50-20-506, MCA; AND PROVIDING AN EFFECTIVE DATE.

[SB181](#) – Chapter Number Assigned - AN ACT PROVIDING FOR THE PROVISION OF CERTAIN INFORMATION TO A PARENT, GUARDIAN, OR OTHER PERSON HAVING PHYSICAL OR LEGAL CUSTODY OF A CHILD WHO IS THE SUBJECT OF A CHILD ABUSE OR NEGLECT INVESTIGATION.

[SB249](#) – Died in Process - AN ACT REVISING REQUIREMENTS FOR TREATMENT PLANS IN CHILD ABUSE AND NEGLECT PROCEEDINGS; REVISING THE REQUIREMENTS FOR ORDERING A TREATMENT PLAN; REVISING REQUIREMENTS FOR ENTERING THE HOME OF A PARENT OR GUARDIAN TO ASSESS COMPLIANCE WITH A TREATMENT PLAN; PROVIDING THAT PARENTS HAVE A RIGHT TO SEEK TREATMENT FROM A PROVIDER OF THEIR CHOOSING; REQUIRING THAT THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES PAY COSTS ASSOCIATED WITH REQUIREMENTS IN TREATMENT PLANS; REQUIRING THAT A TREATMENT PLAN BE PRESENTED TO THE COURT AT THE SHOW CAUSE HEARING OR 20 DAYS AFTER A CHILD IS REMOVED; AND AMENDING SECTION 41-3-443, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

[SB337](#) – Died in Process - AN ACT GENERALLY REVISING LAWS INVOLVING PARENTAL RIGHTS; PROVIDING FOR PARENT INVOLVEMENT IN EDUCATION; PROVIDING THAT PARENTS MAY WITHDRAW THEIR CHILD FROM HARMFUL SCHOOL INSTRUCTION; PROVIDING THAT PARENTS SHALL PROVIDE PRIOR CONSENT IF THEY WANT THEIR CHILD TO RECEIVE SCHOOL INSTRUCTION REGARDING HUMAN SEXUALITY; PROVIDING THAT PARENTS MAY HAVE THEIR CHILD EXCUSED FROM SCHOOL ATTENDANCE FOR RELIGIOUS PURPOSES; ESTABLISHING ADDITIONAL PARENTAL RIGHTS AND RESPONSIBILITIES; PROVIDING THAT, EXCEPT FOR LAW ENFORCEMENT, EMPLOYEES OF GOVERNMENTAL ENTITIES ARE PROHIBITED FROM WITHHOLDING CERTAIN INFORMATION FROM PARENTS; PROVIDING THE SUPERINTENDENT OF PUBLIC INSTRUCTION WITH ENFORCEMENT AUTHORITY; AMENDING SECTIONS 20-5-103, 20-7-120, AND 40-6-701, MCA; AND PROVIDING AN EFFECTIVE DATE.

[SB339](#) – Chapter Number Assigned - AN ACT ESTABLISHING REASONABLE CHILDHOOD INDEPENDENCE LAWS.

[SB368](#) – Died in Standing Committee - AN ACT GENERALLY REVISING LAWS RELATED TO MINORS; REQUIRING INTERVIEWS OF A CHILD IN PARENTING PLAN PROCEEDINGS; PROVIDING ADDITIONAL RIGHTS FOR CHILDREN IN PARENTING PLAN PROCEEDINGS AND CHILD ABUSE AND NEGLECT PROCEEDINGS; REVISING THE DEFINITION OF "BEST INTERESTS OF THE CHILD" IN CHILD

ABUSE AND NEGLECT PROCEEDINGS; PROVIDING AN EXCEPTION AND ADDITIONAL PENALTIES IN PARENTING INTERFERENCE CASES; AND AMENDING SECTIONS 40-4-205, 40-4-212, 40-4-214, 40-4-9 227, 41-3-102, 41-3-437, 41-3-440, AND 45-5-634, MCA.

[SB518](#) – Chapter Number Assigned - AN ACT GENERALLY REVISING LAWS INVOLVING PARENTAL RIGHTS; PROVIDING FOR PARENT INVOLVEMENT IN EDUCATION; PROVIDING THAT PARENTS MAY WITHDRAW THEIR CHILD FROM CERTAIN SCHOOL INSTRUCTION, INCLUDING FOR RELIGIOUS PURPOSES; REQUIRING SCHOOL DISTRICTS TO PROVIDE INFORMATION TO PARENTS ABOUT THE EDUCATIONAL OPPORTUNITIES AVAILABLE TO CHILDREN OF THE DISTRICT; ESTABLISHING ADDITIONAL PARENTAL RIGHTS AND RESPONSIBILITIES; PROVIDING THAT, WITH CERTAIN EXCEPTIONS, EMPLOYEES OF GOVERNMENTAL ENTITIES ARE PROHIBITED FROM WITHHOLDING CERTAIN INFORMATION FROM PARENTS; INCREASING A FILING FEE; AMENDING SECTIONS 20-5-103 AND 25-1-202, MCA; AND PROVIDING EFFECTIVE DATES.

2021

[SB259](#) – Died in Process - AN ACT RESTRICTING A GOVERNMENTAL ENTITY'S ABILITY TO INTERFERE WITH PARENTAL RIGHTS; ESTABLISHING A CAUSE OF ACTION FOR INTERFERENCE WITH PARENTAL RIGHTS; AND PROVIDING AN APPLICABILITY DATE.

[SB282](#) – Died in Process - AN ACT GENERALLY REVISING LAWS RELATED TO THE RIGHT OF PARENTS TO DIRECT, CONTROL, AND REMAIN INFORMED ABOUT A MINOR CHILD'S HEALTH CARE; RESTRICTING THE ABILITY OF A MINOR TO CONSENT TO HEALTH SERVICES; MANDATING THE RELEASE OF RECORDS AND INFORMATION ABOUT A MINOR'S MEDICAL TREATMENT TO THE MINOR'S PARENTS; LIMITING THE ABILITY OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AND LOCAL BOARDS OF HEALTH TO REMOVE MINOR CHILDREN FROM THE HOME FOR THE PURPOSE OF QUARANTINE AND ISOLATION; PROVIDING A PROCESS FOR APPEAL OF THE DECISION TO TERMINATE LIFE-SUSTAINING TREATMENT OF A MINOR CHILD; AND AMENDING SECTIONS 41-1-402, 41-1-403, 41-1-404, 41-7-102, 50-1-204, AND 50-2-118, MCA.

[SB331](#) – Died in Standing Committee - AN ACT GENERALLY REVISING LAWS REGARDING THE PARENTAL CARE, CUSTODY, AND CONTROL OF CHILDREN; REQUIRING GOVERNMENT EMPLOYEES TO NOTIFY PARENTS WHEN A CRIME HAS BEEN COMMITTED AGAINST THEIR CHILD; PROVIDING THAT GOVERNMENT EMPLOYEES MAY NOT ENCOURAGE OR COERCE CHILDREN TO WITHHOLD INFORMATION FROM THEIR PARENTS OR TAKE OTHER ACTIONS IN BAD FAITH; REVISING CHILD ABUSE NEGLECT LAWS REGARDING INFORMATION CONTAINED IN AFFIDAVITS SUBMITTED BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; REVISING CHILD ABUSE AND NEGLECT LAWS TO PROVIDE THAT PARENTS MAY HAVE SUPPORT PERSONS PRESENT AT HEARINGS; REVISING CHILD ABUSE AND NEGLECT LAWS TO REQUIRE THE CONSIDERATION OF FAMILY VALUES WHEN PLACING A CHILD; AMENDING SECTIONS 41-3-202, 41-3-422, 41-3-427, AND 41-3-440, MCA; AND PROVIDING AN APPLICABILITY DATE.

[SB400](#) – Chapter Number Assigned - AN ACT RESTRICTING A GOVERNMENTAL ENTITY'S ABILITY TO INTERFERE WITH FUNDAMENTAL PARENTAL RIGHTS; ESTABLISHING A CAUSE OF ACTION FOR

INTERFERENCE WITH PARENTAL RIGHTS; PROVIDING A FILING FEE; AMENDING SECTION 25-1-202, MCA; AND PROVIDING AN APPLICABILITY DATE.

2019

[HB347](#) – Chapter Number Assigned - AN ACT PROVIDING THAT TITLE 40, CHAPTER 9, MCA, IS NOT AN EXCLUSIVE REMEDY AND A GRANDPARENT IS NOT PRECLUDED FROM SEEKING RELIEF UNDER OTHER STATUTES RELATING TO CHILD CUSTODY AND WELFARE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

[HB561](#) – Died in Process - AN ACT REVISING CHILD CUSTODY LAWS PERTAINING TO THE BEST INTEREST OF A CHILD; REVISING THE PARENTING FACTORS THAT A COURT CONSIDERS IN DETERMINING A PARENTING PLAN; AND AMENDING SECTION 40-4-212, MCA.

[SB202](#) – Died in Standing Committee - AN ACT GENERALLY REVISING GUARDIANSHIP AND CONSERVATORSHIP LAWS; ADOPTING THE UNIFORM GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE ARRANGEMENTS ACT; AMENDING SECTIONS 7-4-3004, 19-2-803, 20-5-320, 30-10-103, 40-6-602, 41-3-444, 47-1-104, 47-1-110, 50-5-1305, 50-9-106, 52-3-207, 52-3-803, 52-3-804, 72-1-103, 72-3-917, 72-5-101, 72-5-602, 72-15-301, 72-31-413, AND 72-38-103, MCA; REPEALING SECTIONS 72-5-102, 72-5-104, 72-5-201, 72-5-202, 72-5-211, 72-5-212, 72-5-213, 72-5-221, 72-5-222, 72-5-223, 72-5-224, 72-5-225, 72-5-231, 72-5-233, 72-5-234, 72-5-301, 72-5-302, 72-5-303, 72-5-304, 72-5-305, 72-5-306, 72-5-311, 72-5-312, 72-5-313, 72-5-314, 72-5-315, 72-5-316, 72-5-317, 72-5-318, 72-5-319, 72-5-320, 72-5-321, 72-5-322, 72-5-324, 72-5-325, 72-5-401, 72-5-402, 72-5-403, 72-5-404, 72-5-405, 72-5-406, 72-5-407, 72-5-408, 72-5-409, 72-5-410, 72-5-411, 72-5-412, 72-5-413, 72-5-414, 72-5-415, 72-5-421, 72-5-422, 72-5-423, 72-5-424, 72-5-425, 72-5-426, 72-5-427, 72-5-428, 72-5-429, 72-5-430, 72-5-431, 72-5-432, 72-5-433, 72-5-434, 72-5-435, 72-5-436, 72-5-437, 72-5-438, 72-5-439, 72-5-444, 72-5-445, 72-5-446, 72-5-447, 72-5-448, 72-5-449, AND 72-5-450, MCA; AND PROVIDING AN APPLICABILITY DATE.

2017

[HB182](#) – Died in Standing Committee - AN ACT DECLARING THE POLICY OF THE STATE OF MONTANA REGARDING YOUTH IN FOSTER CARE AND FOSTER PARENTS; ESTABLISHING A POSITION AND REQUIRING A PROCEDURE TO HANDLE COMPLAINTS; PROVIDING RULEMAKING AUTHORITY; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

[HB399](#) – Died in Standing Committee - AN ACT REVISING CHILD CUSTODY LAWS PERTAINING TO THE BEST INTEREST OF A CHILD; CREATING A REBUTTABLE PRESUMPTION THAT JOINT PHYSICAL CUSTODY IS IN THE BEST INTEREST OF A CHILD; PROVIDING THAT A COURT MAY NOT PREFER ONE PARENT OVER THE OTHER BASED ON THE PARENT'S STATUS AS MOTHER OR FATHER; AND AMENDING SECTION 40-4-212, MCA.

[SB22](#) – Chapter Number Assigned - AN ACT REVISING LAWS RELATED TO TERMINATION OF THE PARENT-CHILD LEGAL RELATIONSHIP WHEN A CHILD IS BORN AS THE RESULT OF SEXUAL INTERCOURSE WITHOUT CONSENT OR SEXUAL ASSAULT; PROVIDING A PROCESS TO TERMINATE THE LEGAL RELATIONSHIP; PROVIDING THAT THE OBLIGATION TO PAY CHILD SUPPORT IS NOT RELIEVED BY THE TERMINATION OF PARENTAL RIGHTS; AND AMENDING SECTION 41-3-607, MCA.

2015

[HB227](#) – Chapter Number Assigned - AN ACT ADOPTING THE 2008 UNIFORM FAMILY SUPPORT ACT; AMENDING SECTIONS 40-5-103, 40-5-143, 40-5-144, 40-5-145, 40-5-146, 40-5-147, 40-5-148, 40-5-149, 40-5-150, 40-5-151, 40-5-152, 40-5-153, 40-5-154, 40-5-157, 40-5-158, 40-5-159, 40-5-160, 40-5-161, 40-5-162, 40-5-163, 40-5-164, 40-5-165, 40-5-166, 40-5-171, 40-5-172, 40-5-173, 40-5-174, 40-5-175, 40-5-176, 40-5-177, 40-5-178, 40-5-179, 40-5-180, 40-5-181, 40-5-183, 40-5-184, 40-5-185, 40-5-186, 40-5-187, 40-5-188, 40-5-189, 40-5-190, 40-5-191, 40-5-192, 40-5-193, 40-5-194, 40-5-195, 40-5-196, 40-5-197, 40-5-272, AND 40-5-923, MCA; AND PROVIDING AN EFFECTIVE DATE.

[HB257](#) – Missed Deadline for General Bill Transmittal - AN ACT DECLARING THE POLICY OF THE STATE OF MONTANA REGARDING YOUTH IN FOSTER CARE AND FOSTER PARENTS.

[HB472](#) – Chapter Number Assigned - AN ACT REVISING LAWS RELATING TO THE OFFICE OF THE CHILD AND FAMILY OMBUDSMAN; PERMANENTLY ESTABLISHING THE OFFICE OF THE CHILD AND FAMILY OMBUDSMAN; PROVIDING POWERS, DUTIES, AND INVESTIGATIVE PROCEDURES OF THE OMBUDSMAN; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO PROVIDE THE OMBUDSMAN WITH CERTAIN REPORTS; PROVIDING PRIVILEGE; TRANSFERRING APPROPRIATION AUTHORITY; AMENDING SECTIONS 41-3-205 AND 41-3-208, MCA; AND PROVIDING AN EFFECTIVE DATE.

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- ⁱ Title 41, chapter 3, part 6, Montana Code Annotated
 - ⁱⁱ 41-3-615, Montana Code Annotated
 - ⁱⁱⁱ 41-3-423, Montana Code Annotated
 - ^{iv} Title 40, chapters 5 and 6, Montana Code Annotated