

## **SJ 22: Study of Family Law Procedures and Alternatives**

### *Parenting Plan Guidelines in Montana District Courts*

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for the Law and Justice Interim Committee  
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#### Background and Purpose

At the September 2013 meeting of the Law and Justice Interim Committee (LJIC), a panelist suggested that implementing standard, statewide parenting guidelines for judges, attorneys, and parents to follow in dissolution or parenting plan cases would be an improvement to Montana's current family law procedures. Subsequently, the LJIC requested more information on parenting plan guidelines.

This paper gives an brief overview of what parenting plan guidelines are and provides a summary of the district courts in Montana that currently incorporate parenting plan guidelines into their local court rules or work.

#### Parenting Plan Guidelines in General

State law requires a final order of dissolution to include a parenting plan if the marriage involves a child. Parents who are not married can petition the court to order a parenting plan if the parents of a child cannot agree on the terms they will use to share parenting. To guide parents and judges in developing and setting parenting plans, several District Courts in Montana use parenting plan guidelines. Numerous other jurisdictions around the country also use some type of parenting plan guidelines.

These guidelines can take many forms and run from one page to a stack of pages. Some guidelines provide worksheets to use in developing a parenting plan. In certain jurisdictions, courts have adopted their guidelines in local court rules; in others, the courts use them to provide assistance to families but decline to adopt the guidelines as formal rules. In at least one state--Indiana--the state supreme court adopted in its court rules a set of "parenting time guidelines". In all cases, the guidelines are never intended to be mandatory or to limit the choices that can be suggested or made by parents setting up a parenting plan or by the court in an order involving a parenting plan. Instead, the guidelines are just that, guides for parents and courts when deciding how best to create a plan to address a child's emotional, physical, developmental, and other needs when parents separate.

Several parenting plan guidelines used in Montana district courts stress that the courts' preference is for the parents to arrive at an agreement in developing a parenting plan and to minimize court involvement in the matter. If the parents are unable to agree, the guidelines provide the parents with what the presiding judge in the district will consider "generally reasonable" when setting out parenting arrangements. These guidelines highlight that they provide only a "general direction" for the parents and that the judge

presiding over the case has the ability to adopt whatever plan will best meet the needs of the children involved.

Typically, parenting plan guidelines suggest how parents can settle a wide range of issues, including:

- how parents can or should communicate with each other;
- the exchange of important documents and health and school information;
- how holidays, birthdays, and summer and school vacations will be handled;
- what clothes will be provided when the child arrives for time with a parent;
- missed parenting time;
- what parenting time might be appropriate for children of different ages and developmental needs;
- providing day care for children; and
- when parents become involved in new relationships.

The list is not an exhaustive one, but it should give the LJIC an idea of the scope of the guidelines and why courts stress that the judge retains the discretion to include in an order the provisions that judge feels will best serve the individual child or children involved.

Given the range of parenting guidelines used by courts, there can be an equally wide range of methods a court uses to develop those guidelines. Generally, a committee or subcommittee of a court drafts the guidelines in consultation with child development specialists, judges, attorneys, psychologists, mediators, mental health providers, and others involved with the court system or child welfare.

Nine of Montana's 22 judicial districts have either adopted parenting plan guidelines in local court rules, reference the use of guidelines, or use an approved set of guidelines but do not reference the guidelines in formal court rules.

The table on the following page lists the judicial districts in Montana that use some type of parenting guidelines. Attached to this paper are the guidelines used by the Fourth Judicial District (Missoula and Mineral Counties). These guidelines are very similar in wording to guidelines used in several other court districts, giving the committee an idea of what is often considered in Montana domestic relations cases that require a parenting plan.

## Parenting Plan Guidelines in Montana District Courts

| Judicial District | Counties  | Use of Guidelines Noted in Local Court Rules? |
|-------------------|---|---|
| 1                 | Lewis and Clark, Broadwater                                       | No  |
| 2                 | Butte-Silver Bow  | Yes <sup>#</sup>                              |
| 3                 | Deer Lodge, Granite, Powell                                       | No  |
| 4                 | Missoula, Mineral   | Yes <sup>#</sup>                              |
| 5                 | Beaverhead, Madison, Jefferson                                    | Yes <sup>^</sup>                              |
| 6                 | Park, Sweet Grass   | Yes <sup>^</sup>                              |
| 7                 | McCone, Prairie, Wibaux, Dawson, Richland                         | No  |
| 8                 | Cascade   | Yes <sup>#</sup>                              |
| 9                 | Glacier, Toole, Pondera, Teton                                    | Yes <sup>#</sup>                              |
| 10                | Fergus, Judith Basin, Petroleum                                   | No  |
| 11                | Flathead  | Yes <sup>1</sup>                              |
| 12                | Liberty, Hill, Chouteau   | No  |
| 13                | Yellowstone   | No  |
| 14                | Golden Valley, Meagher, Musselshell, Wheatland                    | No  |
| 15                | Daniels, Sheridan, Roosevelt                                      | No  |
| 16                | Carter, Custer, Fallon, Garfield, Powder River, Rosebud, Treasure | No  |
| 17                | Blaine, Phillips, Valley  | No  |
| 18                | Gallatin  | No <sup>2</sup>                               |

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<sup>1</sup>The Eleventh Judicial District Court Rules don't reference a parenting plan guidelines, but do provide certain exhibits that reference similar topics to what might be included in guidelines. For the purposes of this report, it is included as a district that has some type of general guidelines about what the court might consider reasonable and appropriate in parenting plan orders.

<sup>2</sup>The Eighteenth Judicial District Court Rules don't mention guidelines, but the district did develop parenting guidelines based on guidelines from Arizona and Oregon. The judges in the Eighteenth District declined to formally adopt the guidelines but they are in use in the District (email correspondence with Judge Michele Snowberger, Belgrade City Court Judge and Chairperson of the Committee on Self-Represented Litigants, which is a committee of the Montana Supreme Court's Access to Justice Commission). These guidelines are available for viewing on the Law and Justice Interim Committee website: [www.leg.mt.gov/ljic](http://www.leg.mt.gov/ljic).

| Judicial District | Counties                     | Use of Guidelines Noted in Local Court Rules? |
|-------------------|------------------------------|---|
| 19                | Lincoln                      | No  |
| 20                | Lake, Sanders                | No  |
| 21                | Ravalli                      | Yes <sup>#</sup>                              |
| 22                | Stillwater, Carbon, Big Horn | No  |

\* Information on judicial districts' parenting plan guidelines was compiled using local court rules gathered on the Judicial Branch website: [http://courts.mt.gov/dcourt/dc\\_rules/default.mcp](http://courts.mt.gov/dcourt/dc_rules/default.mcp). Some districts also post local court rules on county websites and, at times, when information on the Judicial Branch website was inconclusive, the county sites provided additional information.

# The Parenting Guidelines used by the judges of the Fourth Judicial District Court in Missoula and Mineral Counties that are included in this report reference age-specific information about parenting times. All guidelines that use this type of language are denoted with a hashtag.

^ Courts that use guidelines that are similar to those in the Fourth Judicial District Court but do *not* include the age-specific information are marked with ^.

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