

# KEY CONCEPTS IN FAMILY LAW

LAW AND JUSTICE INTERIM COMMITTEE  
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## TITLE 40 AND BEYOND

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Title 40, MCA governs the broad spectrum of issues that make up family law in Montana. From 2014-2023, an [average](#) of over 10,000 family law cases were filed in Montana each year. From marriages begun or ended to highly contested matters of child support and custody, family law is one of the most common ways the average person will encounter the judicial system. While a summary is insufficient to address all matters under the family law umbrella, this report will highlight a few key concepts and distinctions.

## KEY CONCEPTS AND TERMS

### DOMESTIC RELATIONS VS. DEPENDENT-NEGLECT

Family law matters are commonly referred to as domestic relations (DR) cases. DR cases are civil matters in which the State is not an actor. They are initiated when an individual (typically a husband, wife, or parent) petitions the court to resolve a matter that falls under Title 40, MCA. These are separate and distinct from dependent-neglect (DN) cases in which DPHHS investigates allegations of child abuse or neglect. While DR cases can involve allegations of abuse, they are ultimately separate matters.

Family law cases are different than dependent-neglect (DN) cases in which the state is the petitioner and allegations of abuse or neglect are the central issues.

### MARRIAGE

[40-1-103, MCA](#) defines marriage as “a personal relationship between a man and a woman arising out of a civil contract to which the consent of the parties is essential.” Title 40 governs how marriages can be contracted (entered into), maintained, invalidated, or dissolved. Family law matters may also arise between parties who share or care for children but were never married.

### SEPARATION

A court may grant a legal separation if both parties agree. After six months, a separation can become a dissolution.

### DISSOLUTION

Dissolution is the term used for “divorce” in Montana law. Montana is a “no-fault” divorce state, which means a person may obtain a divorce without a showing of wrongdoing or the consent of the other spouse. Before granting a dissolution, the court must find that a marriage is “irretrievably broken.” Some dissolutions can be resolved amicably, while others require the court to make difficult decisions on the division of property and assets, the parenting of any children shared by the parties, support of those children, and in some cases, support for either spouse.<sup>1</sup> Montana is a “fair and equitable” state, which means property is divided in a fair manner that considers both income and homemaking contributions.<sup>2</sup>

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<sup>1</sup> [40-4-104, MCA](#)

<sup>2</sup> [40-4-202, MCA](#)

## PARENTING PLAN

Parenting plans outline how a child’s financial, educational, health, and emotional needs will be met. Montana courts favor the term “parenting time” over “custody” to keep emphasis on the child. Pursuant to [40-4-227, MCA](#), while Montana law recognizes a parent’s right to parental control, it prioritizes the best interest of the child over that right when a parent’s conduct is contrary to the parent-child relationship.

The purposes of a parenting plan as outlined in [40-4-233, MCA](#) are to:

- Protect the best interest 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 and minimize the need for future changes to the parenting plan;
- Set forth the authority and responsibilities of each parent with respect to the child; and
- Encourage the parents to meet their parenting responsibilities through agreements in the plan rather than through judicial intervention.

Pursuant to 40-4-227, MCA, Montana law prioritizes the best interest of the child over the rights of a parent when the parent’s conduct is contrary to the parent-child relationship.

## BEST INTEREST OF THE CHILD

When making decisions regarding parenting plans, the factors the court must consider when determining best interest of the child include:

- The wishes of the child's parents;
- The wishes of the child;
- The interaction of the child with the parents, siblings, and other persons who may impact the child;
- The child’s adjustment to home, school, or community;
- One parent's physical abuse or the threat of physical abuse against either the child or the other parent;
- Chemical dependency or abuse by either parent;
- Continuity and stability of care;
- Developmental needs of the child; and
- Whether a parent has knowingly failed to pay birth costs or child support that the parent is able to pay.

## GUARDIAN AD LITEM

Courts may utilize guardian ad litem (GAL) to represent the interests of children in family law cases. GAL duties as outlined in [40-4-205, MCA](#) include gathering information about the children and their circumstances, and making recommendations to the court about support, parenting, and parental contact.

GALs in family law matters are different from Court Appointed Special Advocates (CASA/GALs) who represent the interests of children in dependent-neglect matters. CASA/GAL duties are outlined in [41-3-112, MCA](#).