

## Montana Family Law – Jurisdiction and Service of Process

By Morgan, Lewis & Bockius LLP – March 31, 2021

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### Custody Determination - Jurisdiction

#### MT ST 40-7-201:

“(1) Except as otherwise provided in 40-7-204, a court of this state has jurisdiction to make an initial child

custody determination only if:

(a) this state is the home state of the child on the date of the commencement of the proceeding or was the home state of the child within 6 months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(b) a court of another state does not have jurisdiction under subsection (1)(a), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under 40-7-108 or 40-7-109, and:

(i) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

(ii) substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

(c) all courts having jurisdiction under subsection (1)(a) or (1)(b) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under 40-7-108 or 40-7-109; or

(d) no state would have jurisdiction under subsection (1)(a), (1)(b), or (1)(c).

(2) Subsection (1) is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

(3) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.”

#### MT ST 40-7-204:

“(1) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(2) If there is no previous child custody determination that is entitled to be enforced under this chapter and a child custody proceeding has not been commenced in a court of a state having jurisdiction under 40-7-201 through 40-7-203, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under 40-7-201 through 40-7-203. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under 40-7-201 through 40-7-203, a child custody determination made under this section becomes a final determination if it so provides and this state becomes the home state of the child.

(3) If there is a previous child custody determination that is entitled to be enforced under this chapter or a child custody proceeding has been commenced in a court of a state having jurisdiction under 40-7-201

through 40-7-203, any order issued by a court of this state under this section must specify in the order a period of time that the court considers adequate to allow the person seeking an order to obtain an order from the state having

jurisdiction under 40-7-201 through 40-7-203. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or until the period expires.

(4) A court of this state that has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under 40-7-201 through 40-7-203, shall immediately communicate with the other court. A court of this state that is exercising jurisdiction pursuant to 40-7-201 through 40-7-203, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section, shall immediately communicate with the court of that state. The purpose of the communication is to resolve the emergency, to protect the safety of the parties and the child, and to determine a period for the duration of the temporary order.”

## **Custody Determination – Service/Notification Requirements**

See Custody Determination - Jurisdiction Section.

## **Paternity and Child Support Proceeding – Jurisdiction**

### **MT ST 40-4-210:**

(1) In a proceeding to establish or modify a child support order, a district court may acquire personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

(a) the individual is personally served with notice within this state in accordance with Rule 4(b), Montana Rules of Civil Procedure;

(b) the individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document that has the effect of waiving any contest to personal jurisdiction;

(c) the individual has resided with the child within this state;

(d) the child was adopted within this state when at least one parent was a resident;

(e) the individual resided in this state and provided prenatal expenses or support for the child;

(f) the child resides in this state as a result of the acts or directives of the individual;

(g) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; or

(h) there is any other basis consistent with the constitutions of this state and the United States for the exercise of the personal jurisdiction.

(2) A district court shall recognize and, if petitioned to do so, enforce according to its terms a child support order issued by a court or administrative agency of another state if the order was made consistent with the full faith and credit provisions of 28 U.S.C. 1738B.

(3) A district court may not establish a subsequent child support order that conflicts with an existing order entitled to recognition under subsection (2) or, except as provided in subsection (6), modify an existing order entitled to recognition under subsection (2).

(4) In interpreting a child support order issued in another state, including the duration of current payments and other obligations of support, a district court shall apply the law of the issuing state.

(5) In an action to enforce arrears under a child support order issued in another state, a district court shall apply the statute of limitations of this state or of the issuing state, whichever provides the longer period of limitation.

(6) A district court has jurisdiction to modify a child support order issued by a court or administrative agency of another state only after meeting the requirements of 40-5-1065, 40-5-1067, and 40-5-1068 and the standards for modification of interstate support orders set out in 28 U.S.C. 1738B.

**MT ST 40-5-1008:**

“(1) In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

- (a) the individual is personally served with notice within this state;
- (b) the individual submits to the jurisdiction of this state by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
- (c) the individual resided with the child in this state;
- (d) the individual resided in this state and provided prenatal expenses or support for the child;
- (e) the child resides in this state as a result of the acts or directives of the individual;
- (f) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;
- (g) the individual asserted parentage of a child in the putative father registry maintained in this state by the department of public health and human services; or
- (h) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(2) The bases of personal jurisdiction set forth in subsection (1) or in any other law of this state may not be used to acquire personal jurisdiction for a tribunal of this state to modify a child support order of another state unless the requirements of 40-5-1065 are met or, in the case of a foreign support order, unless the requirements of 40-5-1069 are met.”

**MT ST 40-6-109:**

“(1) The district court has jurisdiction of an action brought under this part. The action may be joined with an action for dissolution, annulment, separate maintenance, support, or adoption.

(2) For purposes of an action brought under this part, personal jurisdiction is established in the courts of this state over an individual or the individual's guardian or conservator, if:

- (a) the individual is personally served within this state in accordance with Rule 4(b), Montana Rules of Civil Procedure;
- (b) the individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document that has the effect of waiving any contest to personal jurisdiction;
- (c) the individual resided with the child in this state;
- (d) the individual resided in this state and provided prenatal expenses or support for the child;
- (e) the child resides in this state as a result of the acts or directives of the individual;
- (f) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; or
- (g) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(3) The action may be brought in the county in which the child or the alleged father resides or is found or, if the father is deceased, in which proceedings for probate of the father's estate have been or could be commenced.”

## **Paternity and Child Support Proceeding – Service/Notification Requirements**

See Paternity and Child Support Jurisdiction Section.

## **Child Abuse/Neglect Proceeding – Jurisdiction**

### **MT ST 40-6-233:**

“The abuse of parental authority is the subject of judicial cognizance in a civil action brought by the child or by its relative within the third degree or by the county commissioners of the county where the child resides. When the abuse is established, the child may be freed from the dominion of the parent and the duty of support and education enforced. A parent or guardian of a child has the right to give the child medicine prescribed for the child, and exercise of the right is not an abuse of parental authority.”

### **MT ST 41-3-103:**

“(1) Except as provided in the federal Indian Child Welfare Act, in all matters arising under this chapter, a person is subject to a proceeding under this chapter and the district court has jurisdiction over:

- (a) a youth who is within the state of Montana for any purpose;
- (b) a youth or other person subject to this chapter who under a temporary or permanent order of the court has voluntarily or involuntarily left the state or the jurisdiction of the court;
- (c) a person who is alleged to have abused or neglected a youth who is in the state of Montana for any purpose;
- (d) a youth or youth's parent or guardian who resides in Montana;
- (e) a youth or youth's parent or guardian who resided in Montana within 180 days before the filing of a petition under this chapter if the alleged abuse and neglect is alleged to have occurred in whole or in part in Montana.

(2) Venue is proper in the county where a youth is located or has resided within 180 days before the filing of a petition under this part or a county where the youth's parent or guardian resides or has resided within 180 days before the filing of a petition under this part.”

## **Child Abuse/Neglect Proceeding – Service/Notification Requirements**

See Child Abuse/Neglect Proceeding Jurisdiction Section.

## **Divorce and Legal Separation – Jurisdiction**

No independent statute identified.

## **Divorce and Legal Separation – Service/Notification Requirements**

No independent statute identified.

## **Adoption Proceeding – Jurisdiction**

### **MT ST 42-1-104:**

“(1) Proceedings for adoption must be brought in the district court of the county where the petitioners reside.

(2) Petitions for appointment of a confidential intermediary may be filed:

- (a) in the county where the decree of adoption was issued;
- (b) in the county of residence of the petitioner; or

(c) if the petitioner resides out of state, in any county.”

MT ST 42-5-103:

“(1) Upon the filing of a petition for adoption, notice of hearing must be served on:

- (a) a person whose consent to adoption is required under 42-2-301;
  - (b) the department or agency whose consent to adoption is required;
  - (c) the spouse of the petitioner if the spouse has not joined in the petition;
  - (d) a person who has revoked a consent or relinquishment or is attempting to have a consent or relinquishment set aside;
  - (e) the child's guardian ad litem if the child has one; and
  - (f) any other person named by the court to receive notice.
- (2) The notice must direct the person to appear in court at the time specified and to show cause why the petition should not be granted.
- (3) A notice of hearing is not required to be served on any party:
- (a) whose parental rights have been terminated in prior proceedings;
  - (b) who waives notice in a relinquishment, consent, or other document signed by the party;
  - (c) who has consented in writing to an adoption; or
  - (d) whose consent to adoption is not required under 42-2-302.”

## **Adoption Proceeding – Service/Notification Requirements**

See Adoption Proceeding Jurisdiction Section.

## **Domestic Violence – Jurisdiction**

**MT ST 40-15-301:**

“(1) District courts, justices' courts, municipal courts, and city courts have concurrent jurisdiction to hear and issue orders under 40-15-201.

(2) When a dissolution of marriage or parenting action involving the parties is pending in district court, a person may file a petition for an order of protection in a justice's, municipal, or city court only if the district court judge assigned to that case is unavailable or if the petitioner, to escape further abuse, left the county where the abuse occurred. The petitioner shall provide a copy of relevant district court documents to the justice's, municipal, or city court, along with the petition. The justice of the peace, municipal court judge, or city court judge shall immediately certify the pleadings to the original district court after signing an order of protection under this subsection. The district court shall conduct the hearing unless both parties and both courts agree that the hearing may be conducted in the court of limited jurisdiction. If the district court is unable to conduct a hearing within 20 days of receipt of the certified pleadings, it shall conduct a hearing within 45 days of the receipt of the pleadings, unless the hearing is continued at the request of either party for good cause or by the court. If the hearing is continued, the order of protection must remain in effect until the court conducts the hearing.

(3) If one of the parties to an order of protection files for dissolution of marriage or files a parenting action after the order of protection is filed but before the hearing is conducted, the hearing must be conducted in the court in which the order of protection was filed. Either party may appeal or remove the matter to the district court prior to or after the hearing. If the district court is unable to conduct a hearing within 20 days of receipt of the certified pleadings, the district court shall conduct a hearing within 45 days of receipt of the pleadings. The hearing may be continued at the request of either party for good cause or by the court. If the hearing is continued, the order of protection must remain in effect until the court conducts the hearing.

- (4) An action brought under this chapter may be filed in the county where the petitioner currently or temporarily resides, the county where the respondent resides, or the county where the abuse occurred. There is no minimum length of residency required to file a petition under this chapter.
- (5) The right to petition for relief may not be denied because the petitioner has vacated the residence or household to avoid abuse.
- (6) An order of protection issued under this section is effective throughout the state. Courts and law enforcement officials shall give full faith and credit to all orders of protection issued within the state.
- (7) A certified copy of an order of protection from another state, along with proof of service, may be filed in a Montana court with jurisdiction over orders of protection in the county where the petitioner resides. If properly filed in Montana, an order of protection issued in another state must be enforced in the same manner as an order of protection issued in Montana.”

## **Domestic Violence– Service/Notification Requirements**

See Domestic Violence Jurisdiction Section.

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