

Montana Legal Services Association

The Ultimate DIY Guide to Divorce and Custody in Montana



Providing, protecting, and enhancing access to justice.

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The Ultimate DIY Guide to Divorce and Custody in Montana

In this article you will learn about:

- Filing for a Divorce
- During a Divorce Lawsuit
- After a Divorce
- Filing a Parenting Plan
- Child and Medical Support
- During a Parenting Plan Lawsuit
- After a Parenting Plan Lawsuit

Summary

Montana Legal Services Association created this article to help you through a divorce or parenting case in Montana. We recommend that everyone with a family law issue in Montana read this article. Knowing your rights, and the rights of the other person, might save you time, money, and stress later on.

The information in this article applies to both parties in a divorce or parenting case. There is helpful information about what happens at the beginning, during, and after divorce or parenting case. We added lots of links in the online version to more information and do-it-yourself forms that you can use in Montana Courts.

Many people are able to represent themselves in a divorce or parenting case. But, if you have any questions, it is a good idea to talk to a lawyer. You'll find links to legal help in this article. So, if you get stuck on a question, we recommend that you contact a lawyer.

What if my spouse or partner has hurt me or the children? There are a few important things to know if you are leaving a violent or abusive relationship. The end of a violent relationship is sometimes the most dangerous point for the victim and children. There may be free legal and non-legal help for people leaving a domestic violence relationship. It is a good idea to come up with a safety plan. You may also want to look into getting an Order of Protection. It is important to know that the Court may base some of its decisions on safety concerns for the parents and/or children.

Filing for a Divorce

In Montana, the legal name for a divorce is a "Dissolution of Marriage." The law refers to the divorcing spouses as "the parties to the Dissolution."

The **Petitioner** is the party who first asks the Court for a Dissolution. The Petitioner asks the Court for a Dissolution by filing a **Petition for Dissolution** with the Clerk of District Court.

The **Respondent** is the other spouse. The Respondent may have a say in what happens in the Dissolution by filing an **Answer to Petition for Dissolution**. The Respondent must file an Answer within 21 days after getting served with the Petition for Dissolution.

If there are minor children from the marriage, the Dissolution must include a Parenting Plan. Montana law no longer uses the words "custody" and "visitation." Instead, it uses "parenting" to promote the idea that both parents should be involved in the children's lives. The Court documents will say parenting instead of custody or visitation. We will use the words parenting instead of custody in this article as well.

Filing a Petition for Dissolution does not end the marriage right away. It starts a Court process to decide how to split the spouses' property and debts, and how to make parenting decisions. After all issues have been resolved, the Court ends the marriage by ordering a **Final Decree of Dissolution**.

Who Can File for a Dissolution in Montana?

Either spouse may file for a Dissolution in Montana only if Montana has **jurisdiction** over your case. Montana has jurisdiction over your Dissolution if one spouse has resided in Montana for at least 90 days before filing a petition. When there are children from the marriage under 18, they must have resided in Montana for at least six months before you can file for a Dissolution in the state. There are a few exceptions, mostly related to safety issues for the children or a spouse. In general, Montana Courts only have jurisdiction if the children have resided in the state for at least six months before filing a petition.

You can find the laws that talk about jurisdiction in Montana Code Annotated (M.C.A.) § 40-4-211. The "§" is a symbol that means section. 40 is the Title. 4 is the Chapter. And, 211 is the Part. If you have questions about filing for a Dissolution in Montana, talk to a lawyer.

Where Do I File for Dissolution in Montana?

You must file a Dissolution in a District Court in the county where the venue is proper. A county may be a proper venue if:

- One or both spouses live in the county,
- One or both spouses own real property in the county,
- The children live in the county,
- Or, the children have important ties to the county, like where they go to school or see their doctor.

Based on your situation, there could be more than one county that may be a proper venue. If you have questions about which county to file in, talk to a lawyer.

How Does the Court Decide If You Can Get a Dissolution?

The legal reasons you must show to get a Dissolution are called the **grounds for Dissolution**. In Montana, the grounds for Dissolution are "**an irretrievable breakdown in the marriage**." When you ask the Court for a Dissolution, you must state in the Petition that there is an irretrievable breakdown in the marriage. To show that there is an irretrievable breakdown, you must tell the Court that either:

- You have lived separate and apart for 180 days before filing for the Dissolution, or
- That there is serious marital discord which adversely affects the attitude of one of the parties.

The form for a Petition for Dissolution on this website includes the language you need to tell the Court the grounds for Dissolution.

No Fault Dissolution

In Montana you do not have to show that one person is at fault for the breakdown of the marriage. Your spouse does not have to agree to get a divorce. And, you do not need to prove that there has been wrong-doing by one of the spouses.

Default Dissolution

A **default judgment** is what the Court awards you if the other spouse does not answer a Petition for Dissolution. The other spouse, the Respondent, has 21 days to file an Answer to the Petition after they are served with a copy of it. After 21 days, the Clerk of Court can enter a default judgment. The spouse who filed the petition still must file paperwork to ask for a hearing to get a Final Decree of Dissolution. The Petition for Dissolution packet on this website has the paperwork to ask for a default.

If you get a default judgment, the Court will grant you everything you asked for in the Petition, as long as the Court finds that your request is "equitable." Equitable means fair. Equitable does not always mean that everything is split up evenly. If there are children, the Court also must find that your Proposed Parenting Plan is in the best interests of the children.

Joint Dissolution

If both you and your spouse can agree to all the terms of your Dissolution, you may file for a Joint Dissolution. That means that you must agree on the parenting of the children and how to divide property and debt for a Joint Petition. With a Joint Dissolution, both you and your spouse are Co-Petitioners. You will both sign the Petition and the Parenting Plan. If you can agree to do a Joint Dissolution, the Court process for getting a Dissolution may be quicker and simpler.

Annulment

Montana law does not use the word annulment. Instead, it uses the term **Declaration of Invalidity of Marriage**. Only a District Court Judge may issue a Declaration of Invalidity of Marriage. It states that the marriage was not valid because of such things as:

- Fraud, or
- Incapacity to enter the marriage (like, being underage or incapacitated).

There are only specific circumstances when a Judge in Montana will issue a Declaration of Invalidity of Marriage. You can find the law for Declaration of Invalidity of Marriage, often called annulment, at M.C.A. § 40-1-402.

Legal Separation

A Legal Separation is different than just separating from your spouse and living somewhere else. You must ask the Court for a Legal Separation. Like a Dissolution, your spouse does not have to agree to the Legal Separation. But, if one spouse objects and wants a Dissolution instead, they may change the Legal Separation into a Dissolution case.

The requirements for a Legal Separation are generally the same as for a Dissolution. But, a **Decree of Separation does not end the marriage**. You cannot legally remarry if you get a Legal Separation. And, both spouses may still be responsible for each other's debts.

Six months after a Judge decrees a Legal Separation, either party may ask the Court to change the Decree of Separation into a Final Decree of Dissolution. A Decree of Dissolution is what the Judge orders to end the marriage. The other spouse can't object to the decree being turned into a Dissolution. If you want to file for a Legal Separation, it is a good idea to talk to a lawyer.

Temporary Economic Restraining Order

When you file for a Dissolution, the Clerk of Court will automatically put in a Temporary Economic Restraining Order. The Order prevents either spouse from getting rid of their property, "except in the usual course of business or for the necessities of life" or to pay reasonable attorney's fees. The Order says such things as both spouses may **not** change the beneficiaries of their insurance coverage while the Dissolution is pending.

The Order will be included in the Summons and served on the other spouse with the Petition. A Temporary Economic Restraining Order is a normal part of every Dissolution.

This temporary order ends once the Dissolution is finalized. You can learn more about what the law says about a Temporary Economic Restraining Order in M.C.A. § 40-4-121.

What do I put in the Petition or Answer to Dissolution?

The person who starts a Dissolution will ask for what they want from the divorce in their Petition for Dissolution. The other spouse may ask for what they want in their Answer to Petition for Dissolution. A Dissolution will address issues like:

- Where the children will live and what contact they will have with each parent
- Child support and medical support for the children
- Who will keep what real property, like land and homes
- Who will keep what personal property, like furniture, animals, and cars
- How to divide financial assets, like savings and retirement accounts, and
- Who will be responsible for which debts.

Parenting

If there are minor children from the marriage, a Dissolution must include a Parenting Plan. The Court will order a Parenting Plan that it finds to promote the best interests of the child. We will talk more about Parenting Plans later in the Parenting Plan section below.

Property

The Court will split the property and debts of the marriage equitably. In deciding what is equitable, the Court will consider many factors, including:

- The duration of the marriage;
- The age, health, occupation, income, vocational skills, estate, liabilities, and needs of both parties;
- The parenting arrangements, if children are involved;
- Whether maintenance has been granted;
- The opportunity for both parties to acquire income and assets in the future; and
- The contribution of a spouse as a homemaker to the family.

Equitable means fair. Equitable does not always mean that everything is split up evenly. For example, if one spouse needs a truck for work, the Court may give it to that spouse even if the other car is worth much less. You can learn more about what the law says about how to divide property in M.C.A. § 40-4-202.

When filling out your Dissolution forms, it is helpful to have gathered as much information about your financial situation as possible. You must include all the property and debts that you know about. Be as specific as possible. For example, describe a credit card debt as "Capitol One Visa for \$200." When deciding how you want to divide property and debts, it is a good idea to think about the factors we talked about earlier that the Court will consider. You want to ask for what you can live with and what you think is fair based on your specific situation.

Major Property

The Court refers to property like houses or land as **real property**. Married people may have a right to part of each other's pensions or retirement accounts. We strongly recommend you talk to a lawyer if you or your spouse own any:

- Homes
- Land
- Retirement accounts
- Pensions from work.

Personal Property

The law refers to property that you can move as personal property. For example, cars, furniture, jewelry, stocks, and bonds are personal property. The forms for a Dissolution on this website have spaces for asking the Court how you want to divide personal property. It is a good idea to ask in your Petition or Answer that one party remove their name from the title of the other person's property within 20 days after the Court grants a Final Decree.

Debts

You are not responsible for the debts your spouse had before you were married or after you are divorced. But, creditors can collect from you on your joint debts from the marriage. These debts often include utility bills, credit cards, and contracts you both signed.

Notify joint creditors of your separation as soon as possible. Only you and your ex-spouse are parties to your Dissolution. This means that creditors are not required to honor the Court's division of debts. You may have to go back to the District Court if the Court Order is not being followed by your ex-spouse.

Maintenance (Alimony):

Maintenance is often called alimony. Maintenance refers to money one spouse pays to the other, separate from child support. You may want to ask for maintenance in your Petition or Answer if:

- You have been married for several years,
- You lack the means to provide for yourself,
- You are unable to support yourself through employment, and
- The other spouse has the means to help you financially.

You can find what the law in Montana says about maintenance in M.C.A. § 40-4-203.

During a Divorce Lawsuit

The legal term for a divorce lawsuit in Montana is a **Dissolution Proceeding**. Filing a Petition for Dissolution only starts the process. It does not immediately end a marriage. The marriage only ends when the Court issues a **Final Decree of Dissolution**. A Dissolution Proceeding may require one or more Court hearings, depending on how much the spouses disagree.

When the spouses disagree, the divorce becomes a **contested case**. The Court may issue a **Scheduling Order** at that time. A Scheduling Order lays out a timeline and requirements for the parties to move towards a trial. Not all divorces go to trial. Sometimes parties can come to an agreement during a contested case. The Court will often order the parties to **Mediation** to settle differences before the trial.

Mediation

Mediation is a way to solve your problems out of court. Both spouses are allowed to have a lawyer with them at mediation.

The mediator is the person that runs the mediation. A mediator is a trained neutral third party who does not take sides. A mediator tries to help you and the other spouse come to an agreement that you can both live with and can be filed and ordered by the Court.

The mediator does not testify in court, make decisions, or blame anyone. But, the mediator will always file a report after mediation to tell the court if the parties came to any agreement. The report should only say:

- If mediation was successful,
- When it happened, and
- How long it took.

The mediator will not blame any spouse or make statements about what they said during mediation in their report.

If you and the other spouse cannot make any agreements, then mediation will stop. The mediator will file a report to let the Court know that the parties did not come to an agreement.

If the mediator is able to help you and the other spouse come to an agreement, they will help you write out that agreement. That agreement will be called **Stipulated**. Stipulated means that the parties agree to it. There may be more than one stipulated document. For example, you may come up with a Stipulated Parenting Plan. Or, you might come up with a Stipulated Division of Debts and Assets.

You can have a lawyer look over agreements that you come to during mediation. The mediator will file a report saying that mediation was successful. The mediator may include a copy of the stipulated documents with their report.

You or the other party would then file a **Motion** asking the Court to adopt the stipulated document.

Important: Mediation may not be right for you if:

- There is or has been domestic violence in the relationship; Or,
- One parent has physically, emotionally, or sexually abused the child.

If you don't think mediation is right for you because of any of the above, you will need to notify the Court. To notify the Court:

- Check the Order for Mediation for guidance on what to do if mediation is not appropriate,
- Ask the Clerk of Court or Self Help Law Center if they have a local form to ask the Court to excuse you from mediation; and/or
- File a written Motion that says why mediation is not right for you. In your Motion, you will need to refer to the specific law saying when mediation is not appropriate. You can find that law at M.C.A § 40-4-301.

Important: Sometimes people decide to do mediation even if they or their children have experienced abuse. In these cases, each spouse will need to provide written, informed consent to mediation. You can check with the Clerk of Court or Self Help Law Center to see if they have a form for giving consent to mediation in these cases.

Temporary Orders

During a legal proceeding, either party may file a **Motion** to ask the Court to make a decision or take some action. Either spouse may file a Motion to ask the Court to issue certain **temporary orders** during a Dissolution Proceeding. Below are common temporary orders.

Temporary Maintenance

If you have been married to your spouse for several years and need temporary financial help, you may want to ask for a Temporary Maintenance Order. A request for maintenance usually is not appropriate in a default Dissolution. If your spouse is likely to disagree with temporary maintenance, you will likely need the help of a lawyer.

Temporary Child Support

A Temporary Child Support Order will order one parent to pay child support during the Dissolution proceeding. It may be a good idea to ask for temporary child support if:

- The Court or the Montana Child Support Enforcement Agency hasn't already established child support
- You need money from the other parent to take care of the children.

You may ask for temporary child support by filing a Motion for Temporary Child Support. Again, this might not be appropriate for a default Dissolution or Parenting Plan. If you have questions, talk to a lawyer.

Temporary Family Support Orders

A Judge may issue a Temporary Family Support Order dealing with all sorts of financial issues during the Dissolution Proceeding. You or the other side may request this from the Court through a Motion. This order does not replace orders for temporary maintenance or child support.

The order may make one or both spouses use specific income to pay certain bills. For example, if one spouse still lives in the home but has trouble keeping up on the mortgage, the Court may order the other spouse to make all or part of the mortgage

payments from their salary. Asking for a Temporary Family Support Order may be a good idea if:

- One spouse doesn't earn enough to pay some of the marital debts, and/or
- The spouses cannot agree about who should pay what bills.

You may find what the law says about Temporary Family Support Orders in M.C.A. §40-4-121. You will likely need help from a lawyer.

Declaration of Assets, Debts, Income, and Expenses

Montana law requires both parties to the Dissolution to give the other party a list of their assets, debts, income, and expenses within 60 days of serving the Petition. This document is called the Preliminary Declaration of Disclosure of Assets, Debts, Income, and Expenses. The Petition for Dissolution packet on this website includes this form. If **both** parties agree in writing or in Court, the exchange of preliminary declarations of disclosure may be waived.

The law also requires you and the other spouse to exchange final declarations of disclosure before the case goes to trial or before the parties reach an agreement. But, you may waive the final disclosure requirements if your spouse does not file an Answer to Petition for Dissolution and the Court grants you a default judgment. Except in the case of a default judgment, the parties may **not** agree to waive the exchange of final disclosures.

The Court may accept the other spouse's statement as true if you do not file your own. You may get charged with Contempt of Court, be fined, or punished in some other way, if you make any purposefully false statements about your financial situation.

After the Divorce Lawsuit

When the Court grants your Dissolution, it will issue a **Final Decree of Dissolution**. A Final Decree legally ends the marriage and changes your status from married to single. You will get a **conformed copy** of the Decree. A conformed copy is a copy that the Clerk of Court signs to say it is an exact copy of the original. Keep a copy of the Decree in a safe place. You may also want to request a **Certified Copy** which may cost a small amount but will be useful when having to show the Decree to other government agencies. Make sure to follow the orders in the Decree, including:

- Paying your part of the marital debts as soon as possible; and
- Making sure vehicle and other titles are signed over to the right person.

If You Get Support Payments Directly from Your Ex-Spouse:

- Keep a written record of all payments; and
- Make copies of all checks, and keep them in a safe place.

If You Changed Your Name as Part of the Dissolution:

- Keep a Certified Copy of the Decree as proof of the name change;
- Notify the Social Security Administration (SSA) and complete the forms to receive a new identification card;
- Update your driver's license with the Department of Motor Vehicles;
- Change your name on other important legal papers. For example, powers of attorney, living wills, trusts, and contracts; and
- Notify other people and institutions with whom you have contact. For example, friends and family, employers, schools, post office, banks, creditors, telephone and utility companies, insurance agencies, the Public Assistance office, etc.

Some Tax Issues to Keep in Mind:

- The IRS assumes that the parent who actually has the children most of the time should get the exemptions. The IRS may not rely on schedule in the Parenting Plan. But, parents are allowed to trade tax exemptions back and forth, using IRS Form 8332.
- Your marital status for tax filing is set as of the last day of the year. If you are still married on December 31 (and you file as of a calendar year, as most people do), you must file as married (either jointly or separately). If you are divorced as of December 31, you must file single (either as head of household or not).
- Contact a tax professional if you have more questions or think you may be eligible for other tax credits. You can also learn more by reading our article on Divorce and Taxes.

Parenting Plan Section Begins on Next Page

Filing a Parenting Plan

Montana law no longer uses the words “custody” and “visitation.” Instead, it uses “parenting” to promote the idea that both parents should be involved in the children’s lives as long as it is safe and in the children’s best interests.

The **Petitioner** is the party who first asks the Court for a Parenting Plan by filing a **Petition for Parenting Plan** with the Clerk of District Court. The Petition will include a **Proposed Parenting Plan** which lays out what the Petitioner wants for parenting.

The **Respondent** is the other parent. The Respondent will be able to state what they would like in a Parenting Plan by filing an **Answer to Petition for Parenting Plan**. The Respondent must file an Answer within 21 days after getting served with the Petition for Parenting Plan.

You can find the forms that you can use to file a Petition for Parenting Plan and an Answer to Petition for Parenting Plan on this website.

If you and the other parent are getting a divorce, you must include a Parenting Plan in your Dissolution of Marriage. You will file your Parenting Plan paperwork with the same Clerk of Court where you file your Dissolution of Marriage paperwork.

Filing a Petition for Parenting Plan does not establish a parenting schedule right away. It starts a Court process to decide where the children will live, what kind of contact the children will have with each parent, how the parents will make decisions about the child, and other things as well. The Parenting Plan lawsuit ends when the Court orders a **Final Parenting Plan**.

Who Can File for a Parenting Plan in Montana?

Either parent may file for a Parenting Plan in Montana only if Montana has **jurisdiction** over the children. Montana has jurisdiction over the children if they have lived in Montana for at least six months before a parent files a Petition for Parenting Plan. There are some exceptions. Most exceptions deal with safety concerns for the children or one of the parents. If you are in a dangerous situation and need to file a Parenting Plan before your children have lived in Montana for six months, talk to a lawyer.

You can find the laws that talk about jurisdiction in Montana Code Annotated (M.C.A.) § 40-4-211. The “§” is a symbol that means section. 40 is the Title. 4 is the Chapter. And, 211 is the Part. If you have questions about if you can file for a Parenting Plan in Montana, talk to a lawyer.

Where Do I File for a Parenting Plan in Montana?

You must file a Parenting Plan with the Clerk of District Court in the county where the venue is proper. A county may be a proper venue if:

- One or both parents live in the county,
- The children live in the county,
- Or, the children have important ties to the county, like where they go to school or see their doctor.

Based on your situation, there could be more than one county that may be a proper venue. If you have questions about which county to file in, talk to a lawyer.

How does the Court decide parenting?

The Court will determine a Parenting Plan based on what it believes are the "**best interests of the child.**" When deciding what is in the best interests of the child, the court will consider these factors along with others:

- 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 significantly impact the child;
- 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.

You can find the law that talks about the factors the Court will consider when deciding the best interests of the child at Montana Code Annotated (M.C.A.) § 40-4-212.

Remember, the "§" is a symbol that means section. 40 is the Title. 4 is the Chapter.

And, 212 is the Part. If you have questions about the best interest of the child, talk to a lawyer.

Local Parenting Plan Guidelines

We also recommend that you check with the Clerk of Court or your nearest Self Help Law Center to see if they have local Parenting Plan Guidelines. You can think of the guidelines as a way to add more direction to what the law says a Court should look at when deciding parenting. The Court will likely base its decisions on its local guidelines.

Can you limit the other parent's time with the children?

Montana law assumes that it is best for the child if both parents have frequent and ongoing contact with the child. Ideally, both parents will spend close to equal time with their child when it is in the child's best interests. It is not necessary in all cases for children to spend exactly the same amounts of time with each parent.

Sometimes it is **not** in the best interests of the child to have frequent contact with a parent. The Court may decide to limit contact and/or order supervised visitation with that parent if it is necessary to protect the child from harm. The Court may hold a hearing to decide if it is in the best interests of the child to limit parenting time.

When deciding whether to limit and/or order supervised visitation, the Court will consider such things as:

- Evidence of physical abuse by one parent against the other parent or child
- Evidence of threats of physical abuse by one parent against the other parent or child.
- Substance abuse by a parent.

The Court will also consider whether one parent has been convicted of:

- Murder
- Sexual assault or rape
- Child endangerment
- Partner or family member assault
- Sexual abuse of children
- Strangulation of a partner or family member.

The Court may consider convictions for other crimes when deciding whether to limit contact.

The Court may also consider other issues when limiting parenting time. For example, the Court may consider:

- Child development
- Nursing needs of an infant
- Untreated mental health issues that impact the child
- Availability and location of the parents.

The forms on this website have room for you to ask for limited contact and/or supervised visitation. If you have any questions, talk to a lawyer.

May I terminate the other parent's rights?

Filing a Petition for Parenting Plan does not terminate a parent's rights. It only sets out things like where the children will live, how much time the children will spend with each parent, and how decisions will be made about the children. Terminating parental rights means that the parent has no rights at all to interact with the children, and does not pay future child support. A parent whose rights were terminated may still be ordered to pay back child support.

In general, you may only ask the Court to terminate the other parent's rights through a step-parent adoption. If the other parent does not agree to have their parental rights terminated, they may ask for a Court-appointed lawyer to represent them in the step-parent adoption case. The parent asking for the step-parent adoption does not have the same right to a Court-appointed lawyer. The step-parent adoption forms on this website are only for when both parents agree.

There are other unique situations when you may be able to terminate a parent's rights without a step-parent adoption. In those cases, the Court may also appoint a lawyer to represent the parent at risk of losing their rights. You can learn more by reading our article on Termination of Parental Rights in Montana. If you have any questions about adoption or terminating parental rights, talk to a lawyer right away.

Setting up a residential schedule

Parenting Plans can be general or very specific in stating where the children will be at different times. For example, the plan can state who the children will live with before the children start school, while they are in school, during summer and winter vacations, and for different holidays and other special occasions.

The more specific you make your Parenting Plan, the less you and the other parent will be able to disagree over vague or unclear language. It also will be easier to enforce if the other parent violates the plan. For example, you should use language like, "the first and third weekends of the month from 5:00 p.m. Friday to 5:00 p.m. Sunday" rather than just "every other weekend." Do not use general language such as "reasonable visitation" if you are worried that the other parent will not follow the plan or that you will have disagreements over what "reasonable" means. Detailed language on the exact parenting schedule may also make it easier for enforcement by law enforcement as well as the Courts.

It is also a good idea to think about how you want to exchange your children with the other parent. If you and the other parent often get into disagreements, you might want to include specific information about how you will exchange the children for visits. If the other parent has been abusive to you in the past, you might want to set up a meeting place for the exchange somewhere that is safe and public. For example, the parking lot of a busy restaurant or store. You may also want to check in your area for a professional supervised visitation and exchange center that you can use.

The forms for Parenting Plans on this website have sections where you can ask for specific rules for residential schedules and exchanges for the children. The forms let you ask for specific parenting time during the school year, vacations, weekends, holidays, and special occasions like birthdays.

We have interactive forms that create a legal document based on answers that you give in an online interview.

We also have write-in-the-blank forms that you can print out and fill in by hand.

Child and Medical Support

The Court will include a Child Support Order in the Final Parenting Plan. One or both parents may have to pay child support. Child support must be within guidelines set by the Child Support Enforcement Division (CSED). When you have good reason for why child support should be different than what has been calculated, you may ask the Court to consider a different amount. There are three ways to come up with child support within the guidelines:

- Hire a private lawyer to calculate child support
- Open a case with the Child Support Enforcement Division (CSED)
- Use the free Montana Online Child Support Calculator.

What are the Child Support Guidelines?

The Court will order a child support amount that it finds is reasonable or necessary for raising the child. Marital misconduct does not affect the amount for child support. The Court will base the amount of child support on:

- The financial resources available to the child;
- The financial resources available to each parent (income, pensions, etc.);
- The standard of living the child would have had if the parents were still together;
- The child's emotional, educational, and medical needs;
- The age of the child;
- The cost of day-care; and
- How much time the child spends with each parent.

A private lawyer, CSED, and the free Montana Online Child Support Calculator will likely all come up with a Child Support Order that meets the guidelines. A private lawyer may be a good option if you have the money and a complicated situation. The Montana Online Child Support Calculator is a good option if you know the other parent's financial situation, and neither parent gets any temporary income. An example of temporary income could be money from seasonal work. Opening a case with the Child Support Enforcement Division (CSED) is a good option if you are having trouble using the Montana Online Child Support Calculator and cannot hire a lawyer. CSED can also help with enforcing the child support Order as can the Court.

Learn more about the Montana Online Child Support Calculator.

Financial Affidavit

One important factor in figuring the child support amount is **how much each parent is earning**. Both parents should complete a Child Support Guidelines Financial Affidavit. You must sign this document in front of a notary, swearing that the information in it is true. You are also required to attach copies of your pay stubs or other documentation of your income.

The Montana Online Child Support Calculator will help you come up with a Financial Affidavit. CSED or a private lawyer will use the Financial Affidavit to come up with a child support calculation.

If you do not already have a Child Support Order, the law requires you to file a copy of Financial Affidavit with the Court and serve a copy on the other parent as a part of your Dissolution and/or Parenting Plan case.

What does unemployment do to Child Support?

A parent is still responsible for paying child support even if:

- Their income is unknown, or
- They are unemployed.

In general, the court assumes that everybody could be working 40 hours each week and earning at least minimum wage unless you can show with good reason why you cannot work 40 hours a week. The amount of money you would make from a full time job at the minimum wage is "imputed" to each parent. Imputed means the Court assumes that parent could make that much money.

The court may impute higher than minimum wage if the parent has a higher potential to make more money. Education level and work history may affect your earning potential. For example, if one parent made \$75,000 a year for a few years and then took another job at \$50,000 a year, the Court may impute a higher wage based on the parent's earning potential.

How are the Child Support payments made?

Child support payments are generally made by automatic income withholding. Automatic income withholding is when child support comes out of your paycheck. The Court may choose to order a parent to pay child support through another way if it finds a good reason why income withholding is not appropriate.

Income also can be withheld if the child support payment is late. The Court uses the word "delinquent" for late payments. Support is considered delinquent if it is 8 days overdue. If you and the children get public assistance under Temporary Assistance to Needy Families (TANF), the child support payments must be made through CSED.

Notifying the Child Support Enforcement Division

If you are already getting services from CSED, or if you get public assistance under TANF, you must notify CSED that you have filed for a Dissolution of Marriage and/or Parenting Plan. The Parenting Plan packet that you can download from this website has a notice to CSED.

Medical Insurance

Every Child Support Order also must include a section about who will pay for the medical insurance and medical expenses of the minor children.

The general rule is that a parent who has medical insurance available through their employment must cover the children if the insurance is available at a reasonable cost. If both parents have health plans, they may both provide coverage for the children.

Sometimes the court will order both parents to pay premiums, deductibles, or other health care expenses based on percentages determined by the child support guidelines. For example, one parent may have to pay one-third of the expenses, while the other parent pays two-thirds. The obligation to provide medical insurance ends when the child support obligation ends.

You can read what the law says about medical and child support at M.C.A. § 40-5-805, M.C.A. § 40-5-806, M.C.A. § 40-5-807, and M.C.A. § 40-5-808.

During a Parenting Plan Lawsuit

The legal term for a parenting lawsuit in Montana is a **Parenting Plan Proceeding**. Filing a Petition for Parenting Plan only starts the process. It does not immediately establish a parenting schedule. The Court establishes a parenting schedule when it orders a Parenting Plan.

Sometimes a Court will order an **Interim Parenting Plan** during the Parenting Plan Proceeding. A Parenting Plan Proceeding ends when the Court orders a **Final Parenting Plan**. A Parenting Plan Proceeding may require one or more Court hearings, depending on how much the parents disagree and how complicated the issues are.

During a legal proceeding, either party may file a **Motion** to ask the Court to make a decision or take some action. Either parent may file a Motion to ask the Court to issue certain **Orders** during a Parenting Plan Proceeding. If the other parent does not agree with the Motion, they may file a **Response to Motion** to explain why they disagree with the Motion. In general, after a parent files a Motion, the Court will schedule a hearing to hear from both parents and make a decision.

Below are common orders during a Parenting Plan Proceeding.

Mediation

The Court will often order the parents to mediation. The Court may order mediation more than once. Mediation is a way to solve your problems out of court. Both parents are allowed to have a lawyer with them at mediation.

The mediator is the person that runs the mediation. A mediator is a trained neutral third party who does not take sides. A mediator tries to help you and the other parent come to an agreement that you can both live with and can be filed and ordered by the Court.

The mediator does not testify in court, make decisions, or blame anyone. But, the mediator will always file a report after mediation to tell the court if the parties came to any agreement. The report should only say:

- If mediation was successful,
- When it happened, and
- How long it took.

The mediator will not blame any parent or make statements about what they said during mediation in their report.

If you and the other person cannot make any agreements, then mediation will stop. The mediator will file a report to let the Court know that the parties did not come to an agreement.

If the mediator is able to help you and the other parent come to an agreement, they will help you write out that agreement. That agreement is called a **Stipulated Parenting Plan**. You can have a lawyer look over the Stipulated Parenting Plan. The mediator will file a report saying that mediation was successful. The mediator may include a copy of the Stipulated Parenting Plan with their report.

You or the other party would then file a **Motion** asking the Court to adopt the Stipulated Parenting Plan.

Important: Mediation may not be right for you if:

- There is or has been domestic violence in the relationship; Or,
- One parent has physically, emotionally, or sexually abused the child.

If you don't think mediation is right for you because of any of the above, you will need to notify the Court. To notify the Court:

- Check the Order for Mediation for guidance on what to do if mediation is not appropriate,
- Ask the Clerk of Court or Self Help Law Center if they have a local form to ask the Court to excuse you from mediation; and/or

- File a written Motion that says why mediation is not right for you. In your Motion, you will need to refer to the specific law saying when mediation is not appropriate. You can find that law at M.C.A § 40-4-301.

Important: Sometimes people decide to do mediation even if they or their children have experienced abuse. In these cases, each parent will need to provide written, informed consent to mediation. You can check with the Clerk of Court or Self Help Law Center to see if they have a form for giving consent to mediation in these cases.

Interim Parenting Plan

You can ask the Court for an Interim Parenting Plan if you need a temporary parenting schedule during the Parenting Plan Proceeding. You may want an Interim Parenting Plan if:

The children are in danger

You fear one parent will run away with the children

You and the other parent cannot agree on parenting time during the Parenting Plan Proceeding.

You ask the Court for an Interim Parenting Plan by filing a **Motion for Interim Parenting Plan** and an **Affidavit**. You may also file a **Brief in Support** of your Motion.

The Brief is where you make a legal argument on why you are asking the Court to order an Interim Parenting Plan. You must base your legal argument on what the law says and the facts of your case. As an example, a brief might say, “The Petitioner and Respondent cannot agree on regular parenting times. It is in the best interest of the child that the Court order my Interim Parenting Plan.”

The Brief will talk about facts in the Affidavit. An Affidavit is a sworn statement only about facts. You do not make an argument in an Affidavit. An Affidavit will have statements like, “I asked to have parenting time on weekends. The Respondent said I could only have parenting time every other weekend.” A lawyer can help you decide what information to put in your Motion, Brief, and Affidavit. You will need to file your Motion for Interim Parenting Plan with the Court overseeing the parenting case, and serve the other party. You can find a blank Motion Packet you may use to ask for an Interim Parenting Plan on this website.

Order to Show Cause

If one parent is not following the Judge's orders during a Parenting Plan Proceeding, the other parent may file a **Motion to Show Cause**. For example, if the Court orders and Interim Parenting Plan, and the other parent is not following it, you may want to file a Motion to Show Cause.

The Motion to Show Cause asks the Court to schedule a hearing for the other parent to explain why they are not following the Judge's orders.

To learn more, read our article about the 10 Steps to Take When the Other Parent Won't Follow the Parenting Plan.

Important: Filing a Motion to Show Cause is a serious step to take. There are risks to filing a Motion to Show Cause. There may be other options as well. It is a good idea to talk to a lawyer before filing a Motion to Show Cause.

Going to Court

You always file paperwork for a Parenting Plan case with the Clerk of District Court. The Court may schedule one or more hearings to address issues brought up in paperwork filed in the Parenting Plan Proceeding or at earlier hearings.

A hearing is when both parents will meet with the Judge in a formal setting. The Court will issue an **Order Setting a Hearing**. Usually, the order will have information about what the hearing will be about. The order will also say the time of the hearing and how long it will last.

Make sure you carefully read and understand the order scheduling the hearing and any Motions either parent may have filed asking for the hearing. You will want to make sure that you stick to the point of the hearing and not bring up other issues unless they are related.

Each parent will have the opportunity to explain their side of the story. At some hearings, the Judge will allow each parent (or their lawyer if they have one) to ask the other parent questions. The Court calls this "**cross examination**."

The Judge may also ask both parents questions about the facts they stated and legal arguments they made in their court paperwork or during the hearing.

Here are some tips for representing yourself at a hearing:

1. Show up at least 15 minutes early.
2. Dress like you're going to an important job interview.
3. Always address the Judge as "Your Honor" or "Judge."
4. Be respectful to everyone. That includes the other parent, Judge, Court staff, and other people in the Court.
5. Bring the Court documents you and the other parent filed. Make sure the Court papers are organized.
6. Bring your evidence. Make sure that your evidence is organized so that you can easily find it. You don't want to make the hearing more stressful if you have to dig through papers. Make sure to have copies ready for yourself, the Court and the other side if you want the Judge to look at written evidence or pictures.
7. Bring an outline of what you want to say. You can also bring questions that you want to ask the other parent.
8. Do not bring your children unless the Court has ordered the children to be there.
9. Wait your turn to speak. You do not want to interrupt the other parent and especially the Judge.
10. Speak clearly when it is your time. Make sure the Judge and other parent can understand you. You won't get what you want if the Judge cannot understand or hear you.
11. Ask questions. If you do not understand something, you have the right to ask for more information so that you understand. Just remember to be respectful, as hearings can be stressful.
12. Make sure you understand what to do next before you leave.

Follow all Court Orders. The Judge may give you verbal orders during the hearing. You must follow those. A Judge may also issue written orders throughout the case. You'll need to follow those as well. The Clerk of Court will mail you the Judge's written orders at the address they have on file for you.

If you are confused about what exactly the Judge has ordered during a hearing, it is a good idea to ask for clarification. If you are having a hard time understanding a Judge's written orders, you'll want to have a lawyer look them over.

After a Parenting Plan Lawsuit

The Parenting Plan Proceeding ends when the Court issues a **Final Parenting Plan**. The Final Parenting Plan will say where the children will live, what kind of contact the

children will have with each parent, and how the parents will make decisions about the child. The Final Plan will also include a Medical and Child Support Order.

It is important that you follow the Final Parenting Plan. This includes following:

- The residential schedule for the children
- Guidelines for when, where, and how to exchange the children
- How parenting decisions will be made
- Child support
- Medical support
- Updating the Court about changes to your personal information.

If you have any questions about your Final Parenting Plan, talk to a lawyer.

Updating the Court with information

Parenting Plans must require both parties to update the court with changes to the following information:

- Your Social Security number,
- Your residential and mailing addresses,
- Your telephone number,
- Your driver's license number,
- Your employer's name, address, and telephone number,
- If the children are covered by a health or medical insurance plan, the name of the plan, the policy identification number, and the names of the persons covered;
and
- If the children are not covered, information about availability of coverage through the party's employer.

If you are concerned that updating the Court with this information will put you in danger, let the Court know. The Clerk of Court or Self Help Law Center may have a local form to notify the Court. Or, you may need to file a written Motion to ask the Court to keep certain information private.

If you move

Before you move, you must file a **Notice of Intent to Move** with the Clerk of District Court, and serve the other parent with the Notice. If your move will significantly affect

the child's contact with the other parent, you must file and serve the Notice of Intent to Move **at least 30 days before you move**. You must also include a **Proposed Amended Parenting Plan**.

You can find what the law says about a Notice of Intent to Move at M.C.A § 40-4-217.

On this website you can find more information and the forms for filing a Notice of Intent to Move.

Changing your Parenting Plan

Most Parenting Plans have a section that says the parents must go to **mediation** before asking the Court to change their Parenting Plan. The idea is to avoid having the parents go back to court each time there is a disagreement. Ideally, a Parenting Plan will be written so that there is little need to change it as the children grow up.

If you and the other parent agree on changes to the Parenting Plan, you may file a **Motion to Amend Parenting Plan (Agreed)**.

If you and the other parent cannot agree on changes, the steps for changing a Parenting Plan are complicated. You may ask the Court to change a Parenting Plan by filing a **Motion to Amend Parenting Plan**. Usually, you must file the Motion with the same Court that ordered your Final Parenting Plan.

In general, to change a Parenting Plan when the other parent does not agree you must show the Court:

- It has been six months since ordering the Final Parenting Plan, And
- There has been a significant change in circumstances, And
- A new plan is necessary to protect the child's best interests.

You can find the law for changing your Parenting Plan at M.C.A § 40-4-219. If you are thinking about changing your Parenting Plan, it is a good idea to talk to a lawyer.

If a parent doesn't follow the Parenting Plan

It is serious if one parent does not follow the court ordered Parenting Plan. Not following a Parenting Plan can cause stress to the parents and the child. A parent can ask the court to change custody if one parent is not following it. A parent can be held in contempt of court for violating a Parenting Plan. A parent could face criminal charges for not following a Parenting Plan. You must follow your part of the plan, even when the other parent is not following the Parenting Plan. Two wrongs do not make a right.

You have options and steps that you can take when the other parent is not following the Parenting Plan. Usually, you do not want to rush to court or call the police when the other parent is not following a Parenting Plan unless there is an emergency or immediate safety concern.

Learn more by reading our article [10 Steps for When the Other Parent Won't Follow the Parenting Plan](#).

Tax issues to keep in mind

The IRS assumes that the parent who actually has the children most of the time should get the exemptions. The IRS may not rely on schedule in the Parenting Plan. But, parents are allowed to trade tax exemptions back and forth, using IRS Form 8332.

If you are having problems with the IRS, you can apply for free legal help from Montana Legal Services Association.

FIND WHERE TO GO FOR MORE HELP ON NEXT PAGE

How do I get more help?

Montana Legal Services Association (MLSA) provides free civil legal help to low-income people. Contact us to see if you qualify:

- Apply anytime online at mtlsa.org;
- Call our Helpline at 1-800-666-6899 (Helpline hours are limited).

What help can I find at MLSA?

- Legal advice and representation;
- Referrals to volunteer attorneys and other providers;
- Self-help clinics and materials.

www.MontanaLawHelp.org

Need legal information or forms? Visit www.MontanaLawHelp.org.

Can't find what you want? Use LiveHelp. Click on the LiveHelp icon and get help finding the information you need.

www.MTLISA.org

Find copies of all our brochures online. They are all available for free download!

This pamphlet is meant to give basic legal information, not legal advice about your problem. The law changes often and each case is different. We recommend you talk to an attorney about your legal problem.