

HOUSE BILL NO. 25

INTRODUCED BY CODY

IN THE HOUSE

DECEMBER 27, 1990	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 7, 1991	FIRST READING.
JANUARY 15, 1991	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
	PRINTING REPORT.
JANUARY 17, 1991	SECOND READING, DO PASS.
JANUARY 18, 1991	ENGROSSING REPORT.
JANUARY 19, 1991	THIRD READING, PASSED. AYES, 91; NOES, 1.
	TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 21, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 6, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
FEBRUARY 9, 1991	SECOND READING, CONCURRED IN.
FEBRUARY 11, 1991	THIRD READING, CONCURRED IN. AYES, 48; NOES, 0.
	RETURNED TO HOUSE.

IN THE HOUSE

FEBRUARY 12, 1991	RECEIVED FROM SENATE.
FEBRUARY 21, 1991	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 25

2 INTRODUCED BY CODY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAWS
5 RELATING TO ADOPTIONS TO REQUIRE A 72-HOUR PERIOD AFTER
6 BIRTH BEFORE A RELINQUISHMENT OF PARENTAL RIGHTS MAY BE
7 EXECUTED; AMENDING SECTIONS 40-6-125, 40-6-135, AND
8 40-8-109, MCA; AND PROVIDING AN EFFECTIVE DATE."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 **Section 1.** Section 40-6-125, MCA, is amended to read:

12 "40-6-125. Children born out of wedlock --
13 relinquishment -- consent. (1) If the mother of a child born
14 out of wedlock proposes to relinquish the child for adoption
15 and the relinquishment or consent of the birth father cannot
16 be obtained, the child may not be placed for adoption until
17 the parental rights of the father are terminated by the
18 court as provided in this part, by the court pursuant to
19 Title 41, chapter 3, or by a court of competent jurisdiction
20 in another state or country.

21 (2) Pending the termination or other disposition of the
22 rights of the father of the child born out of wedlock, the
23 mother may execute a relinquishment, in accordance with
24 40-6-135(2) through (5), terminating her rights to the
25 child. If the mother relinquishes the child, the agency of

1 the state of Montana ~~or the~~, a licensed adoption agency, or
2 the person to whom the child is relinquished may file a
3 petition under this part or a petition of dependency or
4 neglect pursuant to Title 41, chapter 3. Pending disposition
5 of the petition, the court may enter an order authorizing
6 temporary care of the child.

7 (3) At the request of the mother, her execution of a
8 relinquishment ~~shall~~ must be delayed until after the court
9 has determined the identity of the father and has awarded
10 custody of the child to the father or terminated his rights
11 under this part."

12 **Section 2.** Section 40-6-135, MCA, is amended to read:

13 "40-6-135. Relinquishment of parental rights -- form,
14 execution, and revocation. (1) Any A parent or guardian who
15 proposes to relinquish custody of a child for purposes of
16 placing the child for adoption may do so by executing a
17 relinquishment by which all parental rights to the child are
18 voluntarily relinquished to the department of family
19 services or, a licensed adoption agency, or the prospective
20 adoptive parents. A parent may not execute a relinquishment
21 to the department or a licensed adoption agency unless the
22 department or the agency has agreed to accept custody of the
23 child until the child is adopted.

24 (2) A relinquishment may be executed at any time,
25 except that a birth mother may not execute a relinquishment

1 before the child is 72 hours old.

2 †2†(3) Except as otherwise provided in this section, a
3 relinquishment ~~shall~~ must be by a separate instrument
4 executed before a notary public.

5 †3†(4) If the person from whom a relinquishment is
6 required is a member of any of the armed services or is in
7 prison, the relinquishment may be executed and acknowledged
8 before any person authorized by law to administer oaths.

9 †4†(5) If the relinquishment is executed in another
10 state or country, the court having jurisdiction over the
11 adoption proceeding in this state shall determine whether
12 the relinquishment was executed in accordance with the laws
13 of that state or country and may not proceed unless it finds
14 that the relinquishment was so executed.

15 †5†(6) Upon the filing of a properly and voluntarily
16 executed relinquishment of a child by a parent or guardian,
17 the court shall immediately issue an order terminating the
18 rights of that parent or guardian to that child. If the
19 rights of both parents, the surviving parent, or the
20 guardian have been terminated and if the department of
21 family services or a licensed adoption agency has agreed to
22 accept custody of the child until the child is adopted, the
23 court shall issue an order committing the child to the
24 department or to the licensed adoption agency to which the
25 relinquishment was given.

1 †6†(7) Entry of an order terminating the rights of both
2 parents pursuant to subsection †5† (6) terminates the
3 jurisdiction of the district court over the child in any
4 divorce or separate maintenance action.

5 †7†(8) Upon petition of a person who executed a
6 relinquishment and of the department of family services or
7 the licensed adoption agency to which the child was
8 relinquished, the court with which the relinquishment was
9 filed may grant a hearing to consider whether the
10 relinquishment should be revoked. A relinquishment may not
11 be revoked if the child has been placed for adoption. A
12 verbatim record of testimony related to the petition ~~shall~~
13 must be made."

14 **Section 3.** Section 40-8-109, MCA, is amended to read:

15 "40-8-109. Placement for adoption by parents. (1) No A
16 parent may not make a placement of a child for adoption with
17 an individual who is not a stepparent or a member of the
18 child's extended family unless the parent files with the
19 district court for the county in which the prospective
20 adoptive parent or the parent making the placement resides:

21 (a) a notice of parental placement; and
22 (b) a relinquishment of parental rights to the
23 prospective adoptive parents executed voluntarily and in
24 accordance with 40-6-135(2) through †4† (5).

25 (2) The notice of parental placement and the

1 relinquishment ~~shall~~ must be filed prior to a parent's
 2 placement of the child with an individual who intends to
 3 adopt the child. The notice of parental placement ~~shall~~ must
 4 contain the following information:

5 (a) the name and address of each birth parent, if
 6 known, and if unknown, the steps taken to ascertain the
 7 whereabouts of the parent or parents;

8 (b) the name and address of each prospective adoptive
 9 parent;

10 (c) the name and address or expected date and place of
 11 birth of the child; and

12 (d) the name and address of counsel, guardian ad litem,
 13 or other representative, if any, for each of the parties in

14 (a) through (c) of subsection (2).

15 (3) Upon receipt of a notice of parental placement and
 16 a relinquishment, the court shall require that the
 17 department examine the child and conduct interviews with the
 18 birth parents and prospective adoptive parents and report to
 19 the court within 30 days but not earlier than 5 days after
 20 the birth of the child. The report must state whether the
 21 following requirements for placement have been met:

22 (a) that the decision to place was voluntarily made by
 23 the birth parents;

24 (b) that the department has no temporary authority to
 25 investigate or provide protective services to the family

1 under 41-3-402;

2 (c) that the birth parents or their representatives
 3 have provided the court with the report required by
 4 40-8-136;

5 (d) that the prospective adoptive parents have been
 6 provided a medical and social history of the child and birth
 7 parents; and

8 (e) that the proposed placement is in the child's best
 9 interest.

10 (4) The department may contract with licensed social
 11 workers and licensed child-placing agencies to conduct the
 12 investigations and prepare the report to the court ordered
 13 pursuant to subsection (3).

14 (5) The department may charge the prospective adoptive
 15 parents a fee, commensurate with costs, for the
 16 investigation and report.

17 (6) Within 45 days of filing of the notice of parental
 18 placement and the relinquishment, the court shall schedule a
 19 hearing to consider the proposed placement.

20 (7) (a) At least 5 days' notice of the time and place
 21 of the hearing must be given to the birth parents, the
 22 prospective adoptive parents, any named guardian ad litem,
 23 and the department.

24 (b) The hearing ~~shall--be~~ is closed to all persons
 25 except those persons entitled to notice and their

1 representatives or counsel.

2 (8) If the court finds that all requirements for
3 placement have been met, the court may issue an order or
4 schedule a hearing for the purpose of terminating parental
5 rights and granting temporary custody to the prospective
6 adoptive parents. The prospective adoptive parents **must**
7 shall file their petition to adopt within 30 days of the
8 order.

9 (9) If the court finds that all requirements for the
10 adoptive placement have not been met, the court may issue
11 any order appropriate to protect the child."

12 NEW SECTION. **Section 4.** Effective date. [This act] is
13 effective July 1, 1991.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 25
INTRODUCED BY CODY

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAWS
RELATING TO ADOPTIONS TO REQUIRE A 72-HOUR PERIOD AFTER
BIRTH BEFORE A RELINQUISHMENT OF PARENTAL RIGHTS MAY BE
EXECUTED; AMENDING SECTIONS 40-6-125, 40-6-135, AND
40-8-109, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-6-125, MCA, is amended to read:

"40-6-125. Children born out of wedlock --
relinquishment -- consent. (1) If the mother of a child born
out of wedlock proposes to relinquish the child for adoption
and the relinquishment or consent of the birth father cannot
be obtained, the child may not be placed for adoption until
the parental rights of the father are terminated by the
court as provided in this part, by the court pursuant to
Title 41, chapter 3, or by a court of competent jurisdiction
in another state or country.

(2) Pending the termination or other disposition of the
rights of the father of the child born out of wedlock, the
mother may execute a relinquishment, in accordance with
40-6-135(2) through (5), terminating her rights to the
child. If the mother relinquishes the child, the agency of

the state of Montana ~~or the~~, a licensed adoption agency, or
the person to whom the child is relinquished may file a
petition under this part or a petition of dependency or
neglect pursuant to Title 41, chapter 3. Pending disposition
of the petition, the court may enter an order authorizing
temporary care of the child.

(3) At the request of the mother, her execution of a
relinquishment ~~shall~~ must be delayed until after the court
has determined the identity of the father and has awarded
custody of the child to the father or terminated his rights
under this part."

Section 2. Section 40-6-135, MCA, is amended to read:

"40-6-135. Relinquishment of parental rights -- form,
execution, and revocation. (1) Any A parent or guardian who
proposes to relinquish custody of a child for purposes of
placing the child for adoption may do so by executing a
relinquishment by which all parental rights to the child are
voluntarily relinquished to the department of family
services ~~or~~, a licensed adoption agency, or the prospective
adoptive parents. A parent may not execute a relinquishment
to the department or a licensed adoption agency unless the
department or the agency has agreed to accept custody of the
child until the child is adopted.

(2) A relinquishment may be executed at any time,
except that a birth mother may not execute a relinquishment

1 before the child is 72 hours old.

2 ~~†2†~~(3) Except as otherwise provided in this section, a
3 relinquishment ~~shall~~ must be by a separate instrument
4 executed before a notary public.

5 ~~†3†~~(4) If the person from whom a relinquishment is
6 required is a member of any of the armed services or is in
7 prison, the relinquishment may be executed and acknowledged
8 before any person authorized by law to administer oaths.

9 ~~†4†~~(5) If the relinquishment is executed in another
10 state or country, the court having jurisdiction over the
11 adoption proceeding in this state shall determine whether
12 the relinquishment was executed in accordance with the laws
13 of that state or country and may not proceed unless it finds
14 that the relinquishment was so executed.

15 ~~†5†~~(6) Upon the filing of a properly and voluntarily
16 executed relinquishment of a child by a parent or guardian,
17 the court shall immediately issue an order terminating the
18 rights of that parent or guardian to that child. If the
19 rights of both parents, the surviving parent, or the
20 guardian have been terminated and if the department of
21 family services or a licensed adoption agency has agreed to
22 accept custody of the child until the child is adopted, the
23 court shall issue an order committing the child to the
24 department or to the licensed adoption agency to which the
25 relinquishment was given.

1 ~~†6†~~(7) Entry of an order terminating the rights of both
2 parents pursuant to subsection ~~†5†~~ (6) terminates the
3 jurisdiction of the district court over the child in any
4 divorce or separate maintenance action.

5 ~~†7†~~(8) Upon petition of a person who executed a
6 relinquishment and of the department of family services or
7 the licensed adoption agency to which the child was
8 relinquished, the court with which the relinquishment was
9 filed may grant a hearing to consider whether the
10 relinquishment should be revoked. A relinquishment may not
11 be revoked if the child has been placed for adoption. A
12 verbatim record of testimony related to the petition ~~shall~~
13 must be made."

14 **Section 3.** Section 40-8-109, MCA, is amended to read:

15 **"40-8-109. Placement for adoption by parents.** (1) **No A**
16 parent may not make a placement of a child for adoption with
17 an individual who is not a stepparent or a member of the
18 child's extended family unless the parent files with the
19 district court for the county in which the prospective
20 adoptive parent or the parent making the placement resides:

- 21 (a) a notice of parental placement; and
22 (b) a relinquishment of parental rights to the
23 prospective adoptive parents executed voluntarily and in
24 accordance with 40-6-135(2) through ~~†4†~~ (5).

25 (2) The notice of parental placement and the

1 relinquishment ~~shall~~ must be filed prior to a parent's
 2 placement of the child with an individual who intends to
 3 adopt the child. The notice of parental placement ~~shall~~ must
 4 contain the following information:

5 (a) the name and address of each birth parent, if
 6 known, and if unknown, the steps taken to ascertain the
 7 whereabouts of the parent or parents;

8 (b) the name and address of each prospective adoptive
 9 parent;

10 (c) the name and address or expected date and place of
 11 birth of the child; and

12 (d) the name and address of counsel, guardian ad litem,
 13 or other representative, if any, for each of the parties in
 14 (a) through (c) of subsection (2).

15 (3) Upon receipt of a notice of parental placement and
 16 a relinquishment, the court shall require that the
 17 department examine the child and conduct interviews with the
 18 birth parents and prospective adoptive parents and report to
 19 the court within 30 days but not earlier than 5 days after
 20 the birth of the child. The report must state whether the
 21 following requirements for placement have been met:

22 (a) that the decision to place was voluntarily made by
 23 the birth parents;

24 (b) that the department has no temporary authority to
 25 investigate or provide protective services to the family

1 under 41-3-402;

2 (c) that the birth parents or their representatives
 3 have provided the court with the report required by
 4 40-8-136;

5 (d) that the prospective adoptive parents have been
 6 provided a medical and social history of the child and birth
 7 parents; and

8 (e) that the proposed placement is in the child's best
 9 interest.

10 (4) The department may contract with licensed social
 11 workers and licensed child-placing agencies to conduct the
 12 investigations and prepare the report to the court ordered
 13 pursuant to subsection (3).

14 (5) The department may charge the prospective adoptive
 15 parents a fee, commensurate with costs, for the
 16 investigation and report.

17 (6) Within 45 days of filing of the notice of parental
 18 placement and the relinquishment, the court shall schedule a
 19 hearing to consider the proposed placement.

20 (7) (a) At least 5 days' notice of the time and place
 21 of the hearing must be given to the birth parents, the
 22 prospective adoptive parents, any named guardian ad litem,
 23 and the department.

24 (b) The hearing ~~shall--be~~ is closed to all persons
 25 except those persons entitled to notice and their

1 representatives or counsel.

2 (8) If the court finds that all requirements for
3 placement have been met, the court may issue an order or
4 schedule a hearing for the purpose of terminating parental
5 rights and granting temporary custody to the prospective
6 adoptive parents. The prospective adoptive parents must
7 shall file their petition to adopt within 30 days of the
8 order.

9 (9) If the court finds that all requirements for the
10 adoptive placement have not been met, the court may issue
11 any order appropriate to protect the child."

12 NEW SECTION. **Section 4.** Effective date. [This act] is
13 effective July 1, 1991.

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17 the parental rights of the father are terminated by the
18 court as provided in this part, by the court pursuant to
19 Title 41, chapter 3, or by a court of competent jurisdiction
20 in another state or country.

21 (2) Pending the termination or other disposition of the
22 rights of the father of the child born out of wedlock, the
23 mother may execute a relinquishment, in accordance with
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25 except that a birth mother may not execute a relinquishment

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 18 placement and the relinquishment, the court shall schedule a
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5 rights and granting temporary custody to the prospective
6 adoptive parents. The prospective adoptive parents must
7 shall file their petition to adopt within 30 days of the
8 order.

9 (9) If the court finds that all requirements for the
10 adoptive placement have not been met, the court may issue
11 any order appropriate to protect the child."

12 NEW SECTION. Section 4. Effective date. [This act] is
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REFERENCE BILL

1 before the child is 72 hours old.

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3 relinquishment ~~shall~~ must be by a separate instrument
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13 of that state or country and may not proceed unless it finds
14 that the relinquishment was so executed.

15 ~~†5†~~(6) Upon the filing of a properly and voluntarily
16 executed relinquishment of a child by a parent or guardian,
17 the court shall immediately issue an order terminating the
18 rights of that parent or guardian to that child. If the
19 rights of both parents, the surviving parent, or the
20 guardian have been terminated and if the department of
21 family services or a licensed adoption agency has agreed to
22 accept custody of the child until the child is adopted, the
23 court shall issue an order committing the child to the
24 department or to the licensed adoption agency to which the
25 relinquishment was given.

1 ~~†6†~~(7) Entry of an order terminating the rights of both
2 parents pursuant to subsection ~~†5†~~ (6) terminates the
3 jurisdiction of the district court over the child in any
4 divorce or separate maintenance action.

5 ~~†7†~~(8) Upon petition of a person who executed a
6 relinquishment and of the department of family services or
7 the licensed adoption agency to which the child was
8 relinquished, the court with which the relinquishment was
9 filed may grant a hearing to consider whether the
10 relinquishment should be revoked. A relinquishment may not
11 be revoked if the child has been placed for adoption. A
12 verbatim record of testimony related to the petition ~~shall~~
13 must be made."

14 **Section 3.** Section 40-8-109, MCA, is amended to read:

15 **"40-8-109. Placement for adoption by parents.** (1) No A
16 parent may not make a placement of a child for adoption with
17 an individual who is not a stepparent or a member of the
18 child's extended family unless the parent files with the
19 district court for the county in which the prospective
20 adoptive parent or the parent making the placement resides:

21 (a) a notice of parental placement; and
22 (b) a relinquishment of parental rights to the
23 prospective adoptive parents executed voluntarily and in
24 accordance with 40-6-135(2) through ~~†4†~~ (5).

25 (2) The notice of parental placement and the

1 relinquishment ~~shall~~ must be filed prior to a parent's
 2 placement of the child with an individual who intends to
 3 adopt the child. The notice of parental placement ~~shall~~ must
 4 contain the following information:

5 (a) the name and address of each birth parent, if
 6 known, and if unknown, the steps taken to ascertain the
 7 whereabouts of the parent or parents;

8 (b) the name and address of each prospective adoptive
 9 parent;

10 (c) the name and address or expected date and place of
 11 birth of the child; and

12 (d) the name and address of counsel, guardian ad litem,
 13 or other representative, if any, for each of the parties in

14 (a) through (c) of subsection (2).

15 (3) Upon receipt of a notice of parental placement and
 16 a relinquishment, the court shall require that the
 17 department examine the child and conduct interviews with the
 18 birth parents and prospective adoptive parents and report to
 19 the court within 30 days but not earlier than 5 days after
 20 the birth of the child. The report must state whether the
 21 following requirements for placement have been met:

22 (a) that the decision to place was voluntarily made by
 23 the birth parents;

24 (b) that the department has no temporary authority to
 25 investigate or provide protective services to the family

1 under 41-3-402;

2 (c) that the birth parents or their representatives
 3 have provided the court with the report required by
 4 40-8-136;

5 (d) that the prospective adoptive parents have been
 6 provided a medical and social history of the child and birth
 7 parents; and

8 (e) that the proposed placement is in the child's best
 9 interest.

10 (4) The department may contract with licensed social
 11 workers and licensed child-placing agencies to conduct the
 12 investigations and prepare the report to the court ordered
 13 pursuant to subsection (3).

14 (5) The department may charge the prospective adoptive
 15 parents a fee, commensurate with costs, for the
 16 investigation and report.

17 (6) Within 45 days of filing of the notice of parental
 18 placement and the relinquishment, the court shall schedule a
 19 hearing to consider the proposed placement.

20 (7) (a) At least 5 days' notice of the time and place
 21 of the hearing must be given to the birth parents, the
 22 prospective adoptive parents, any named guardian ad litem,
 23 and the department.

24 (b) The hearing ~~shall--be~~ is closed to all persons
 25 except those persons entitled to notice and their

1 representatives or counsel.

2 (8) If the court finds that all requirements for
3 placement have been met, the court may issue an order or
4 schedule a hearing for the purpose of terminating parental
5 rights and granting temporary custody to the prospective
6 adoptive parents. The prospective adoptive parents must
7 shall file their petition to adopt within 30 days of the
8 order.

9 (9) If the court finds that all requirements for the
10 adoptive placement have not been met, the court may issue
11 any order appropriate to protect the child."

12 NEW SECTION. Section 4. Effective date. [This act] is
13 effective July 1, 1991.

-End-