

THE MINUTES OF THE MEETING OF THE HOUSE JUDICIARY COMMITTEE
November 16, 1981

The meeting was called to order at 7:00 p.m. by Chairman Keyser. The meeting was held in Room 436 of the State Capitol Building. Members of the House Judiciary Committee include:

Rep. Hubert Abrams	Rep. Dennis Iverson
Rep. Robert Anderson	Rep. Michael Keedy
Rep. Gary Bennett	Rep. Kerry Keyser, Chairman
Rep. Dave Brown	Rep. John Matsko
Rep. Alison Conn	Rep. Jean McLane
Rep. Aubyn Curtiss	Rep. Art Shelden
Rep. Fritz Daily	Rep. Carl Seifert, Vice Chairman
Rep. Ralph Eudaily	Rep. Wes Teague
Rep. Tom Hannah	Rep. Dan Yardley
Rep. Herb Huennekens	

Roll call was taken and all committee members were present except Representatives Brown, Conn, Iverson and Shelden, who were excused.

HOUSE BILL 3

CHAIRMAN KEYSER introduced Senator Joe Mazurek, cosponsor of HB 3, who made the presentation on HB 3.

SENATOR MAZUREK said HB 3 was requested by the Department of Social and Rehabilitation Services (SRS). He said HB 3 is within the call of the legislature to correct a mistake in a bill passed last legislative session.

SENATOR MAZUREK said the reason for the correction is the impact that would be felt in the Aid to Families with Dependent Children Program. The AFDC case load would be increased by 100 cases a year if HB 3 is not passed.

SENATOR MAZUREK told the committee HB 3 reinserts a section that was repealed by SB 267 by accident last session. Section 40-6-124 is the section that allowed private adoption agencies to go directly to court to terminate the parental rights of an unwed mother who wanted to give up her child for adoption. Without that section, adoption agencies were put in a position where the agencies don't have the means to go to court to obtain a child for adoptive placement. The only recourse would be to ask the mother to get her own attorney and go through the new process that was created under SB 267 (SB 267 is attached) or the agency would have to go to the county attorney and ask him to petition the court to have the child declared a dependent neglect.

SENATOR MAZUREK said Section 1 is just a reinsertion of Section 40-6-124 as it existed prior to its inadvertant repeal in SB 267.

SECTION 2 of HB 3 changes the language of Section 40-6-125 so that it is consistent with the language that existed in SB 267. Section 2 would allow the mother to have the courts make temporary arrangements for her child until the father's involvement has been clarified.

SENATOR MAZUREK said Section 3 of HB 3 just changes the use of the term "release" to the term "relinquishment".

SENATOR MAZUREK said there was one other change that was not a reinsertion. This bill would repeal Sections 132, 133 and 134 because it has been discovered that the procedures established by those sections and Section 11 were unworkable. Sections 132 through 134 set up one type of relinquishment procedure and Section 11 set up another type of relinquishment procedure. SRS feels once the notice is filed under Section 11 and the process is followed, that would be sufficient information to give SRS the ability to make sure the medical background and any other pertinent information on the child can be gathered. If both procedures have to be followed, SRS feels the mother will simply walk out of the hospital without signing over custody of the child to the state or to a private adoption agency because of the time involved in obtaining the information needed for a court hearing.

SENATOR MAZUREK said HB 3 is an attempt to keep private adoption agencies in business which would allow SRS or the adoption agency to go directly to court for the purpose of terminating parental rights without having to rely on the county attorney or the mother. This procedure would make it easier on the mother who wants to put her child up for adoption but does not want to have to appear in court more than once.

NORMA VESTRE, Administrator of the Community Services Division, SRS, said SRS supports HB 3. SRS has estimated, if HB 3 is not passed, there will be an increase in costs to the Community Services Division of between \$50,000 and \$75,000. Ms. Vestre also offered written testimony to this committee. (See EXHIBIT 1)

MARK RICKS, Director of the LDS Social Services, also testified in favor of HB 3. He said this legislation would prevent hardships that are now felt by his organization.

KENNETH GJERDE, Assistant Director of the Lutheran Social Services, testified in support of HB 3. He said without the passage of HB 3, the cost of social workers' time will be increased. He said his organization doesn't want to see any extra expenses incurred. Mr. Gjerde said if HB 3 is not passed, babies will be in foster homes longer and under the Medicaid Program longer.

REBECCA JONES, representing the Montana Children's Home and Hospital, spoke in support of HB 3. She said HB 3 will prevent a mother, who is giving her child up for adoption, from having to appear in court twice.

MARILYN MCKIBBEN, representing the Catholic Social Services, told the committee her organization also supports HB 3 and would appreciate favorable action in this legislation.

CHAIRMAN KEYSER opened the meeting to questions from committee members.

REPRESENTATIVE HUENNEKENS asked Senator Mazurek to define a petition of dependency or neglect. Senator Mazurek said a county attorney will file a petition of dependency or neglect in order to proceed in a court case of relinquishment. Senator Mazurek said there is a Uniform Parentage Act in which the unwed natural father is identified and establishes standards by which his parental rights can be terminated.

REPRESENTATIVE KEEDY asked about the rights of a natural father who wants to retain custody of his child. He said page 3, line 16 (and the new language) deals with that issue but he wants to know if a father's rights can be terminated without his consent. Senator Mazurek referred Representative Keedy to page 4, subsection (3) of HB 3. He said that language was never repealed from SB 267 but was left out of the amended bill for some reason. That subsection says a mother may request that the relinquishment of her child 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. He said none of the sections dealing with the father and his rights have been left out of HB 3. Senator Mazurek said Sections 40-6-101 through 40-6-128 deal with identifying the father and termination of his parental rights.

SENATOR MAZUREK said nothing has been changed in this bill except the repealer of Sections 132 through 134 which applies to only those situations where the mother is handling the relinquishment by herself. He said Sections 132 through 134 duplicate what is said in Section 11.

SENATOR MAZUREK said the purpose of SB 267 was to get a handle on private adoptions. He said HB 3 will ensure that before the placement is made, someone will have to make sure the mother made the relinquishment voluntarily and that the proper medical background on the baby is collected.

REPRESENTATIVE KEEDY read Section 133 of SB 267. That section requires a relinquishment hearing that would prevent the courts from issuing an order of relinquishment until satisfied that the

parents had been counseled and understood the consequences of his/her act. Representative Keedy said he feels that is an important provision and asked where that provision is retained in this new legislation. Senator Mazurek said if that provision is not contained in Section 11, then it is not in the bill. Senator Mazurek said that process is done during the court hearing.

SENATOR MAZUREK said SRS is concerned that with the two separate proceedings, Section 132 through 134 and Section 11, it would be too difficult for the unmarried mothers to follow the completed process of relinquishment. He said if this committee feels more comfortable with leaving in Sections 132 through 134 that would be fine but he feels the process is too cumbersome if the two separate proceedings would be required by having all sections in the bill. Senator Mazurek said the primary reason for this bill is to get Section 1 and Section 2 back into law. Representative Keedy said he wants to make sure that Section 40-6-133 is included in the Uniform Parentage Act or is a duplication of a different section before it is repealed from this bill.

SENATOR MAZUREK said the mother of a child used to be able to relinquish her child to anyone but SB 267 put a stop to that and said the mother must relinquish her child to an adoption agency or to SRS.

CHAIRMAN KEYSER asked if this committee did not approve the repealing of Sections 132 through 134 and put Section 1 back into the law, would there still be an extra cost of \$50,000 to \$75,000 to SRS. Ms. Vestre said yes, the extra cost would still be there because there would be two procedures required through Sections 132 through 134 and Section 11. The babies will probably remain under foster care 2-4 weeks longer to allow the process of hearings on the relinquishment petition, which means filing papers and setting a court date. The petition for relinquishment could only be considered if filed by both parents and if there was a non-consenting parent, there would have to be two court dates.

The committee then went into EXECUTIVE SESSION.

REPRESENTATIVE HUENNEKENS said he would like more time to do some checking on the bill before he has to make a decision.

REPRESENTATIVE YARDLEY asked Bob Pyfer, attorney for the Legislative Council, if he has done any research on this bill.

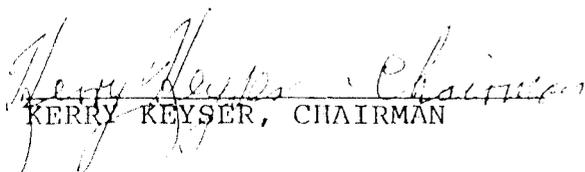
MR. PYFER said he had some questions on retaining Sections 40-6-132 through 40-6-134, MCA, as proposed by this committee, and adding in Sections 1, 2 and 3. He said there might be some language that would be inconsistent between the two.

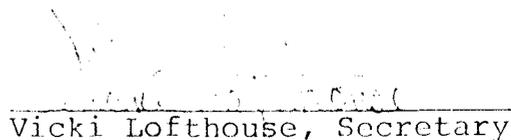
MR. PYFER said the new Section 1 which re-enacts the old section provides one procedure for relinquishment but Sections 132 through 134 state a court may not issue an order of relinquishment unless it is satisfied that the parent has been counseled and fully understands the consequences of his/her act. The new section says upon the filing of the properly executed relinquishment, the courts shall immediately issue an order terminating the rights of the parent of the child.

CHAIRMAN KEYSER told the committee there are too many unanswered questions and he feels a subcommittee should be appointed to clarify the issues raised during this meeting.

CHAIRMAN KEYSER appointed a subcommittee of five with Representative Hannah as chairman. Other members include Representatives Keedy, Huennekens, Bennett and Curtiss. He directed the subcommittee to get together with the Legislative Council attorney and report back to this committee.

The meeting was adjourned at 7:50 p.m.


KERRY KEYSER, CHAIRMAN


Vicki Lofthouse, Secretary

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House BILL NO. 3 (SSI)

INTRODUCED BY *Loy* MAZUREK

BY REQUEST OF THE DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAWS
RELATING TO RELINQUISHMENT OF CHILDREN FOR ADOPTION;
AMENDING SECTIONS 40-6-125 AND 40-8-103, MCA; REPEALING
SECTIONS 40-6-132 THROUGH 40-6-134, MCA; AND PROVIDING AN
IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION Section 1. Relinquishment of parental
rights -- form, execution, and revocation. (1) Any 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 an agency of the
state of Montana or a licensed adoption agency.

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

(3) If the person from whom a relinquishment is
required is a member of any of the armed services or is in
prison, the relinquishment may be executed and acknowledged

1 before any person authorized by law to administer oaths.

2 (4) If the relinquishment is executed in another state
3 or country, the court having jurisdiction over the adoption
4 proceeding in this state shall determine whether the
5 relinquishment was executed in accordance with the laws of
6 that state or country and may not proceed unless it finds
7 that the relinquishment was so executed.

8 (5) Upon the filing of a properly executed
9 relinquishment of a child by a parent or guardian, the court
10 shall immediately issue an order terminating the rights of
11 that parent or guardian to that child. If the rights of
12 both parents, the surviving parent, or the guardian have
13 been terminated, the court shall issue an order committing
14 the child to the agency of the state of Montana or the
15 licensed adoption agency to which the relinquishment was
16 given.

17 (6) Entry of an order terminating the rights of both
18 parents pursuant to subsection (5) terminates the
19 jurisdiction of the district court over the child in any
20 divorce or separate maintenance action.

21 (7) Upon petition of a person who executed a
22 relinquishment and of the agency of the state of Montana or
23 licensed adoption agency to which the child was
24 relinquished, the court with which the relinquishment was
25 filed may grant a hearing to consider whether the

1 relinquishment should be revoked. A relinquishment may not
2 be revoked if the child has been placed for adoption. A
3 verbatim record of testimony related to the petition shall
4 be made.

5 Section 2. Section 40-6-125, MCA, is amended to read:

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

15 (2) Pending the termination or other disposition of
16 the rights of the father of the child born out of wedlock,
17 the mother may ~~deliver-physical-custody-of-her-child-to-the~~
18 ~~department-or-a-licensed--child--placing--agency--by--filing~~
19 ~~execute_a_relinquishment_terminating_her_rights_to_the~~
20 ~~child.If_the_mother_relinquishes_the_child,the_agency_of~~
21 ~~the_state_of_Montana_or_the_licensed_adoption_agency_to_who~~
22 ~~the_child_is_relinquished_may_file~~ a petition under this
23 part or a petition of ~~dependency_or_neglect~~ pursuant to
24 40-6-132. -- Upon Title 41, chapter 3. Pending disposition of
25 the petition, the court may enter an order authorizing

1 temporary care of the child.

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

7 Section 3. Section 40-8-103, MCA, is amended to read:

8 "40-8-103. Definitions. As used in this chapter,
9 unless the context otherwise requires the following
10 definitions apply:

11 (1) "Adoption" means the act of creating the legal
12 relationship between parent and child when it does not exist
13 genetically.

14 (2) "Adoptive parent" means an adult who has become
15 the mother or father of a child through the legal process of
16 adoption.

17 (3) "Agency" means a public or voluntary agency
18 licensed by any jurisdiction within the United States and
19 expressly empowered to place children as a preliminary to a
20 possible adoption.

21 (4) "Birth parent" means the mother or father of
22 genetic origin of a child but does not include a putative
23 father of a child.

24 (5) "Child" means any person under 18 years of age.

25 (6) "Court" means a Montana district court or a tribal

1 court of any Montana Indian reservation.

2 (7) "Department" means the department of social and
3 rehabilitation services, as established and provided for in
4 Title 2, chapter 15, part 22.

5 (8) "Extended family member" means an adult who is the
6 child's grandparent, aunt or uncle, brother or sister, niece
7 or nephew, or first cousin.

8 (9) "Parent" means the birth or adoptive mother or the
9 birth, adoptive, or legal father whose parental rights have
10 not been terminated.

11 (10) "Placement for adoption" means the transfer of
12 physical custody of a child with respect to whom all
13 parental rights have been terminated and who is otherwise
14 legally free for adoption to a person who intends to adopt
15 the child.

16 (11) "Relinquishment" means the informed and voluntary
17 release in writing of all parental rights with respect to a
18 child by a parent to an individual or agency pursuant to
19 40-6-132-through-40-6-134 [section 1]."

20 Section 4. Repealer. Sections 40-6-132 through
21 40-6-134, MCA, are repealed.

22 Section 5. Codification instruction. Section 1 is
23 intended to be codified as an integral part of Title 40,
24 chapter 6, part 1, and the provisions of Title 40, chapter
25 6, part 1, apply to section 1.

1 Section 6. Effective date. This act is effective on
2 passage and approval.

-End-

40-6-122. Promise to render support. (1) Any promise in writing to furnish support for a child growing out of a supposed or alleged father and child relationship does not require consideration and is enforceable according to its terms, subject to 40-6-107(4).

(2) In the best interest of the child or the mother, the court may, and upon the promisor's request shall, order the promise to be kept in confidence and designate a person or agency to receive and disburse on behalf of the child all amounts paid in performance of the promise.

History: En. 61-323 by Sec. 23, Ch. 512, L. 1975; amd. Sec. 22, Ch. 33, L. 1977; R.C.M. 1947, 61-323.

40-6-123. Birth records. (1) Upon order of a court of this state or upon request of a court of another state, the department of health and environmental sciences shall prepare a substitute certificate of birth consistent with the findings of the court and shall substitute the new certificate for the original certificate of birth.

(2) The fact that the father and child relationship was declared after the child's birth shall not be ascertainable from the new certificate but the actual place and date of birth shall be shown.

(3) The evidence upon which the new certificate was made and the original birth certificate shall be kept in a sealed and confidential file and shall be subject to inspection only upon consent of the court and all interested persons or in exceptional cases only upon an order of the court for good cause shown.

History: En. 61-324 by Sec. 24, Ch. 512, L. 1975; R.C.M. 1947, 61-324.

40-6-124. Repealed. Sec. 15, Ch. 530, L. 1981.

History: En. 61-328 by Sec. 1, Ch. 422, L. 1977; R.C.M. 1947, 61-328.

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 deliver physical custody of her child to the department or a licensed child placing agency by filing a petition pursuant to 40-6-132. Upon petition, the court may enter an order authorizing temporary care of the child.

History: En. 61-329 by Sec. 2, Ch. 422, L. 1977; R.C.M. 1947, 61-329; amd. Sec. 4, Ch. 530, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "relinquish" for "release" throughout the section; substituted "birth" for "natural" after "consent of the" near the middle of (1); substituted the

provision dealing with delivering physical custody for the provision dealing with executing a release terminating rights in (2); deleted former subsection (3); for text of former section see sec.2, Ch. 422, L. 1977.

40-6-126. Notice of intent to claim paternity. (1) Before the birth of a child born out of wedlock, a person claiming under oath to be the father of the child may file a verified notice of intent to claim paternity with the

40-6-132. Petition for relinquishment of custody of child. (1) Any parent who proposes to relinquish custody of a child for purposes of placing the child for adoption may do so by petitioning the district court upon forms supplied by the court.

- (2) The petition shall contain the following information:
- the name and age of both birth parents, if known;
 - the name, if any, and the age of the child;
 - the race and religion of both birth parents, if known; and
 - why relinquishment is desired.

(3) Upon receipt of the petition, the court shall set the time for hearing the matter.

(4) The parent-child legal relationship may not be terminated by relinquishment proceedings unless both birth parents join in the petition unless the parent-child legal relationship of a parent not joining the petition has terminated.

History: En. Sec. 1, Ch. 530, L. 1981.

Compiler's Comments

Codification Instruction: Subsection (1) of sec. 16, Ch. 530, L. 1981, provided: "Sections 1 through 3 [40-6-132 through 40-6-134] are

intended to be codified as an integral part of Title 40, chapter 6, part 1, and the provisions of Title 40, chapter 6, part 1, apply to sections 1 through 3."

40-6-133. Relinquishment hearing — requirements. (1) The court may not issue an order of relinquishment until it is satisfied that the relinquishing parent has been counseled and fully understands the consequences of his act.

(2) If the court finds after the hearing that it is in the best interests of the birth parents or child that no relinquishment be granted, the court shall enter an order dismissing the action.

(3) If the court is not satisfied that the relinquishing parent has been counseled and fully understands the consequences of his act, it may continue the matter. The court may, after considering the best interests of the child, order the child to be placed in foster care while the matter is continued.

(4) If the court finds at the hearing that the relinquishing parent has been counseled as provided in subsection (1) and that the relinquishment would best serve the interests of the birth parents and the child, it shall enter an order of relinquishment. The order shall contain language terminating the parent-child legal relationship.

History: En. Sec. 2, Ch. 530, L. 1981.

40-6-134. Order of relinquishment — custody. (1) In the order of relinquishment terminating the parent-child legal relationship of both parents or of the only living parent, the court, after taking into account the racial, cultural, and religious background of the child, shall order legal custody transferred to:

- the department of social and rehabilitation services;
- a licensed child placement agency;
- a relative of the child;
- the person named in the notice filed by the parents pursuant to 40-8-109; or
- any other person eligible to adopt if the court finds it is in the child's best interest.

see p 46 for form

Cross-References
Parent-child legal relationship termination, Title 41, ch. 3, part 6.

(2) The order of relinquishment shall set forth all pertinent facts brought forth at the hearing and shall also state that the court is satisfied that the provisions of 40-6-133(1) have been satisfied.

(3) The order of relinquishment divests the relinquishing parent or parents of all legal rights and obligations they may have with respect to the child relinquished. The order shall release the relinquished child from all legal obligations with respect to the relinquishing parent or parents.

History: En. Sec. 3, Ch. 530, L. 1981.

Part 2

Obligations of Parents

40-6-201. Legitimacy of children born in wedlock. All children born in wedlock are presumed to be legitimate.

History: En. Sec. 280, Civ. C. 1895; re-en. Sec. 3738, Rev. C. 1907; re-en. Sec. 5830, R.C.M. 1921; Cal. Civ. C. Sec. 193; Field Civ. C. Sec. 86; re-en. Sec. 5830, R.C.M. 1935; R.C.M. 1947, 61-101.

40-6-202. Legitimacy of children born after dissolution of marriage. All children of a woman who has been married, born within 10 months after the dissolution of her marriage, are presumed to be legitimate children of that marriage.

History: En. Sec. 281, Civ. C. 1895; re-en. Sec. 3739, Rev. C. 1907; re-en. Sec. 5831, R.C.M. 1921; Cal. Civ. C. Sec. 194; Based on Field Civ. C. Sec. 87; re-en. Sec. 5831, R.C.M. 1935; R.C.M. 1947, 61-102.

40-6-203. Child legitimized by marriage of parents. A child born before wedlock becomes legitimate by the subsequent marriage of its parents.

History: En. Sec. 11, p. 410, Bannack Stat.; re-en. Sec. 11, p. 521, Cod. Stat. 1871; re-en. Sec. 864, 5th Div. Rev. Stat. 1879; re-en. Sec. 1425, 5th Div. Comp. Stat. 1887; amd. Sec. 302, Civ. C. 1895; re-en. Sec. 3760, Rev. C. 1907; re-en. Sec. 5852, R.C.M. 1921; Cal. Civ. C. Sec. 215; re-en. Sec. 5852, R.C.M. 1935; R.C.M. 1947, 61-123.

40-6-204 through 40-6-210 reserved.

40-6-211. Obligations of parents for the support and education of their children. The parent or parents entitled to the custody of a child must give him support and education suitable to his circumstances.

History: En. Sec. 283, Civ. C. 1895; re-en. Sec. 3741, Rev. C. 1907; re-en. Sec. 5833, R.C.M. 1921; Cal. Civ. C. Sec. 196; Field Civ. C. Sec. 89; re-en. Sec. 5833, R.C.M. 1935; amd. Sec. 21, Ch. 293, L. 1975; R.C.M. 1947, 61-104.

40-6-212. Allowance to parent. The proper court may direct an allowance to be made to the parent of a child out of the child's property for the past or future support and education of the child, on such conditions as may be proper, whenever such direction is for the child's benefit.

History: En. Sec. 288, Civ. C. 1895; re-en. Sec. 3746, Rev. C. 1907; re-en. Sec. 5838, R.C.M. 1921; Cal. Civ. C. Sec. 201; Field Civ. C. Sec. 92; re-en. Sec. 5838, R.C.M. 1935; amd. Sec. 14, Ch. 33, L. 1977; R.C.M. 1947, 61-109.

40-6-213. Remedy when parent dies without providing for support of child. If a parent chargeable with the support of a child dies leaving

Part 1

Adoption of Children

40-8-101. Short title. This part may be cited as the "Uniform Adoption Act", as amended.

History: En. Sec. 17, Ch. 240, L. 1957; R.C.M. 1947, 61-217; amd. Sec. 5, Ch. 530, L. 1981.

Compiler's Comments

1981 Amendment: Added "as amended" to the end of the section.

40-8-102. Uniformity of interpretation. This part shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 16, Ch. 240, L. 1957; R.C.M. 1947, 61-216.

40-8-103. Definitions. As used in this chapter, unless the context otherwise requires the following definitions apply:

(1) "Adoption" means the act of creating the legal relationship between parent and child when it does not exist genetically.

(2) "Adoptive parent" means an adult who has become the mother or father of a child through the legal process of adoption.

(3) "Agency" means a public or voluntary agency licensed by any jurisdiction within the United States and expressly empowered to place children as a preliminary to a possible adoption.

(4) "Birth parent" means the mother or father of genetic origin of a child but does not include a putative father of a child.

(5) "Child" means any person under 18 years of age.

(6) "Court" means a Montana district court or a tribal court of any Montana Indian reservation.

(7) "Department" means the department of social and rehabilitation services, as established and provided for in Title 2, chapter 15, part 22.

(8) "Extended family member" means an adult who is the child's grandparent, aunt or uncle, brother or sister, niece or nephew, or first cousin.

(9) "Parent" means the birth or adoptive mother or the birth, adoptive, or legal father whose parental rights have not been terminated.

(10) "Placement for adoption" means the transfer of physical custody of a child with respect to whom all parental rights have been terminated and who is otherwise legally free for adoption to a person who intends to adopt the child.

(11) "Relinquishment" means the informed and voluntary release in writing of all parental rights with respect to a child by a parent to an individual or agency pursuant to 40-6-132 through 40-6-134.

History: En. Sec. 1, Ch. 240, L. 1957; R.C.M. 1947, 61-201; amd. Sec. 6, Ch. 530, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "chapter" for "part" in the first sentence of the section; deleted former subsection (1) defining "adoptive"; inserted subsections (1) and (2);

deleted former subsection (4) defining "adult adoptee"; inserted subsections (3) and (4); rewrote the definition of "child" substantially in (5) (for former text see sec. 1, Ch. 240, L. 1957); added subsections (6) through (11).

40-8-104. Who may be adopted. (1) Any minor may be adopted if:

(a) the minor has no living parent; or

SENATE BILL NO. 267

INTRODUCED BY MAZUREK

BY REQUEST OF THE DEPARTMENT OF SOCIAL AND

REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO ADOPTION AND TO AMEND THE LAWS RELATING TO RELINQUISHMENT AND PLACEMENT OF CHILDREN FOR ADOPTION BY THEIR PARENTS WITHOUT AGENCY INVOLVEMENT; AMENDING SECTIONS 40-6-125, 40-8-101, 40-8-103, 40-8-104, 40-8-111, 40-8-113, 40-8-121, 40-8-122, AND 40-8-123, MCA; AND REPEALING SECTION 40-6-124, MCA."

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

NEW SECTION. Section 1. Petition for relinquishment of custody of child. (1) Any parent who proposes to relinquish custody of a child for purposes of placing the child for adoption may do so by petitioning the district court upon forms supplied by the court.

(2) The petition shall contain the following information:

- (a) the name and age of both birth parents, if known;
(b) the name, if any, and the age of the child;
(c) the race and religion of both birth parents, if known; and

(d) why relinquishment is desired.

(3) Upon receipt of the petition, the court shall set the time for hearing the matter.

(4) The parent-child legal relationship may not be terminated by relinquishment proceedings unless both birth parents join in the petition unless the parent-child legal relationship of a parent not joining the petition has terminated.

NEW SECTION. Section 2. Relinquishment hearing -- requirements. (1) The court may not issue an order of relinquishment until it is satisfied that the relinquishing parent has been counseled and fully understands the consequences of his act.

(2) If the court finds after the hearing that it is in the best interests of the birth parents or child that no relinquishment be granted, the court shall enter an order dismissing the action.

(3) If the court is not satisfied that the relinquishing parent has been counseled and fully understands the consequences of his act, it may continue the matter. The court may, after considering the best interests of the child, order the child to be placed in foster care while the matter is continued.

(4) If the court finds at the hearing that the relinquishing parent has been counseled as provided in

1 subsection (1) of this section and that the relinquishment
 2 would best serve the interests of the birth parents and the
 3 child, it shall enter an order of relinquishment. The order
 4 shall contain language terminating the parent-child legal
 5 relationship.

6 NEW SECTION. Section 3. Order of relinquishment --
 7 custody. (1) In the order of relinquishment terminating the
 8 parent-child legal relationship of both parents or of the
 9 only living parent, the court, after taking into account the
 10 racial, cultural, and religious background of the child,
 11 shall order legal custody transferred to:

- 12 (a) the department of social and rehabilitation
- 13 services;
- 14 (b) a licensed child placement agency;
- 15 (c) a relative of the child;
- 16 (d) the person named in the notice filed by the
- 17 parents pursuant to [section 11]; or
- 18 (e) any other person eligible to adopt if the court
- 19 finds it is in the child's best interest.

20 (2) The order of relinquishment shall set forth all
 21 pertinent facts brought forth at the hearing and shall also
 22 state that the court is satisfied that the provisions of
 23 [section 2(1)] have been satisfied.

24 (3) The order of relinquishment divests the
 25 relinquishing parent or parents of all legal rights and

1 obligations they may have with respect to the child
 2 relinquished. The order shall release the relinquished child
 3 from all legal obligations with respect to the relinquishing
 4 parent or parents.

5 Section 4. Section 40-6-125, MCA, is amended to read:
 6 "40-6-125. Children born out of wedlock -- release
 7 relinquishment -- consent. (1) If the mother of a child born
 8 out of wedlock proposes to release relinquish the child for
 9 adoption and the release relinquishment or consent of the
 10 noted birth father cannot be obtained, the child may not
 11 be placed for adoption until the parental rights of the
 12 father are terminated by the court as provided in this part,
 13 by the court pursuant to Title 41, chapter 3, or by a court
 14 of competent jurisdiction in another state or country.

15 (2) Pending the termination or other disposition of
 16 the rights of the father of the child born out of wedlock,
 17 the mother may execute a release terminating her rights to
 18 the child if the mother releases the child the agency of
 19 the state of Montana the licensed adoption agency or the
 20 person to whom the child is released may file deliver
 21 physical custody of her child to the department OR A
 22 LICENSED CHILD PLACING AGENCY by filing a petition under
 23 this part or a petition of dependency or neglect pursuant to
 24 Title 41, chapter 3 [section 1]. Pending disposition of the
 25 upon petition, the court may enter an order authorizing

1 temporary care of the child.

2 f3) At the request of the mother, her formal execution

3 of a release shall be delayed until after the court has

4 determined the identity of the father and has awarded

5 custody of the child to the father or terminated his rights

6 under this part.

7 Section 5. Section 40-8-101, MCA, is amended to read:

8 "40-8-101. Short title. This part may be cited as the

9 "Uniform Adoption Act" as amended."

10 Section 6. Section 40-8-103, MCA, is amended to read:

11 "40-8-103. Definitions. As used in this part chapter,

12 unless the context otherwise requires:

13 f1) "adoptee" means a person of any age who has been

14 legally adopted;

15 f2) "adoption" means the act of creating the legal

16 relationship between parent and child when it did not exist

17 genetically;

18 f3) "adoptive parent" means an adult who has become

19 the mother or father of a child through the legal process of

20 adoption;

21 f4) "adult adoptee" means a person who was adopted as

22 a child and who has obtained majority;

23 f5) "agency" means a public or voluntary agency

24 licensed by any jurisdiction within the United States and

25 expressly empowered to place children as a preliminary to a

1 possible adoption;

2 f6) "birth parent" means the mother or father of

3 genetic origin of a child, but does not include a putative

4 father of a child;

5 f7) "child" means any minor person and "agency" means

6 any person authority or agency legally empowered to

7 place children for adoption singular words may extend and

8 be applied to several persons or things as to one

9 person or things plural words may extend and be applied to

10 one person or thing as well as to several persons or

11 things under 18 years of age;

12 f8) "court" means a Montana district court or a

13 tribal court of any Montana Indian reservation;

14 f9) "department" means the department of social and

15 rehabilitation services, as established and provided for in

16 Title 2, chapter 15, part 22;

17 f10) "extended family member" means an adult who is

18 the child's grandparent, aunt or uncle, brother or sister,

19 niece or nephew, or first cousin;

20 f11) "parent" means the birth or adoptive mother or

21 the birth, adoptive, or legal father whose parental rights

22 have not been terminated;

23 f12) "placement for adoption" means the transfer of

24 physical custody of a child with respect to whom all

25 parental rights have been terminated and who is otherwise

1 legally free for adoption to a person who intends to adopt
 2 the child;
 3 121(11) "relinquishment" means the informed and
 4 voluntary release in writing of all parental rights with
 5 respect to a child by a parent to an individual or agency
 6 pursuant to [sections 1 through 3]."
 7 Section 7. Section 40-8-104, MCA, is amended to read:
 8 "40-8-104. Who may be adopted. (1) Any child present
 9 ~~within this state at the time the petition for adoption is~~
 10 ~~filed irrespective of place of birth or place of residency~~
 11 ~~minor may be adopted if:~~
 12 (a) ~~the minor has no living parent; or~~
 13 (b) ~~the parental rights of the living parents of the~~
 14 ~~minor have been terminated according to the laws of this~~
 15 ~~state or of another jurisdiction; or~~
 16 (c) ~~the living parents consent to the adoption;~~
 17 (2) ~~an adult may be adopted as provided in part 2 of~~
 18 ~~this chapter."~~

19 Section 5. Section 40-8-111, MCA, is amended to read:
 20 "40-8-111. Consent required for adoption. (1) An
 21 adoption of a child may be decreed when there have been
 22 filed written consents to adoption executed by:
 23 (a) both parents, if living, or the surviving parent
 24 of a child, provided that consent is not required from a
 25 father or mother:

1 (i) adjudged guilty by a court of competent
 2 jurisdiction of ~~physical or verbal~~ assault on the child, as
 3 provided in ~~45-2-202~~ 45-2-201, endangering the welfare of
 4 children, concerning the child, as provided in 45-5-622; or
 5 sexual abuse of children, toward the child, as provided in
 6 45-5-625;

7 (ii) who has been judicially deprived of the custody of
 8 the child on account of cruelty or neglect toward the child;
 9 ~~as defined in 41-3-102(3)(d);~~
 10 (iii) who has, in the state of Montana or in any other
 11 state of the United States, willfully abandoned the child;
 12 AS DEFINED IN 41-3-102(3)(d);

13 (iv) who has caused the child to be maintained by any
 14 public or private children's institution, charitable agency,
 15 or any licensed adoption agency or the department of social
 16 and rehabilitation services of the state of Montana for a
 17 period of 1 year without contributing to the support of the
 18 child during said period, if able;

19 (v) if it is proven to the satisfaction of the court
 20 that the father or mother, if able, has not contributed to
 21 the support of the child during a period of 1 year before
 22 the filing of a petition for adoption; or

23 (vi) whose parental rights have been judicially
 24 terminated;
 25 (b) the legal guardian of the child if both parents

1 are dead or if the rights of the parents have been
 2 terminated by judicial proceedings and such guardian has
 3 authority by order of the court appointing him to consent to
 4 the adoption;
 5 (c) the executive head of an agency if the child has
 6 been relinquished for adoption to such agency or if the
 7 rights of the parents have been judicially terminated or if
 8 both parents are dead and custody of the child has been
 9 legally vested in such agency with authority to consent to
 10 adoption of the child; or
 11 (d) any person having legal custody of a child by
 12 court order if the parental rights of the parents have been
 13 judicially terminated, but in such case the court having
 14 jurisdiction of the custody of the child must consent to
 15 adoption and a certified copy of its order shall be attached
 16 to the petition.

17 (2) The consents required by subsections (1)(a) and
 18 (1)(b) shall be acknowledged before an officer authorized to
 19 take acknowledgments or witnessed by a representative of the
 20 department of social and rehabilitation services or of an
 21 agency or witnessed by a representative of the court."

22 Section 9. Section 40-8-113, MCA, is amended to read:
 23 "40-8-113. Consent of child. ~~Consent of the child if~~
 24 ~~if a child is 12 years of age or over, shall be required he~~
 25 ~~must consent to his adoption. Such consent shall consent~~

1 must be given in court or be in writing in such form as the
 2 court shall direct."

3 ~~NEW SECTION.~~ Section 10. Who may place a child for
 4 adoption. A child may be placed for adoption only by:
 5 (1) the department;
 6 (2) a licensed child placing agency; or
 7 (3) the child's parents.

8 ~~NEW SECTION.~~ Section 11. Placement for adoption by
 9 parents. (1) No parent may make a placement of a child for
 10 adoption with a person who is not a stepparent or a member
 11 of the child's extended family unless the parent files a
 12 notice of parental placement with the district court for the
 13 county in which the prospective adoptive parent or the
 14 parent making the placement resides.

15 (2) The notice of parental placement shall be filed
 16 prior to a parent's placement of the child with a person who
 17 intends to adopt the child. The notice of parental placement
 18 shall contain the following information:

19 (a) the name and address of each birth parent, if
 20 known, and if unknown, the steps taken to ascertain the
 21 whereabouts of the parent or parents;

22 (b) the name and address of each prospective adoptive
 23 parent;

24 (c) the name and address or expected date and place of
 25 birth of the child; and

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

4 (3) Upon receipt of a notice of parental placement,
5 the court shall require that a ~~licensed-child-placing~~-agency
6 ~~THE DEPARTMENT~~ examine the child and conduct interviews with
7 the birth parents and prospective adoptive parents and
8 report to the court within 30 days, but not earlier than 5
9 days after the birth of the child. The report must state
10 whether the following requirements for placement have been
11 met:

12 (a) that the decision to place was voluntarily made by
13 the birth parents;
14 (b) that the department has no temporary authority to
15 investigate or provide protective services to the family
16 under 41-3-402;

17 (c) that the birth parents, the prospective adoptive
18 parents, and their representatives have agreed in writing to
19 provide the court with sworn affidavits containing itemized
20 statements of all fees charged or to be charged, expenses
21 incurred or to be incurred, and payments received or to be
22 received in connection with the proposed adoptive placement;

23 (d) that the prospective adoptive parents have been
24 provided a medical and social history of the child and birth
25 parents; and

1 (e) that the proposed placement is in the child's best
2 interest.

3 (4) Within 45 days of filing of the notice of parental
4 placement, the court shall schedule a hearing to consider
5 the proposed placement.

6 (5) (a) At least 5 days' notice of the time and place
7 of the hearing must be given to the birth parents, the
8 prospective adoptive parents, any named guardian ad litem,
9 and the agency or person who conducted the investigation
10 under subsection (3).

11 (b) The hearing shall be closed to all persons except
12 those persons entitled to notice and their representatives
13 or counsel.

14 (6) If the court finds that all requirements for
15 placement have been met, the court may issue an order or
16 schedule a hearing for the purpose of terminating parental
17 rights and granting temporary custody to the prospective
18 adoptive parents. The prospective adoptive parents must file
19 their petition to adopt within 30 days of the order.

20 (7) If the court finds that all requirements for the
21 adoptive placement have not been met, the court may issue
22 any order appropriate to protect the child.

23 Section 12, Section 40-8-121, MCA, is amended to read:
24 "40-8-121. Petition for adoption. (1) A petition for
25 adoption shall be filed in duplicate, verified by the

1 petitioners, and shall specify:

2 (a) the full names, ages, and place of residence of
3 the petitioners and, if married, the place and date of the
4 marriage;

5 (b) when the petitioners acquired or intend to acquire
6 custody of the child and from what person or agency;

7 (c) the date and place of birth of child, if known;

8 (d) the name used for the child in the proceeding and,
9 if a change in name is desired, the new name;

10 (e) that it is the desire of the petitioners that the
11 relationship of parent and child be established between them
12 and the child;

13 (f) a full description and statement of value of all
14 property owned or possessed by the child;

15 (g) facts, if any, which excuse consent on the part of
16 a parent to the adoption.

17 (2) One copy of the petition shall be retained by the
18 court. The other shall be sent to the department of social
19 and rehabilitation services. An additional copy shall be
20 sent to any agency participating in the adoption proceeding.

21 (j) Any written consent required by this part may be
22 attached to the petition or may be filed after the filing of
23 the petition, with the consent of the court.

24 (5) Except as provided in section 111.1, a petition for
25 adoption must be filed within 1 year of the time the child

1 was placed for adoption with the petitioner."

2 Section 13. Section 40-8-122, MCA, is amended to read:

3 "40-8-122. Investigation. (1) Upon the filing of a
4 petition for adoption, the court shall order an

5 investigation to be made by the department of social and
6 rehabilitation services or any other private agency by a

7 licensed and approved for such investigatory purpose of the
8 department of social and rehabilitation services, unless

9 such child placing agency or other person named by the
10 court. The investigation is may be waived by the department

11 of social and rehabilitation services and shall in its
12 discretion further order that if the petitioner is a

13 stepparent of the child or if one of the petitioners is a
14 member of the child's extended family. The report of such

15 investigation shall be filed with the court by the
16 designated investigator within the time fixed by the court

17 and in no event more than 30 days from the issuance of the
18 order for investigation, unless time therefor is extended by

19 the court. Such the report of the investigation if ordered
20 by the court shall state:

21 (a) include the conditions and antecedents of the
22 child for the purpose of determining whether he is a proper
23 subject the child is legally free for adoption;

24 (b) appropriate inquiry to determine whether the
25 proposed home is a suitable one for the child;

1 (c) ~~that medical and social histories have been~~
 2 ~~provided to the adoptive parent~~ and
 3 (d) any other circumstances and conditions which may
 4 have a bearing on the adoption and of which the court should
 5 have knowledge.
 6 (2) The court may order agencies named in subsection
 7 (1) located in one or more counties to make separate
 8 investigations on separate parts of the inquiry as may be
 9 appropriate.
 10 (3) The report of such the investigation shall become
 11 a part of the files in the case and shall contain a definite
 12 recommendation stating the reasons for or against the
 13 proposed adoption and state reasons therefor."

14 Section 14. Section 40-8-123, MCA, is amended to read:
 15 "40-8-123. Summary decree. If the child is ~~retored~~-by
 16 ~~been~~-to a member of the ~~extended~~-family of one of the
 17 petitioners or is a stepchild of the petitioner or the court
 18 finds that the best interests of the child will be furthered
 19 thereby, the court in its discretion, after examination of
 20 the report specified in ordered pursuant to 40-8-122, if
 21 ~~such report had been ordered by said court in its~~
 22 ~~discretion~~, may waive the entry of an interlocutory decree
 23 and the waiting period of 6 months provided in 40-8-124 and
 24 grant a final decree of adoption if satisfied that the
 25 adoption is for in the best interests of the child."

1 Section 15. Repealer. Section 40-6-124, MCA, is
 2 repealed.
 3 Section 16. Codification instruction. (1) Sections 1
 4 through 3 are intended to be codified as an integral part of
 5 Title 40, chapter 6, part 1, and the provisions of Title 40,
 6 chapter 6, part 1, apply to sections 1 through 3.
 7 (2) Sections 10 and 11 are intended to be codified as
 8 an integral part of Title 40, chapter 8, part 1, and the
 9 provisions of Title 40, chapter 8, part 1, apply to sections
 10 10 and 11.

-End-

