

THE MINUTES OF THE MEETING OF THE HOUSE JUDICIARY SUBCOMMITTEE
SPECIAL SESSION
November 19, 1981

The meeting was called to order at 7:15 a.m. by Chairman Hannah. Members of the subcommittee include:

Representative Gary Bennett
Representative Aubyn Curtiss
Representative Tom Hannah, Chairman
Representative Herb Huennekens
Representative Michael Keedy

Representatives Huennekens and Keedy were not present at this meeting.

HOUSE BILL 3

SENATOR JOE MAZUREK, cosponsor of HB 3, passed out copies of proposed amendments to HB 3. (See EXHIBITS 1 and 2)

The subcommittee read through the amendments and decided the amendments contained in EXHIBIT 2 were what the subcommittee wanted to insert into HB 3.

CHAIRMAN HANNAH said the proposed amendments in EXHIBIT 2 would leave Subsection 11 in the bill. He said Representative Keedy was concerned that if Subsection 11 was left out of HB 3, relinquishment by the parent(s) would not necessarily have to be done voluntarily in a court. Chairman Hannah said that issue would be clarified by leaving Subsection 11 in the bill.

REPRESENTATIVE BENNETT said another concern of Representative Keedy was over the Department of Social and Rehabilitation Services' (SRS) involvement in the adoption proceedings. Representative Keedy did not want SRS to be the only decision maker in the adoption procedure. Representative Bennett said with the new amendments there is enough language that requires the courts to be involved with any adoption placements, private or otherwise.

SENATOR MAZUREK said court action is involved in any relinquishment or adoption procedure. SRS is involved in private adoption arrangements, but if the unwed mother wants to place the child with someone in the family, SRS will not be involved.

CHAIRMAN HANNAH said if Representative Keedy has any problems with the amendments, he can bring those problems up in the full committee hearing.

BOB PYFER, attorney for the Legislative Council, said it would be helpful if all committee members received a copy of a grey bill, with the amendments incorporated into the bill, for reference. He offered to make up a grey bill for committee members.

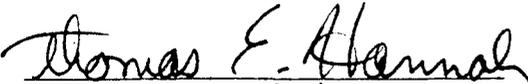
REPRESENTATIVE CURTISS moved this subcommittee accept the amendments contained in EXHIBIT 2.

REPRESENTATIVE BENNETT seconded the motion.

The motion was voted on and PASSED UNANIMOUSLY.

SENATOR MAZUREK thanked the subcommittee members for their consideration of HB 3 and the proposed amendments.

The meeting was adjourned at 7:45 a.m.


TOM HANNAH, Chairman


Vicki Lofthouse, Secretary

A

Proposed Amendments to HB 3

1. Title, line 8.
Following: "40-6-125"
insert: "40-6-132, 40-6-133,"
2. Title, line 9,
Following: line 8
Strike: "SECTIONS 40-6-132 THROUGH A"
insert: "SECTION "
3. Page 2, line 8.
Following: "proposed"
insert: "and voluntarily"
4. Page 3, line 19.
Following: "relinquishment"
Strike: "pursuant to [section 1]"
5. Page 4.
Following: line 6
insert:

5, Page 4

Following: line 6

insert; " Section 3, Section 40-6-132, MCA, is amended to read:

" 40-6-132. Petition for relinquishment of custody of child (1)
Any parent who proposes to relinquish custody of a child ^{to individual}
and not to an agency of the state or a
licensed adoption agency ^{to an individual}

for purposes of placing the child for adoption may do so by petitioning the district court upon forms supplied by the court. ^{pursuant to 40-6-109}

- (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.

Section 4. Section 40-6-133, MCA, is amended to read:

" 40-6-133. Relinquishment ^{to individual} hearing - requirements. (1) The court may not issue an order of relinquishment ^{pursuant to a petition}

filed under 40-6-132 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.

Remember: subsequent sections

6. Page 5, line 19.

Following: " 40-6-134 "

insert: "the provisions of 40-6-132 and 40-6-133 or the provision of "

Following: "Section 1"

insert: ", whichever are applicable"

7. Page 5.

Following: line 19

insert: "Section 4, section 40-8-109, MCA, is amended to read:

40-8-109. Placement for adoption by parents. (1) No parent may make a placement of a child for adoption with a person who is not a stepparent or a member of the child's extended family unless the parent files a notice of parental placement with the district court for the county in which the prospective adoptive parent or the parent making the placement resides.

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

race, and religion

(a) the name, ~~and~~ address of each birth parent, if known, and if unknown,

these facts

the steps taken to ascertain ~~the whereabouts of the parent or parents;~~

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

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

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

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

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

(b) that the department has no temporary authority to investigate or provide protective services to the family under 41-3-402;

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

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

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

taking into account

the child's racial, cultural, and religious background

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

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

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

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

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

Remember: Subsequent sections

8. Page 5, line 20,
Following: "Remember."

Strike: "Sections 40-6-132 through"
insert: "Section"

9. Page 5, line 21.

Following: "MCA,"
Strike: "are"
insert: "is"

B

Proposed Amendments to HB 3

1. Title, line 8.

Following: "40-6-125"

Strike: "AND"

Insert: ") "

Following: "40-8-103,"

Insert: " and 40-8-109,"

2. Page 2, line 8

Following: " properly "

Insert: " and voluntarily "

3. Page 5, line 18

Following: " an "

Strike: " individual or "

Following: " agency "

Insert: " or individual "

4. Page 5, line 19.

Following: " Section 1] "

Insert: " or 40-8-109, whichever is applicable "

5. Page 5.

Following: line 19.

Insert: "Section 4, Section 40-8-109, MCA, is amended to read:

40-8-109. Placement for adoption by parents. (1) No parent may make a placement of a child for adoption with a person who is not a stepparent or a member of the child's extended family unless the parent files a ~~notice of parental placement~~ with the district court for the county in which the prospective adoptive parent or the parent making the placement resides:

- (a) a notice of parental placement; and
(b) a relinquishment of parental rights to the prospective adoptive parents executed voluntarily and in accordance with [section 1 (2) through (4)].

and the relinquishment

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

- (a) the name and address of each birth parent, if known, and if unknown, the steps taken to ascertain the whereabouts of the parent or parents;
(b) the name and address of each prospective adoptive parent;

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

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

over
↓

and a relinquishment

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

- (a) that the decision to place was voluntarily made by the birth parents;
- (b) that the department has no temporary authority to investigate or provide protective services to the family under 41:3-402;
- (c) that the birth parents, the prospective adoptive parents, and their representatives have agreed in writing to provide the court with sworn affidavits containing itemized statements of all fees charged or to be charged, expenses incurred or to be incurred, and payments received or to be received in connection with the proposed adoptive placement;
- (d) that the prospective adoptive parents have been provided a medical and social history of the child and birth parents; and
- (e) that the proposed placement is in the child's best interest.

and the relinquishment

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

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

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

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

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

Remember: Subsequent Sections

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 whom
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-