

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

The meeting was called to order at 2:00 p.m. by Chairman Keyser. The meeting was held in Room 436 of the State Capitol Building. Roll call was taken and all committee members were present except Representatives Seifert and Yardley, who were excused.

HOUSE BILL 3 - EXECUTIVE SESSION

CHAIRMAN KEYSER informed the committee members they had been given copies of a sample grey bill, of HB 3, which included the amendments adopted by the Judiciary Subcommittee. He told them the grey bill is strictly for reference. (See EXHIBIT 1)

REPRESENTATIVE KEEDY said he was still concerned with the relinquishment procedure. It appears that an unwed mother could relinquish her child without necessity of being present at a court hearing to determine whether the relinquishment was made voluntarily or with full knowledge of the consequences of her act. He said he thinks the relinquishment procedure can be done by an adoption agency or the Department of Social and Rehabilitation Services (SRS). Representative Keedy said he will not be comfortable carrying this bill on the floor of the House if the protection for the mother is not included in the bill.

REPRESENTATIVE HANNAH said page 2, line 8, and Subsection 11 of HB 3, EXHIBIT 1, were designed to ensure the relinquishment was done voluntarily. He said Section 40-8-109 also deals with parental relinquishment and appropriate court hearings.

REPRESENTATIVE BROWN said the concern is that the judge should be satisfied that the mother be sure, at the time of relinquishment, of what she is doing and have that act be totally voluntary.

BOB PYFER, attorney for the Legislative Council, referred to page 2, subsection 5 of EXHIBIT 1, and said the judge has to be satisfied the relinquishment is voluntary before parental rights are terminated.

MR. PYFER said he cannot address the merits of this piece of legislation. He said this bill puts the law back into effect the way it was prior to SB 267 with the difference that it would retain the provision of that bill that provides for notice to SRS and a court hearing whenever a child is adopted under private adoption proceedings.

CHAIRMAN KEYSER said this committee is just to consider the section that was repealed in SB 267; not to consider more amendments to the bill.

REPRESENTATIVE BROWN said if this committee is to reinstate that law, it should be reinstated with the necessary changes discussed by this committee.

REPRESENTATIVE HUENNEKENS referred to page 8 of EXHIBIT 1 and said the bill provides that parentage will not be terminated until after requirements for placement have been met. He said he doesn't feel this committee can introduce new concepts in HB 3 that are not within the scope of the call of the legislature.

REPRESENTATIVE DAILY said if this committee is going to put the bill through the legislature, the bill should be what this committee wants or not be passed at all. He said if the concerns are not within the scope of the call, then maybe the call should be expanded to take care of this committee's concerns.

REPRESENTATIVE BROWN asked if language could be added to the effect that the courts must be satisfied that the unwed mother knows exactly what she is doing before parental termination is granted.

MR. PYFER said the rationale for the bill being within the call is that it will reduce the number of cases on the Aid to Families with Dependent Children Program. That fits within the budget aspect of the session. Chairman Keyser asked if the proposal by Representative Brown would change that rationale. Mr. Pyfer said it would not be in the same direction as the call.

REPRESENTATIVE BROWN said he doesn't see where his proposed language would affect the number of AFDC cases. He said the percentage of parents who give children up for adoption would not change.

REPRESENTATIVE ANDERSON said there should be a more careful review of the Uniform Parentage Act to see how this committee's actions affect the Act.

CHAIRMAN KEYSER asked Senator Mazurek how he felt about the proposed language. Senator Mazurek said there are some instances where a mother will refuse to appear before a judge. The language may impede some adoptions. Senator Mazurek said he feels that concern is already addressed in HB 3 with the proposed amendments.

CHAIRMAN KEYSER asked Representative Keedy how the proposed language would be effective if there are women who refuse to go to court. Representative Keedy said if a woman refuses to appear in court, the language would not help, but if an agency or SRS can go to court for the relinquishment, a lot less women will go to court.

SENATOR MAZUREK said if a child is placed for adoption by an agency, that agency makes sure that placement is made with the mother having given voluntary relinquishment and the protection is there.

REPRESENTATIVE HANNAH agreed with Senator Mazurek and said he feels the grey bill presented solves the major concerns of this committee.

REPRESENTATIVE HANNAH moved this committee adopt the amendments to HB 3.

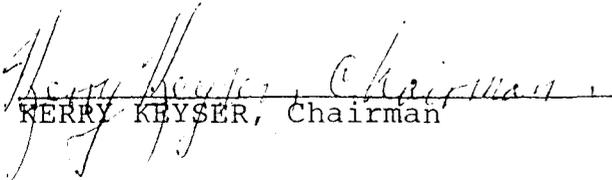
The motion was voted on and PASSED. All committee members voted aye except Representatives Keedy and Daily.

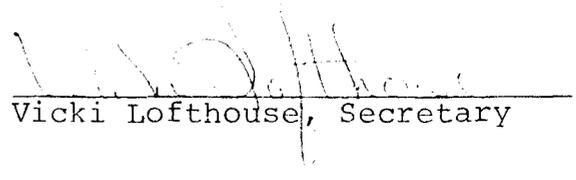
REPRESENTATIVE HANNAH moved HB 3 DO PASS AS AMENDED.

The motion was voted on and PASSED. All committee members voted aye except Representative Daily.

REPRESENTATIVE BROWN said he is not opposed to the bill but he feels the bill does have problems and it should be looked at in the 1983 Legislative Session.

The meeting was adjourned at 2:45 p.m.


PERRY KEYSER, Chairman


Vicki Lofthouse, Secretary

SENATE MEMBERS

PAT M. GOODOVICH
CHAIRMAN
CARROLL GHAM
JOSEPH P. MAZUREK
JESSE O'HARA

HOUSE MEMBERS

JOHN VINCENT
VICE CHAIRMAN
REX MANUEL
ROBT L. HURWITZ
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DIRECTOR ACCOUNTING DIVISION
ROBERT C. PYFER
DIRECTOR LEGAL SERVICES

November 19, 1981

To: Members of House Judiciary Committee, Senator Mazurek and
Randi Hood (SRS)

From: Bob Pyfer

Re: Subcommittee Amendments to HB 3

Attached is a "grey bill" incorporating amendments to HB 3 adopted by the subcommittee this morning. Basically, the amendments make it clear that a relinquishment must be voluntary before a court terminates parental rights (page 2, line 8).

The amendments on page 5, lines 18-20, and the addition of amendments to Section 40-8-109, MCA, (beginning on page 5, line 21) are necessary to specifically provide for voluntary relinquishment in the case of a direct placement of a child by the parents; these amendments are necessary in light of the repealer of sections 40-6-132 through 40-6-134 and should have been included in the introduced bill.

If the full Judiciary Committee adopts these amendments, the grey bill may simply be attached to the committee report to avoid considerable typing time.

HOUSE BILL NO. 3 (1st SS)

INTRODUCED BY LORY, 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, AMP 40-8-103, AND 40-8-102, 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 AND_VOLUNTARILY
9 executed relinquishment of a child by a parent or guardian,
10 the court shall immediately issue an order terminating the
11 rights of that parent or guardian to that child. If the
12 rights of both parents, the surviving parent, or the
13 guardian have been terminated, the court shall issue an
14 order committing the child to the agency of the state of
15 Montana or the licensed adoption agency to which the
16 relinquishment was 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 fitting
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 OR INDIVIDUAL
 19 pursuant to ~~40-6-132--through--40-6-134~~ [section 1] OR
 20 ~~40-8-109, WHICHEVER IS APPLICABLE."~~

21 SECTION 4. SECTION 40-8-109, MCA, IS AMENDED TO READ:

22 "40-8-109. Placement for adoption by parents. (1) No
 23 parent may make a placement of a child for adoption with a
 24 person who is not a stepparent or a member of the child's
 25 extended family unless the parent files a notice of parental

1 placement with the district court for the county in which
2 the prospective adoptive parent or the parent making the
3 placement resides:

4 (a) a notice of parental placement; and

5 (b) a relinquishment of parental rights to the
6 prospective adoptive parents, executed voluntarily and in
7 accordance with [section 1(2) through (4)].

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

13 (a) the name and address of each birth parent, if
14 known, and if unknown, the steps taken to ascertain the
15 whereabouts of the parent or parents;

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

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

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

23 (3) Upon receipt of a notice of parental placement and
24 a relinquishment, the court shall require that the
25 department examine the child and conduct interviews with the

1 birth parents and prospective adoptive parents and report to
2 the court within 30 days but not earlier than 5 days after
3 the birth of the child. The report must state whether the
4 following requirements for placement have been met:

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

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

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

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

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

21 (4) Within 45 days of filing of the notice of parental
22 placement ~~and the relinquishment~~, the court shall schedule a
23 hearing to consider the proposed placement.

24 (5) (a) At least 5 days' notice of the time and place
25 of the hearing must be given to the birth parents, the

1 prospective adoptive parents, any named guardian ad litem,
2 and the agency or person who conducted the investigation
3 under subsection (3).

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

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

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

16 Section 5. Repealer. Sections 40-6-132 through
17 40-6-134, MCA, are repealed.

18 Section 6. Codification instruction. Section 1 is
19 intended to be codified as an integral part of Title 40,
20 chapter 6, part 1, and the provisions of Title 40, chapter
21 6, part 1, apply to section 1.

22 Section 7. Effective date. This act is effective on
23 passage and approval.

-End-

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House BILL NO. 3 (SSE)

INTRODUCED BY Long MAZUREK

BY REQUEST OF THE DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES

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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
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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.

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18 licensed by any jurisdiction within the United States and
19 expressly empowered to place children as a preliminary to a
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22 genetic origin of a child but does not include a putative
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7 or nephew, or first cousin.

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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-

STANDING COMMITTEE REPORT

November 19

1981

MR. **SPEAKER:**

We, your committee on **JUDICIARY**

having had under consideration **HOUSE** Bill No. **3**

**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."**

Respectfully report as follows: That **HOUSE** Bill No. **3**

DO PASS AS AMENDED

(AMENDMENTS INCORPORATED IN ATTACHED GREY BILL)