

1 HOUSE BILL NO. 10
 2 INTRODUCED BY YARDLEY, STOLTZ

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO BE KNOWN AS THE
 5 'UNIFORM PARENTAGE ACT' RELATING TO MATTERS CONCERNING THE
 6 PARENT-CHILD RELATIONSHIP, ITS ESTABLISHMENT AND ITS
 7 TERMINATION; AMENDING SECTIONS 61-105 AND 61-205, R.C.M.
 8 1947; AND REPEALING SECTIONS 61-103, 61-108, 93-2901-1
 9 THROUGH 93-2901-11, R.C.M. 1947."

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

12 Section 1. Short title. This act may be cited as the
 13 "Uniform Parentage Act."

14 Section 2. Parent and child relationship defined. As
 15 used in this act, "parent and child relationship" means the
 16 legal relationship existing between a child and his natural
 17 or adoptive parents incident to which the law confers or
 18 imposes rights, privileges, duties, and obligations. It
 19 includes the mother and child relationship and the father
 20 and child relationship.

21 Section 3. Relationship not dependent on marriage. The
 22 parent and child relationship extends equally to every child
 23 and to every parent, regardless of the marital status of the
 24 parents.

25 Section 4. How parent and child relationship

1 established. The parent and child relationship between a
 2 child and

3 (1) the natural mother may be established by proof of
 4 her having given birth to the child, or under this act;

5 (2) the natural father may be established under this
 6 act;

7 (3) an adoptive parent may be established by proof of
 8 adoption.

9 Section 5. Presumption of paternity. (1) A man is
 10 presumed to be the natural father of a child if:

11 (a) he and the child's natural mother are or have been
 12 married to each other and the child is born during the
 13 marriage, or within three hundred (300) days after the
 14 marriage is terminated by death, annulment, declaration of
 15 invalidity, or divorce, or after a decree of separation is
 16 entered by a court;

17 (b) before the child's birth, he and the child's
 18 natural mother have attempted to marry each other by a
 19 marriage solemnized in apparent compliance with law,
 20 although the attempted marriage is or could be declared
 21 invalid, and,

22 (i) if the attempted marriage could be declared
 23 invalid only by a court, the child is born during the
 24 attempted marriage, or within three hundred (300) days after
 25 its termination by death, annulment, declaration of

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1 invalidity, or divorce; or

2 (ii) if the attempted marriage is invalid without a

3 court order, the child is born within three hundred (300)

4 days after the termination of cohabitation;

5 (c) after the child's birth, he and the child's

6 natural mother have married, or attempted to marry, each

7 other by a marriage solemnized in apparent compliance with

8 law, although the attempted marriage is or could be declared

9 invalid, and

10 (i) he has acknowledged his paternity of the child in

11 writing filed with the department of health and

12 environmental sciences or with the district court for the

13 county where he resides, or

14 (ii) with his consent, he is named as the child's

15 father on the child's birth certificate, or

16 (iii) he is obligated to support the child under a

17 written voluntary promise or by court order;

18 (d) while the child is under the age of majority, he

19 receives the child into his home and openly holds out the

20 child as his natural child; or

21 (e) he acknowledges his paternity of the child in a

22 writing filed with the department of health and

23 environmental sciences or with the district court of the

24 county where he resides, which court or department shall

25 promptly inform the mother of the filing of the

1 acknowledgment, and she does not dispute the acknowledgment

2 within a reasonable time after being informed thereof, in a

3 writing filed with the department of health and

4 environmental sciences or with the district court of the

5 county where the acknowledgment was filed. If another man

6 is presumed under this section to be the child's father,

7 acknowledgment may be effected only with the written consent

8 of the presumed father or after the presumption has been

9 rebutted.

10 (2) A presumption under this section may be rebutted

11 in an appropriate action only by clear and convincing

12 evidence. If two (2) or more presumptions arise which

13 conflict with each other, the presumption which on the facts

14 is founded on the weightier considerations of policy and

15 logic controls. The presumption is rebutted by a court

16 decree establishing paternity of the child by another man.

17 Section 6. Artificial insemination. (1) If, under the

18 supervision of a licensed physician and with the consent of

19 her husband, a wife is inseminated artificially with semen

20 donated by a man not her husband, the husband is treated in

21 law as if he were the natural father of a child thereby

22 conceived. The husband's consent must be in writing and

23 signed by him and his wife. The physician shall certify

24 their signatures and the date of the insemination, and file

25 the husband's consent with the department of health and

1 environmental sciences, where it shall be kept confidential
 2 and in a sealed file. However, the physician's failure to
 3 do so does not affect the father and child relationship.
 4 All papers and records pertaining to the insemination,
 5 whether part of the permanent record of a court or of a file
 6 held by the supervising physician or elsewhere, are subject
 7 to inspection only upon an order of the court for good cause
 8 shown.

9 (2) The donor of semen provided to a licensed
 10 physician for use in artificial insemination of a married
 11 woman other than the donor's wife is treated in law as if he
 12 were not the natural father of a child thereby conceived.

13 Section 7. Determination of father and child
 14 relationship--who may bring action--when action may be
 15 brought. (1) A child, his natural mother, or a man presumed
 16 to be his father under paragraph (a), (b), or (c) of section
 17 5(1), may bring an action

18 (a) at any time for the purpose of declaring the
 19 existence of the father and child relationship presumed
 20 under paragraph (a), (b), or (c) of section 5(1); or

21 (b) for the purpose of declaring the nonexistence of
 22 the father and child relationship presumed under paragraph
 23 (a), (b), or (c) of section 5(1) only if the action is
 24 brought within a reasonable time after obtaining knowledge
 25 of relevant facts, but in no event later than five (5) years

1 after the child's birth. After the presumption has been
 2 rebutted, paternity of the child by another man may be
 3 determined in the same action, if he has been made a party.

4 (2) Any interested party may bring an action at any
 5 time for the purpose of determining the existence or
 6 nonexistence of the father and child relationship presumed
 7 pursuant to section 5.

8 (3) An action to determine the existence of the father
 9 and child relationship with respect to a child who has no
 10 presumed father under section 5 may be brought by the child,
 11 the mother or personal representative of the child, the
 12 department of social and rehabilitation services or the
 13 appropriate county welfare department, the personal
 14 representative or a parent of the mother if the mother has
 15 died, a man alleged or alleging himself to be the father, or
 16 the personal representative or a parent of the alleged
 17 father if the alleged father has died or is a minor.

18 (4) Regardless of its terms, an agreement, other than
 19 an agreement approved by the court in accordance with
 20 section 14(2), between an alleged or presumed father and the
 21 mother or child, does not bar an action under this section.

22 (5) If an action under this section is brought before
 23 the birth of the child, all proceedings shall be stayed
 24 until after the birth, except service of process and the
 25 taking of depositions to perpetuate testimony.

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1 Section 8. Statute of limitations. An action to
 2 determine the existence of the father and child relationship
 3 as to a child who has no presumed father under section 5 may
 4 not be brought later than three (3) years after the birth of
 5 the child, or later than three (3) years after the effective
 6 date of this act, whichever is later. However, an action
 7 brought by or on behalf of a child whose paternity has not
 8 been determined is not barred until three (3) years after
 9 the child reaches the age of majority. Sections 7 and 8 do
 10 not extend the time within which a right of inheritance or a
 11 right to a succession may be asserted beyond the time
 12 provided by law relating to distribution and closing of
 13 decedents' estates or to the determination of heirship, or
 14 otherwise.

15 Section 9. Jurisdiction--venue. (1) The district court
 16 has jurisdiction of an action brought under this act. The
 17 action may be joined with an action for divorce, annulment,
 18 separate maintenance, or support.

19 (2) A person who has sexual intercourse in this state
 20 thereby submits to the jurisdiction of the courts of this
 21 state as to an action brought under this act with respect to
 22 a child who may have been conceived by that act of
 23 intercourse. In addition to any other method provided by
 24 rule or statute, including Rule 4B of the Montana Rules of
 25 Civil Procedure, personal jurisdiction may be acquired by

1 service in accordance with Rule 4B of the Montana Rules of
 2 Civil Procedure.

3 (3) The action may be brought in the county in which
 4 the child or the alleged father resides or is found or, if
 5 the father is deceased, in which proceedings for probate of
 6 his estate have been or could be commenced.

7 Section 10. Parties. The child shall be made a party
 8 to the action. If he is a minor he shall be represented by
 9 his general guardian or a guardian ad litem appointed by the
 10 court. The child's mother or father may not represent the
 11 child as guardian or otherwise. The court may appoint the
 12 department of social and rehabilitation services or the
 13 appropriate county welfare department as guardian ad litem
 14 for the child. The natural mother, each man presumed to be
 15 the father under section 5, and each man alleged to be the
 16 natural father, shall be made parties or, if not subject to
 17 the jurisdiction of the court, shall be given notice of the
 18 action in a manner prescribed by the court and an
 19 opportunity to be heard. The court may align the parties.

20 Section 11. Pre-trial proceedings. (1) As soon as
 21 practicable after an action to declare the existence or
 22 nonexistence of the father and child relationship has been
 23 brought, an informal hearing shall be held. The court may
 24 order that the hearing be held before a referee. The public
 25 shall be barred from the hearing. A record of the

1 proceeding or any portion thereof, shall be kept if any party
2 requests, or the court orders. Rules of evidence need not
3 be observed.

4 (2) Upon refusal of any witness, including a party, to
5 testify under oath or produce evidence, the court may order
6 him to testify under oath and produce evidence concerning
7 all relevant facts. If the refusal is upon the ground that
8 his testimony or evidence might tend to incriminate him, the
9 court may grant him immunity from all criminal liability on
10 account of the testimony or evidence he is required to
11 produce. An order granting immunity bars prosecution of the
12 witness for any offense shown in whole or in part by
13 testimony or evidence he is required to produce, except for
14 perjury committed in his testimony. The refusal of a
15 witness, who has been granted immunity, to obey an order to
16 testify or produce evidence is a civil contempt of the
17 court.

18 (3) Testimony of a physician concerning the medical
19 circumstances of the pregnancy and the condition and
20 characteristics of the child upon birth is not privileged.

21 Section 12. Blood tests. (1) The court may, and upon
22 request of a party shall, require the child, mother, or
23 alleged father to submit to blood tests. The tests shall be
24 performed by an expert qualified as an examiner of blood
25 types, appointed by the court.

1 (2) The court, upon reasonable request by a party,
2 shall order that independent tests be performed by other
3 experts qualified as examiners of blood types.

4 (3) In all cases, the court shall determine the number
5 and qualifications of the experts.

6 Section 13. Evidence relating to paternity. Evidence
7 relating to paternity may include:

8 (1) evidence of sexual intercourse between the mother
9 and alleged father at any possible time of conception;

10 (2) an expert's opinion concerning the statistical
11 probability of the alleged father's paternity based upon the
12 duration of the mother's pregnancy;

13 (3) blood test results, weighted in accordance with
14 evidence, if available, of the statistical probability of
15 the alleged father's paternity;

16 (4) medical or anthropological evidence relating to
17 the alleged father's paternity of the child based on tests
18 performed by experts. If a man has been identified as a
19 possible father of the child, the court may, and upon
20 request of a party shall, require the child, the mother and
21 the man to submit to appropriate tests; and

22 (5) all other evidence relevant to the issue of
23 paternity of the child.

24 Section 14. Pre-trial recommendations. (1) On the
25 basis of the information produced at the pre-trial hearing,

1 the judge or referee conducting the hearing shall evaluate
 2 the probability of determining the existence or nonexistence
 3 of the father and child relationship in a trial and whether
 4 a judicial declaration of the relationship would be in the
 5 best interest of the child. On the basis of the evaluation,
 6 an appropriate recommendation for settlement shall be made
 7 to the parties, which may include any of the following:

8 (a) that the action be dismissed with or without
 9 prejudice;

10 (b) that the matter be compromised by an agreement
 11 among the alleged father, the mother, and the child, in
 12 which the father and child relationship is not determined
 13 but in which a defined economic obligation is undertaken by
 14 the alleged father in favor of the child and, if
 15 appropriate, in favor of the mother, subject to approval by
 16 the judge or referee conducting the hearing. In reviewing
 17 the obligation undertaken by the alleged father in a
 18 compromise agreement, the judge or referee conducting the
 19 hearing shall consider the best interest of the child in the
 20 light of the factors enumerated in section 16(5), discounted
 21 by the improbability, as it appears to him, of establishing
 22 the alleged father's paternity or nonpaternity of the child
 23 in a trial of the action. In the best interest of the
 24 child, the court may order that the alleged father's
 25 identity be kept confidential. In that case, the court may

1 designate a person or agency to receive from the alleged
 2 father and disburse on behalf of the child all amounts paid
 3 by the alleged father in fulfillment of obligations imposed
 4 on him; and

5 (c) that the alleged father voluntarily acknowledge
 6 his paternity of the child.

7 (2) If the parties accept a recommendation made in
 8 accordance with subsection (1), judgment shall be entered
 9 accordingly.

10 (3) If a party refuses to accept a recommendation made
 11 under subsection (1) and blood tests have not been taken,
 12 the court shall require the parties to submit to blood
 13 tests, if practicable. Thereafter the judge or referee
 14 shall make an appropriate final recommendation. If a party
 15 refuses to accept the final recommendation, the action shall
 16 be set for trial.

17 (4) The guardian ad litem may accept or refuse to
 18 accept a recommendation under this section.

19 (5) The informal hearing may be terminated and the
 20 action set for trial if the judge or referee conducting the
 21 hearing finds unlikely that all parties would accept a
 22 recommendation he might make under subsection (1) or (3).

23 Section 15. Civil action. (1) An action under this act
 24 is a civil action governed by the rules of civil procedure.
 25 The mother of the child and the alleged father are competent

1 to testify and may be compelled to testify. Section 11,
2 subsections (2) and (3) and sections 12 and 13 apply to all
3 action brought under this act.

4 (2) Testimony relating to sexual access to the mother
5 by an unidentified man at any time or by an identified man
6 at a time other than the probable time of conception of the
7 child is inadmissible in evidence, unless offered by the
8 mother.

9 (3) In an action against an alleged father, evidence
10 offered by him with respect to a man who is not subject to
11 the jurisdiction of the court concerning his sexual
12 intercourse with the mother at or about the probable time of
13 conception of the child is admissible in evidence only if
14 the alleged father has undergone and made available to the
15 court blood tests the results of which do not exclude the
16 possibility of his paternity of the child. A man who is
17 identified and is subject to the jurisdiction of the court
18 shall be made a defendant in the action.

19 Section 16. Judgment or order. (1) The judgment or
20 order of the court determining the existence or nonexistence
21 of the parent and child relationship is determinative for
22 all purposes.

23 (2) If the judgment or order of the court is at
24 variance with the child's birth certificate, the court shall
25 order that a substitute birth certificate be issued under

1 section 24.

2 (3) The judgment or order may contain any other
3 provision directed against the appropriate party to the
4 proceeding, concerning the duty of support, the custody and
5 guardianship of the child, visitation privileges with the
6 child, the furnishing of bond or other security for the
7 payment of the judgment, or any other matter in the best
8 interest of the child. The judgment or order may direct the
9 father to pay the reasonable expenses of the mother's
10 pregnancy and confinement.

11 (4) Support judgments or orders ordinarily shall be
12 for periodic payments which may vary in amount. In the best
13 interest of the child, a lump sum payment or the purchase of
14 an annuity may be ordered in lieu of periodic payments of
15 support. The court may limit the father's liability for
16 past support of the child to the proportion of the expenses
17 already incurred that the court deems just.

18 (5) In determining the amount to be paid by a parent
19 for support of the child and the period during which the
20 duty of support is owed, a court enforcing the obligation of
21 support shall consider all relevant facts, including:

- 22 (a) the needs of the child;
23 (b) the standard of living and circumstances of the
24 parents;
25 (c) the relative financial means of the parents;

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- 1 (d) the earning ability of the parents;
 2 (e) the need and capacity of the child for education,
 3 including higher education;
 4 (f) the age of the child;
 5 (g) the financial resources and the earning ability of
 6 the child;
 7 (h) the responsibility of the parents for the support
 8 of others; and
 9 (i) the value of services contributed by the custodial
 10 parent.

11 Section 17. Costs. The court may order reasonable fees
 12 of counsel, experts, and the child's guardian ad litem, and
 13 other costs of the action and pre-trial proceedings,
 14 including blood tests, to be paid by the parties in
 15 proportions and at times determined by the court. The court
 16 may order the proportion of any indigent party to be paid
 17 out of the treasury of the county in which the action is
 18 brought.

19 Section 18. Enforcement of judgment or order. (1) If
 20 existence of the father and child relationship is declared,
 21 or paternity or a duty of support has been acknowledged or
 22 adjudicated under this act or under prior law, the
 23 obligation of the father may be enforced in the same or
 24 other proceedings by the mother, the child, the public
 25 authority that has furnished or may furnish the reasonable

1 expenses of pregnancy, confinement, education, support, or
 2 funeral, or by any other person, including a private agency,
 3 to the extent he has furnished or is furnishing these
 4 expenses.

5 (2) The court may order support payments to be made to
 6 the mother, the clerk of the court, or a person,
 7 corporation, or agency designated to administer them for the
 8 benefit of the child under the supervision of the court.

9 (3) Willful failure to obey the judgment or order of
 10 the court is a civil contempt of the court. All remedies
 11 for the enforcement of judgments apply.

12 Section 19. Modification of judgment or order. The
 13 court has continuing jurisdiction to modify or revoke a
 14 judgment or order

15 (1) for future education and support, and

16 (2) with respect to matters listed in section 16,
 17 subsections (3) and (4) and section 18(2), except that a
 18 court entering a judgment or order for the payment of a lump
 19 sum or the purchase of an annuity under section 16(4) may
 20 specify that the judgment or order may not be modified or
 21 revoked.

22 Section 20. Rights to counsel--free transcript on
 23 appeal. (1) At the pre-trial hearing and in further
 24 proceedings, any party may be represented by counsel. The
 25 court shall appoint counsel for a party who is financially

1 unable to obtain counsel.

2 (2) If a party is financially unable to pay the cost
3 of a transcript, the court shall furnish on request a
4 transcript for purposes of appeal.

5 Section 21. Hearings and records--confidentiality.
6 Notwithstanding any other law concerning public hearings and
7 records, any hearing or trial held under this act shall be
8 held in closed court without admittance of any person other
9 than those necessary to the action or proceeding. All
10 papers and records, other than the final judgment,
11 pertaining to the action or proceeding, whether part of the
12 permanent record of the court or of a file in any agency of
13 the state or of any political subdivision or elsewhere, are
14 subject to inspection only upon consent of the court and all
15 interested persons, or in exceptional cases only upon an
16 order of the court for good cause shown.

17 Section 22. Action to declare mother and child
18 relationship. Any interested party may bring an action to
19 determine the existence or nonexistence of a mother and
20 child relationship. Insofar as practicable, the provisions
21 of this act applicable to the father and child relationship
22 apply.

23 Section 23. Promise to render support. (1) Any promise
24 in writing to furnish support for a child, growing out of a
25 supposed or alleged father and child relationship, does not

1 require consideration and is enforceable according to its
2 terms, subject to section 7(4).

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

8 Section 24. Birth records. (1) Upon order of a court
9 of this state or upon request of a court of another state,
10 the department of health and environmental sciences shall
11 prepare a substitute certificate of birth consistent with
12 the findings of the court and shall substitute the new
13 certificate for the original certificate of birth.

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

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

24 Section 25. Custodial proceedings. (1) If a mother
25 relinquishes or proposes to relinquish for adoption a child

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1 who has:

2 (a) a presumed father under section 5(1),

3 (b) a father whose relationship to the child has been
4 determined by a court, or

5 (c) a father as to whom the child is a legitimate
6 child under prior law of this state or under the law of
7 another jurisdiction, the father shall be given notice of
8 the adoption proceeding and have the rights provided under
9 sections 61-205 and 61-206, R.C.M. 1947, unless the father's
10 relationship to the child has been previously terminated or
11 determined by a court not to exist.

12 (2) If a mother relinquishes or proposes to relinquish
13 for adoption a child who does not have:

14 (a) a presumed father under section 5(1),

15 (b) a father whose relationship to the child has been
16 determined by a court, or

17 (c) a father as to whom the child is a legitimate
18 child under prior law of this state or under the law of
19 another jurisdiction, or if a child otherwise becomes the
20 subject of an adoption proceedings, the agency or person to
21 whom the child has been or is to be relinquished, or the
22 mother or the person having custody of the child, shall file
23 a petition in the district court to terminate the parental
24 rights of the father, unless the father's relationship to
25 the child has been previously terminated or determined not

1 to exist by a court.

2 (3) In an effort to identify the natural father, the
3 court shall cause inquiry to be made of the mother and any
4 other appropriate person. The inquiry shall include the
5 following: whether the mother was married at the time of
6 conception of the child at any time thereafter; whether the
7 mother was cohabiting with a man at the time of conception
8 or birth of the child; whether the mother has received
9 support payments or promises of support with respect to the
10 child or in connection with her pregnancy; or whether any
11 man has formally or informally acknowledged or declared his
12 possible paternity of the child.

13 (4) If, after the inquiry, the natural father is
14 identified to the satisfaction of the court, or if more than
15 one man is identified as a possible father, each shall be
16 given notice of the proceeding in accordance with subsection
17 (6) of this section. If any of them fails to appear, or, if
18 appearing, fails to claim custodial rights, his parental
19 rights with reference to the child shall be terminated. If
20 the natural father or a man representing himself to be the
21 natural father, claims custodial rights, the court shall
22 proceed to determine custodial rights.

23 (5) If, after the inquiry, the court is unable to
24 identify the natural father or any possible natural father
25 and no person has appeared claiming to be the natural father

1 and claiming custodial rights, the court shall enter an
 2 order terminating the unknown natural father's parental
 3 rights with reference to the child. Subject to the
 4 disposition of an appeal, upon the expiration of six (6)
 5 months after an order terminating parental rights is issued
 6 under this subsection, the order cannot be questioned by any
 7 person, in any manner, or upon any ground, including fraud,
 8 misrepresentation, failure to give any required notice, or
 9 lack of jurisdiction of the parties or of the subject
 10 matter.

11 (6) Notice of the proceeding shall be given to every
 12 person identified as the natural father or a possible
 13 natural father in the manner appropriate under rules of
 14 civil procedure for the service of process in a civil action
 15 in this state, or in any manner the court directs. Proof of
 16 giving the notice shall be filed with the court before the
 17 petition is heard. If no person has been identified as the
 18 natural father or a possible father, the court, on the basis
 19 of all information available, shall determine whether
 20 publication or public posting of notice of the proceeding is
 21 likely to lead to identification and, if so, shall order
 22 publication or public posting at times and in places and
 23 manner it deems appropriate.

24 Section 26. Uniformity of application and
 25 construction. This act shall be applied and construed to

1 effectuate its general purpose to make uniform the law with
 2 respect to the subject of this act among states enacting it.

3 Section 27. Section 61-105, R.C.M. 1947, is amended to
 4 read as follows:

5 "61-105. Custody of legitimate child. The father and
 6 mother of ~~a-legitimate~~ an unmarried minor child are equally
 7 entitled to its custody, services, and earnings. If either
 8 parent be dead, or unable, or refuse to take the custody, or
 9 has abandoned his or her family, the other is entitled to
 10 its custody, services, and earnings."

11 Section 28. Section 61-205, R.C.M. 1947, is amended to
 12 read as follows:

13 "61-205. Persons required to consent to the adoption.
 14 An adoption of a child may be decreed when there have been
 15 filed written consents to adoption executed by:

16 (1) Both parents, if living, or the surviving parent,
 17 of a ~~legitimate~~ child; provided, that consent shall not be
 18 required from a father or mother,

19 (a) adjudged guilty by a court of competent
 20 jurisdiction of physical cruelty toward said child; or,

21 (b) adjudged to be an habitual drunkard; or,

22 (c) who has been judicially deprived of the custody of
 23 the child on account of cruelty or neglect toward the child;
 24 or,

25 (d) who has, in the state of Montana, or in any other

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1 state of the United States, willfully abandoned such child;
2 or,

3 (e) who has caused the child to be maintained by any
4 public or private children's institution, charitable agency,
5 or any licensed adoption agency, or the state department of
6 public welfare of the state of Montana for a period of one
7 (1) year without contributing to the support of said child
8 during said period, if able; or,

9 (f) if it is proven to the satisfaction of the court
10 that said father or mother, if able, has not contributed to
11 the support of said child during a period of one (1) year
12 before the filing of a petition for adoption; or (an
13 adoption of a child may be decreed when there have been
14 filed written consents to adoption executed by).

15 ~~(2) --The--mother--alone--if--the--child--is--illegitimate--~~
16 ~~or,~~

17 ~~(3) --(2)~~ The legal guardian of the person of the child
18 if both parents are dead or if the rights of the parents
19 have been terminated by judicial proceedings and such
20 guardian has authority by order of the court appointing him
21 to consent to the adoption; or,

22 ~~(4) --(3)~~ The executive head of an agency if the child
23 has been relinquished for adoption to such agency or if the
24 rights of the parents have been judicially terminated, or if
25 both parents are dead, and custody of the child has been

1 legally vested in such agency with authority to consent to
2 adoption of the child; or,

3 ~~(5) --(4)~~ Any person having legal custody of a child by
4 court order if the parental rights of the parents have been
5 judicially terminated, but in such case the court having
6 jurisdiction of the custody of the child must consent to
7 adoption, and a certified copy of its order shall be
8 attached to the petition.

9 The consents required by paragraphs (1) and (2) shall
10 be acknowledged before an officer authorized to take
11 acknowledgments, or witnessed by a representative of the
12 state department of public welfare or of an agency, or
13 witnessed by a representative of the court."

14 Section 29. Uniformity of application and
15 construction. This act shall be applied and construed to
16 effectuate its general purpose to make uniform the law with
17 respect to the subject of this act among states enacting it.

18 Section 30. Severability. If any provision of this
19 act or the application thereof to any person or circumstance
20 is held invalid, the invalidity does not affect other
21 provisions or applications of the act which can be given
22 effect without the invalid provision or application, and to
23 this end the provisions of this act are severable.

24 Section 31. Repeal. Sections 93-2901-1 through
25 93-2901-11, 61-103, and 61-108, R.C.M. 1947, are repealed.

Approved by Committee
on Judiciary

HOUSE BILL NO. 10

INTRODUCED BY YARDLEY, STOLTZ

A BILL FOR AN ACT ENTITLED: "AN ACT TO BE KNOWN AS THE
'UNIFORM PARENTAGE ACT' RELATING TO MATTERS CONCERNING THE
PARENT-CHILD RELATIONSHIP, ITS ESTABLISHMENT AND ITS
TERMINATION; AMENDING SECTIONS 61-105 AND 61-205, R.C.M.
1947; AND REPEALING SECTIONS 61-103, 61-108, 93-2901-1
THROUGH 93-2901-11, R.C.M. 1947."

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

Section 1. Short title. This act may be cited as the
"Uniform Parentage Act".

Section 2. Parent and child relationship defined. As
used in this act, "parent and child relationship" means the
legal relationship existing between a child and his natural
or adoptive parents incident to which the law confers or
imposes rights, privileges, duties, and obligations. It
includes the mother and child relationship and the father
and child relationship.

Section 3. Relationship not dependent on marriage. The
parent and child relationship extends equally to every child
and to every parent, regardless of the marital status of the
parents.

Section 4. How parent and child relationship

established. The parent and child relationship between a
child and

(1) the natural mother may be established by proof of
her having given birth to the child, or under this act;

(2) the natural father may be established under this
act;

(3) an adoptive parent may be established by proof of
adoption.

Section 5. Presumption of paternity. (1) A man is
presumed to be the natural father of a child if:

(a) he and the child's natural mother are or have been
married to each other and the child is born during the
marriage, or within three hundred (300) days after the
marriage is terminated by death, annulment, declaration of
invalidity, or divorce, or after a decree of separation is
entered by a court;

(b) before the child's birth, he and the child's
natural mother have attempted to marry each other by a
marriage solemnized in apparent compliance with law,
although the attempted marriage is or could be declared
invalid, and,

(i) if the attempted marriage could be declared
invalid only by a court, the child is born during the
attempted marriage, or within three hundred (300) days after
its termination by death, annulment, declaration of

1 invalidity, or divorce; or
 2 (ii) if the attempted marriage is invalid without a
 3 court order, the child is born within three hundred (300)
 4 days after the termination of cohabitation;
 5 (c) after the child's birth, he and the child's
 6 natural mother have married, or attempted to marry, each
 7 other by a marriage solemnized in apparent compliance with
 8 law, although the attempted marriage is or could be declared
 9 invalid, and
 10 (i) he has acknowledged his paternity of the child in
 11 writing filed with the department of health and
 12 environmental sciences or with the district court for the
 13 county where he resides, or
 14 (ii) with his consent, he is named as the child's
 15 father on the child's birth certificate, or
 16 (iii) he is obligated to support the child under a
 17 written voluntary promise or by court order;
 18 (d) while the child is under the age of majority, he
 19 receives the child into his home and openly holds out the
 20 child as his natural child; or
 21 (e) he acknowledges his paternity of the child in a
 22 writing filed with the department of health and
 23 environmental sciences or with the district court of the
 24 county where he resides, which court or department shall
 25 promptly inform the mother of the filing of the

1 acknowledgment, and she does not dispute the acknowledgment
 2 within a reasonable time after being informed thereof, in a
 3 writing filed with the department of health and
 4 environmental sciences or with the district court of the
 5 county where the acknowledgment was filed. If another man
 6 is presumed under this section to be the child's father,
 7 acknowledgment may be effected only with the written consent
 8 of the presumed father or after the presumption has been
 9 rebutted.

10 (2) A presumption under this section may be rebutted
 11 in an appropriate action only by clear and convincing
 12 evidence. ~~If--two--(2)--or--more--presumptions--arise--which~~
 13 ~~conflict--with--each--other--the--presumption--which--on--the--facts~~
 14 ~~is--founded--on--the--weightier--considerations--of--policy--and~~
 15 ~~logic--controls---The--presumption--is--rebutted--by--a--court~~
 16 ~~decree--establishing--paternity--of--the--child--by--another--man.~~

17 Section 6. Artificial insemination. (1) If, under the
 18 supervision of a licensed physician and with the consent of
 19 her husband, a wife is inseminated artificially with semen
 20 donated by a man not her husband, the husband is treated in
 21 law as if he were the natural father of a child thereby
 22 conceived. The husband's consent must be in writing and
 23 signed by him and his wife. The physician shall certify
 24 their signatures and the date of the insemination, and file
 25 the husband's consent with the department of health and

1 environmental sciences, where it shall be kept confidential
 2 and in a sealed file. However, the physician's failure to
 3 do so does not affect the father and child relationship.
 4 All papers and records pertaining to the insemination,
 5 whether part of the permanent record of a court or of a file
 6 held by the supervising physician or elsewhere, are subject
 7 to inspection only upon an order of the court for good cause
 8 shown.

9 (2) The donor of semen provided to a licensed
 10 physician for use in artificial insemination of a married
 11 woman other than the donor's wife is treated in law as if he
 12 were not the natural father of a child thereby conceived.

13 Section 7. Determination of father and child
 14 relationship -- who may bring action ~~---when-action-may-be~~
 15 ~~brought.~~ (1) A child, his natural mother, or a man presumed
 16 to be his father under paragraph (a), (b), or (c) of section
 17 5(1), may bring an action.

18 ~~(a)--at-any-time--for--the--purpose--of--declaring--the~~
 19 ~~existence--of--the--father--and--child-relationship-presumed~~
 20 ~~under-paragraph-(a)--(b)--or--(c)--of--section-5(1)--or~~

21 ~~(b)--for-the-purpose-of-declaring-the--nonexistence--of~~
 22 ~~the--father--and--child-relationship-presumed-under-paragraph~~
 23 ~~(a)--(b)--or--(c)--of--section--5(1)--only--if--the--action--is~~
 24 ~~brought--within--a-reasonable-time-after-obtaining-knowledge~~
 25 ~~of-relevant-facts,-but-in-no-event-later-than-five-(5)-years~~

1 ~~after-the-child's-birth,--After--the--presumption--has--been~~
 2 ~~rebutted,-paternity-of-the-child-by-another-man-may-be~~
 3 ~~determined-in-the-same-action,-if-he-has-been-made-a-party,~~

4 (2) Any interested party may bring an action ~~at-any~~
 5 ~~time~~ for the purpose of determining the existence or
 6 nonexistence of the father and child relationship presumed
 7 pursuant to section 5.

8 (3) An action to determine the existence of the father
 9 and child relationship with respect to a child who has no
 10 presumed father under section 5 may be brought by the child,
 11 the mother or personal representative of the child, the
 12 department of social and rehabilitation services or the
 13 appropriate county welfare department, the personal
 14 representative or a parent of the mother if the mother has
 15 died, a man alleged or alleging himself to be the father, or
 16 the personal representative or a parent of the alleged
 17 father if the alleged father has died or is a minor.

18 (4) Regardless of its terms, an agreement, other than
 19 an agreement approved by the court in accordance with
 20 section 14(2), between an alleged or presumed father and the
 21 mother or child, does not bar an action under this section.

22 (5) If an action under this section is brought before
 23 the birth of the child, all proceedings shall be stayed
 24 until after the birth, except service of process and the
 25 taking of depositions to perpetuate testimony.

1 Section 8. Statute of limitations. (1) LIMITATION WHEN
2 FATHER AND CHILD RELATIONSHIP IS PRESUMED.

3 (A) AN ACTION MAY BE COMMENCED AT ANY TIME FOR THE
4 PURPOSE OF DECLARING THE EXISTENCE OF THE FATHER AND CHILD
5 RELATIONSHIP PRESUMED UNDER PARAGRAPH (A), (B), OR (C) OF
6 SECTION 5(1); OR

7 (B) FOR THE PURPOSE OF DECLARING THE NONEXISTENCE OF
8 THE FATHER AND CHILD RELATIONSHIP PRESUMED UNDER PARAGRAPH
9 (A), (B), OR (C) OF SECTION 5(1) ONLY IF THE ACTION IS
10 BROUGHT WITHIN A REASONABLE TIME AFTER OBTAINING KNOWLEDGE
11 OF RELEVANT FACTS, BUT IN NO EVENT LATER THAN FIVE (5) YEARS
12 AFTER THE CHILD'S BIRTH. AFTER THE PRESUMPTION HAS BEEN
13 REBUTTED, PATERNITY OF THE CHILD BY ANOTHER MAN MAY BE
14 DETERMINED IN THE SAME ACTION, IF HE HAS BEEN MADE A PARTY.

15 (2) LIMITATIONS WHEN FATHER-CHILD RELATIONSHIP IS NOT
16 PRESUMED. An action to determine the existence OR
17 NONEXISTENCE of the father and child relationship as to a
18 child who has no presumed father under section 5 may not be
19 brought later than ~~three-(3)~~ FIVE (5) years after the birth
20 of the child, or later than ~~three-(3)~~ FIVE (5) years after
21 the effective date of this act, whichever is later.
22 ~~However,--an-action-brought-by-or-on-behalf-of-a-child-whose~~
23 ~~paternity-has-not-been-determined-is-not-barred-until--three~~
24 ~~(3)--years--after--the--child--reaches--the--age--of--majority,~~
25 Sections 7 and 8 do not extend the time within which a right

1 of inheritance or a right to a succession may be asserted
2 beyond the time provided by law relating to distribution and
3 closing of decedents' estates or to the determination of
4 heirship, or otherwise.

5 Section 9. Jurisdiction--venue. (1) The district court
6 has jurisdiction of an action brought under this act. The
7 action may be joined with an action for divorce, annulment,
8 separate maintenance, ~~or~~ support, OR ADOPTION.

9 (2) A person who has sexual intercourse in this state
10 thereby submits to the jurisdiction of the courts of this
11 state as to an action brought under this act with respect to
12 a child who may have been conceived by that act of
13 intercourse. In addition to any other method provided by
14 rule or statute, including Rule 4B of the Montana Rules of
15 Civil Procedure, personal jurisdiction may be acquired by
16 service in accordance with Rule 4B of the Montana Rules of
17 Civil Procedure.

18 (3) The action may be brought in the county in which
19 the child or the alleged father resides or is found or, if
20 the father is deceased, in which proceedings for probate of
21 his estate have been or could be commenced.

22 Section 10. Parties. The child shall be made a party
23 to the action. If he is a minor he shall be represented by
24 his general guardian or a guardian ad litem appointed by the
25 court. The child's mother or father may not represent the

1 child as guardian or otherwise. The court may appoint the
 2 department of social and rehabilitation services or the
 3 appropriate county welfare department as guardian ad litem
 4 for the child. The natural mother, each man presumed to be
 5 the father under section 5, and each man alleged to be the
 6 natural father, shall be made parties or, if not subject to
 7 the jurisdiction of the court, shall be given notice of the
 8 action in a manner prescribed by the court and an
 9 opportunity to be heard. The court may align the parties.

10 Section 11. Pre-trial proceedings. (1) As soon as
 11 practicable after an action to declare the existence or
 12 nonexistence of the father and child relationship has been
 13 brought, an informal hearing shall be held. The court may
 14 order that the hearing be held before a referee. The public
 15 shall be barred from the hearing. A record of the
 16 proceeding or any portion thereof shall be kept if any party
 17 requests, or the court orders. ~~Rules-of-evidence-need-not~~
 18 ~~be-observed.~~

19 (2) Upon refusal of any witness, including a party, to
 20 testify under oath or produce evidence, the court may order
 21 him to testify under oath and produce evidence concerning
 22 all relevant facts. If the refusal is upon the ground that
 23 his testimony or evidence might tend to incriminate him, the
 24 court may grant him immunity from all criminal liability on
 25 account of the testimony or evidence he is required to

1 produce. An order granting immunity bars prosecution of the
 2 witness for any offense shown in whole or in part by
 3 testimony or evidence he is required to produce, except for
 4 perjury committed in his testimony. The refusal of a
 5 witness, who has been granted immunity, to obey an order to
 6 testify or produce evidence is a civil contempt of the
 7 court.

8 (3) Testimony of a physician concerning the medical
 9 circumstances of the pregnancy and the condition and
 10 characteristics of the child upon birth is not privileged.

11 Section 12. Blood tests. (1) The court may, and upon
 12 request of a party shall, require the child, mother, or
 13 alleged father to submit to blood tests. The tests shall be
 14 performed by an expert qualified as an examiner of blood
 15 types, appointed by the court.

16 (2) The court, upon reasonable request by a party,
 17 shall order that independent tests be performed by other
 18 experts qualified as examiners of blood types.

19 (3) In all cases, the court shall determine the number
 20 and qualifications of the experts.

21 Section 13. Evidence relating to paternity. Evidence
 22 relating to paternity may include:

23 (1) evidence of sexual intercourse between the mother
 24 and alleged father at any possible time of conception;

25 (2) an expert's opinion concerning the statistical

1 probability of the alleged father's paternity based upon the
 2 duration of the mother's pregnancy;

3 (3) blood test results, weighted in accordance with
 4 evidence, if available, of the statistical probability of
 5 the alleged father's paternity;

6 (4) medical or anthropological evidence relating to
 7 the alleged father's paternity of the child based on tests
 8 performed by experts. If a man has been identified as a
 9 possible father of the child, the court may, and upon
 10 request of a party shall, require the child, the mother and
 11 the man to submit to appropriate tests; and

12 (5) all other evidence relevant to the issue of
 13 paternity of the child.

14 Section 14. Pre-trial recommendations. (1) On the
 15 basis of the information produced at the pre-trial hearing,
 16 the judge or referee conducting the hearing shall evaluate
 17 the probability of determining the existence or nonexistence
 18 of the father and child relationship in a trial and whether
 19 a judicial declaration of the relationship would be in the
 20 best interest of the child. On the basis of the evaluation,
 21 an appropriate recommendation for settlement shall be made
 22 to the parties, which may include any of the following:

23 (a) that the action be dismissed with or without
 24 prejudice;

25 (b) that the matter be compromised by an agreement

1 among the alleged father, the mother, and the child, in
 2 which the father and child relationship is not determined
 3 but in which a defined economic obligation is undertaken by
 4 the alleged father in favor of the child and, if
 5 appropriate, in favor of the mother, subject to approval by
 6 the judge or referee conducting the hearing. In reviewing
 7 the obligation undertaken by the alleged father in a
 8 compromise agreement, the judge or referee conducting the
 9 hearing shall consider the best interest of the child in the
 10 light of the factors enumerated in section 16(5), discounted
 11 by the improbability, as it appears to him, of establishing
 12 the alleged father's paternity or nonpaternity of the child
 13 in a trial of the action. In the best interest of the
 14 child, the court may order that the alleged father's
 15 identity be kept confidential. In that case, the court may
 16 designate a person or agency to receive from the alleged
 17 father and disburse on behalf of the child all amounts paid
 18 by the alleged father in fulfillment of obligations imposed
 19 on him; and

20 (c) that the alleged father voluntarily acknowledge
 21 his paternity of the child.

22 (2) If the parties accept a recommendation made in
 23 accordance with subsection (1), judgment shall be entered
 24 accordingly.

25 (3) If a party refuses to accept a recommendation made

1 under subsection (1) and blood tests have not been taken,
 2 the court shall require the parties to submit to blood
 3 tests, if practicable. Thereafter the judge or referee
 4 shall make an appropriate final recommendation. If a party
 5 refuses to accept the final recommendation, the action shall
 6 be set for trial.

7 (4) IF THE SCIENTIFIC EVIDENCE RESULTING FROM THE
 8 BLOOD TESTS CONCLUSIVELY SHOWS THAT THE DEFENDANT COULD NOT
 9 HAVE BEEN THE FATHER THEN THE INSTANT ACTION SHALL BE
 10 DISMISSED.

11 ~~(4)~~(5) The guardian ad litem may accept or refuse to
 12 accept a recommendation under this section.

13 ~~(5)~~(6) The informal hearing may be terminated and the
 14 action set for trial if the judge or referee conducting the
 15 hearing finds unlikely that all parties would accept a
 16 recommendation he might make under subsection (1) or (3).

17 Section 15. Civil action. (1) An action under this act
 18 is a civil action governed by the rules of civil procedure.
 19 The mother of the child and the alleged father are competent
 20 to testify and may be compelled to testify. Section 11,
 21 subsections (2) and (3) and sections 12 and 13 apply to all
 22 action brought under this act.

23 (2) Testimony relating to sexual access to the mother
 24 by an unidentified man at any time or by an identified man
 25 at a time other than the probable time of conception of the

1 child is inadmissible in evidence, unless offered by the
 2 mother.

3 (3) In an action against an alleged father, evidence
 4 offered by him with respect to a man who is not subject to
 5 the jurisdiction of the court concerning his sexual
 6 intercourse with the mother at or about the probable time of
 7 conception of the child is admissible in evidence only if
 8 the alleged father has undergone and made available to the
 9 court blood tests the results of which do not exclude the
 10 possibility of his paternity of the child. A man who is
 11 identified and is subject to the jurisdiction of the court
 12 shall be made a defendant in the action.

13 Section 16. Judgment or order. (1) The judgment or
 14 order of the court determining the existence or nonexistence
 15 of the parent and child relationship is determinative for
 16 all purposes.

17 (2) If the judgment or order of the court is at
 18 variance with the child's birth certificate, the court shall
 19 order that a substitute birth certificate be issued under
 20 section 24.

21 (3) The judgment or order may contain any other
 22 provision directed against the appropriate party to the
 23 proceeding, concerning the duty of support, the custody and
 24 guardianship of the child, visitation privileges with the
 25 child, the furnishing of bond or other security for the

1 payment of the judgment, or any other matter in the best
 2 interest of the child. The judgment or order may direct the
 3 father to pay the reasonable expenses of the mother's
 4 pregnancy and confinement.

5 (4) Support judgments or orders ordinarily shall be
 6 for periodic payments which may vary in amount. In the best
 7 interest of the child, a lump-sum payment or the purchase of
 8 an annuity may be ordered in lieu of periodic payments of
 9 support. The court may limit the father's liability for
 10 past support of the child to the proportion of the expenses
 11 already incurred that the court deems just.

12 (5) In determining the amount to be paid by a parent
 13 for support of the child and the period during which the
 14 duty of support is owed, a court enforcing the obligation of
 15 support shall consider all relevant facts, including:

- 16 (a) the needs of the child;
- 17 (b) the standard of living and circumstances of the
 18 parents;
- 19 (c) the relative financial means of the parents;
- 20 (d) the earning ability of the parents;
- 21 (e) the need and capacity of the child for education,
 22 including higher education;
- 23 (f) the age of the child;
- 24 (g) the financial resources and the earning ability of
 25 the child;

1 (h) the responsibility of the parents for the support
 2 of others; and

3 (i) the value of services contributed by the custodial
 4 parent.

5 Section 17. Costs. The court may order reasonable fees
 6 of counsel, experts, and the child's guardian ad litem, and
 7 other costs of the action and pre-trial proceedings,
 8 including blood tests, to be paid by the parties in
 9 proportions and at times determined by the court. The court
 10 may order the proportion of any indigent party to be paid
 11 out of the treasury of the county in which the action is
 12 brought.

13 Section 18. Enforcement of judgment or order. (1) If
 14 existence of the father and child relationship is declared,
 15 or paternity or a duty of support has been acknowledged or
 16 adjudicated under this act or under prior law--~~the~~
 17 ~~obligation-of-the-father-may-be-enforced-in-the-same-or~~
 18 ~~other-proceedings-by-the-mother,-the-child,-the-public~~
 19 ~~authority-that-has-furnished-or-may-furnish-the-reasonable~~
 20 ~~expenses-of-pregnancy,-confinement,-education,-support,-or~~
 21 ~~funeral-or-by-any-other-person,-including-a-private-agency,~~
 22 ~~to-the-extent-he-has-furnished-or-is-furnishing-these~~
 23 ~~expenses.~~

24 (2) ~~The~~ THE court may order support payments to be
 25 made to the mother, the clerk of the court, or a person,

1 corporation, or agency designated to administer them for the
2 benefit of the child under the supervision of the court.

3 ~~(3)~~(2) Willful failure to obey the judgment or order
4 of the court is a civil contempt of the court. All remedies
5 for the enforcement of judgments apply.

6 Section 19. Modification of judgment or order. The
7 court has continuing jurisdiction to modify or revoke a
8 judgment or order

9 (1) for future education and support, and

10 (2) with respect to matters listed in section 16,
11 subsections (3) and (4) and section 18(2), except that a
12 court entering a judgment or order for the payment of a lump
13 sum or the purchase of an annuity under section 16(4) may
14 specify that the judgment or order may not be modified or
15 revoked.

16 Section 20. Rights to counsel--free transcript on
17 appeal. (1) At the pre-trial hearing and in further
18 proceedings, any party may be represented by counsel. The
19 court shall appoint counsel for a party who is financially
20 unable to obtain counsel.

21 (2) If a party is financially unable to pay the cost
22 of a transcript, the court shall furnish on request a
23 transcript for purposes of appeal.

24 Section 21. Hearings and records--confidentiality.
25 Notwithstanding any other law concerning public hearings and

1 records, any hearing or trial held under this act shall be
2 held in closed court without admittance of any person other
3 than those necessary to the action or proceeding. All
4 papers and records, other than the final judgment,
5 pertaining to the action or proceeding, whether part of the
6 permanent record of the court or of a file in any agency of
7 the state or of any political subdivision or elsewhere, are
8 subject to inspection only upon consent of the court and all
9 interested persons, or in exceptional cases only upon an
10 order of the court for good cause shown.

11 Section 22. Action to declare mother and child
12 relationship. Any interested party may bring an action to
13 determine the existence or nonexistence of a mother and
14 child relationship. Insofar as practicable, the provisions
15 of this act applicable to the father and child relationship
16 apply.

17 Section 23. Promise to render support. (1) Any promise
18 in writing to furnish support for a child, growing out of a
19 supposed or alleged father and child relationship, does not
20 require consideration and is enforceable according to its
21 terms, subject to section 7(4).

22 (2) In the best interest of the child or the mother,
23 the court may, and upon the provision's request shall, order
24 the promise to be kept in confidence and designate a person
25 or agency to receive and disburse on behalf of the child all

1 amounts paid in performance of the promise.

2 Section 24. Birth records. (1) Upon order of a court
3 of this state or upon request of a court of another state,
4 the department of health and environmental sciences shall
5 prepare a substitute certificate of birth consistent with
6 the findings of the court and shall substitute the new
7 certificate for the original certificate of birth.

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

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

18 Section 25. Custodial proceedings. (1) If a mother
19 relinquishes or proposes to relinquish for adoption a child
20 who has:

21 (a) a presumed father under section 5(1),

22 (b) a father whose relationship to the child has been
23 determined by a court, or

24 (c) a father as to whom the child is a legitimate
25 child under prior law of this state or under the law of

1 another jurisdiction, the father shall be given notice of
2 the adoption proceeding and have the rights provided under
3 sections 61-205 and 61-206, R.C.M. 1947, unless the father's
4 relationship to the child has been previously terminated or
5 determined by a court not to exist.

6 (2) If a mother relinquishes or proposes to relinquish
7 for adoption a child who does not have:

8 (a) a presumed father under section 5(1),

9 (b) a father whose relationship to the child has been
10 determined by a court, or

11 (c) a father as to whom the child is a legitimate
12 child under prior law of this state or under the law of
13 another jurisdiction, or if a child otherwise becomes the
14 subject of an adoption proceedings, the agency or person to
15 whom the child has been or is to be relinquished, or the
16 mother or the person having custody of the child, shall file
17 a petition in the district court to terminate the parental
18 rights of the father, unless the father's relationship to
19 the child has been previously terminated or determined not
20 to exist by a court.

21 (3) In an effort to identify the natural father, the
22 court shall cause inquiry to be made of the mother and any
23 other appropriate person. The inquiry shall include the
24 following: whether the mother was married at the time of
25 conception of the child at any time thereafter; whether the

1 mother was cohabiting with a man at the time of conception
 2 or birth of the child; whether the mother has received
 3 support payments or promises of support with respect to the
 4 child or in connection with her pregnancy; or whether any
 5 man has formally or informally acknowledged or declared his
 6 possible paternity of the child.

7 (4) If, after the inquiry, the natural father is
 8 identified to the satisfaction of the court, or if more than
 9 one man is identified as a possible father, each shall be
 10 given notice of the proceeding in accordance with subsection
 11 (6) of this section. If any of them fails to appear, or, if
 12 appearing, fails to claim custodial rights, his parental
 13 rights with reference to the child shall be terminated. If
 14 the natural father or a man representing himself to be the
 15 natural father, claims custodial rights, the court shall
 16 proceed to determine custodial rights.

17 (5) If, after the inquiry, the court is unable to
 18 identify the natural father or any possible natural father
 19 and no person has appeared claiming to be the natural father
 20 and claiming custodial rights, the court shall enter an
 21 order terminating the unknown natural father's parental
 22 rights with reference to the child. Subject to the
 23 disposition of an appeal, upon the expiration of six (6)
 24 months after an order terminating parental rights is issued
 25 under this subsection, the order cannot be questioned by any

1 person, in any manner, or upon any ground, including fraud,
 2 misrepresentation, failure to give any required notice, or
 3 lack of jurisdiction of the parties or of the subject
 4 matter.

5 (6) Notice of the proceeding shall be given to every
 6 person identified as the natural father or a possible
 7 natural father in the manner appropriate under rules of
 8 civil procedure for the service of process in a civil action
 9 in this state, or in any manner the court directs. Proof of
 10 giving the notice shall be filed with the court before the
 11 petition is heard. If no person has been identified as the
 12 natural father or a possible father, the court, on the basis
 13 of all information available, shall determine whether
 14 publication or public posting of notice of the proceeding is
 15 likely to lead to identification and, if so, shall order
 16 publication or public posting at times and in places and
 17 manner it deems appropriate.

18 Section 26. Uniformity of application and
 19 construction. This act shall be applied and construed to
 20 effectuate its general purpose to make uniform the law with
 21 respect to the subject of this act among states enacting it.

22 Section 27. Section 61-105, R.C.M. 1947, is amended to
 23 read as follows:

24 "61-105. Custody of legitimate child. The father and
 25 mother of a ~~legitimate~~ an unmarried minor child are equally

1 entitled to its custody, services, and earnings. If either
 2 parent be dead, or unable, or refuse to take the custody, or
 3 has abandoned his or her family, the other is entitled to
 4 its custody, services, and earnings."

5 Section 28. Section 61-205, R.C.M. 1947, is amended to
 6 read as follows:

7 "61-205. Persons required to consent to the adoption.
 8 An adoption of a child may be decreed when there have been
 9 filed written consents to adoption executed by:

10 (1) Both parents, if living, or the surviving parent,
 11 of a ~~legitimate~~ child; provided, that consent shall not be
 12 required from a father or mother,

13 (a) adjudged guilty by a court of competent
 14 jurisdiction of physical cruelty toward said child; or,

15 (b) adjudged to be an habitual drunkard; or,

16 (c) who has been judicially deprived of the custody of
 17 the child on account of cruelty or neglect toward the child;
 18 or,

19 (d) who has, in the state of Montana, or in any other
 20 state of the United States, willfully abandoned such child;
 21 or,

22 (e) who has caused the child to be maintained by any
 23 public or private children's institution, charitable agency,
 24 or any licensed adoption agency, or the state department of
 25 public welfare of the state of Montana for a period of one

1 (1) year without contributing to the support of said child
 2 during said period, if able; or,

3 (f) if it is proven to the satisfaction of the court
 4 that said father or mother, if able, has not contributed to
 5 the support of said child during a period of one (1) year
 6 before the filing of a petition for adoption; or (an
 7 adoption of a child may be decreed when there have been
 8 filed written consents to adoption executed by).

9 ~~(2)--The--mother,--alone,--if--the--child--is--illegitimate,~~
 10 ~~or,~~

11 ~~(3)--(2)~~ The legal guardian of the person of the child
 12 if both parents are dead or if the rights of the parents
 13 have been terminated by judicial proceedings and such
 14 guardian has authority by order of the court appointing him
 15 to consent to the adoption; or,

16 ~~(4)--(3)~~ The executive head of an agency if the child
 17 has been relinquished for adoption to such agency or if the
 18 rights of the parents have been judicially terminated, or if
 19 both parents are dead, and custody of the child has been
 20 legally vested in such agency with authority to consent to
 21 adoption of the child; or,

22 ~~(5)--(4)~~ Any person having legal custody of a child by
 23 court order if the parental rights of the parents have been
 24 judicially terminated, but in such case the court having
 25 jurisdiction of the custody of the child must consent to

1 adoption, and a certified copy of its order shall be
2 attached to the petition.

3 The consents required by paragraphs (1) and (2) shall
4 be acknowledged before an officer authorized to take
5 acknowledgments, or witnessed by a representative of the
6 state department of public welfare or of an agency, or
7 witnessed by a representative of the court."

8 SECTION 29. FOLLOWING A DETERMINATION OF THE EXISTENCE
9 OF A PARENT-CHILD RELATIONSHIP AND UPON PETITION BY EITHER
10 PARTY THE COURT SHALL THEREUPON DETERMINE THE CUSTODY OF
11 SAID CHILD OR CHILDREN.

12 Section 30. Uniformity of application and
13 construction. This act shall be applied and construed to
14 effectuate its general purpose to make uniform the law with
15 respect to the subject of this act among states enacting it.

16 Section 31. Severability. If any provision of this
17 act or the application thereof to any person or circumstance
18 is held invalid, the invalidity does not affect other
19 provisions or applications of the act which can be given
20 effect without the invalid provision or application, and to
21 this end the provisions of this act are severable.

22 Section 32. Repeal. Sections 93-2901-1 through
23 93-2901-11, 61-103, and 61-108, R.C.M. 1947, are repealed.

-End-

Approved by Committee
on Judiciary

1 HOUSE BILL NO. 10
 2 INTRODUCED BY YARDLEY, STOLTZ
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO BE KNOWN AS THE
 5 'UNIFORM PARENAGE ACT' RELATING TO MATTERS CONCERNING THE
 6 PARENT-CHILD RELATIONSHIP, ITS ESTABLISHMENT AND ITS
 7 TERMINATION; AMENDING SECTIONS 61-105 AND 61-205, R.C.M.
 8 1947; AND REPEALING SECTIONS 61-103, 61-108, 93-2901-1
 9 THROUGH 93-2901-11, R.C.M. 1947."

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

12 Section 1. Short title. This act may be cited as the
13 "Uniform Parentage Act".

14 Section 2. Parent and child relationship defined. As
15 used in this act, "parent and child relationship" means the
16 legal relationship existing between a child and his natural
17 or adoptive parents incident to which the law confers or
18 imposes rights, privileges, duties, and obligations. It
19 includes the mother and child relationship and the father
20 and child relationship.

21 Section 3. Relationship not dependent on marriage. The
22 parent and child relationship extends equally to every child
23 and to every parent, regardless of the marital status of the
24 parents.

25 Section 4. How parent and child relationship

1 established. The parent and child relationship between a
2 child and

3 (1) the natural mother may be established by proof of
4 her having given birth to the child, or under this act;

5 (2) the natural father may be established under this
6 act;

7 (3) an adoptive parent may be established by proof of
8 adoption.

9 Section 5. Presumption of paternity. (1) A man is
10 presumed to be the natural father of a child if:

11 (a) he and the child's natural mother are or have been
12 married to each other and the child is born during the
13 marriage, or within three hundred (300) days after the
14 marriage is terminated by death, annulment, declaration of
15 invalidity, or divorce, or after a decree of separation is
16 entered by a court;

17 (b) before the child's birth, he and the child's
18 natural mother have attempted to marry each other by a
19 marriage solemnized in apparent compliance with law,
20 although the attempted marriage is or could be declared
21 invalid, and,

22 (i) if the attempted marriage could be declared
23 invalid only by a court, the child is born during the
24 attempted marriage, or within three hundred (300) days after
25 its termination by death, annulment, declaration of

1 invalidity, or divorce; or

2 (ii) if the attempted marriage is invalid without a
3 court order, the child is born within three hundred (300)
4 days after the termination of cohabitation;

5 (c) after the child's birth, he and the child's
6 natural mother have married, or attempted to marry, each
7 other by a marriage solemnized in apparent compliance with
8 law, although the attempted marriage is or could be declared
9 invalid, and

10 (i) he has acknowledged his paternity of the child in
11 writing filed with the department of health and
12 environmental sciences or with the district court for the
13 county where he resides, or

14 (ii) with his consent, he is named as the child's
15 father on the child's birth certificate, or

16 (iii) he is obligated to support the child under a
17 written voluntary promise or by court order;

18 (d) while the child is under the age of majority, he
19 receives the child into his home and openly holds out the
20 child as his natural child; or

21 (e) he acknowledges his paternity of the child in a
22 writing filed with the department of health and
23 environmental sciences or with the district court of the
24 county where he resides, which court or department shall
25 promptly inform the mother of the filing of the

1 acknowledgment, and she does not dispute the acknowledgment
2 within a reasonable time after being informed thereof, in a
3 writing filed with the department of health and
4 environmental sciences or with the district court of the
5 county where the acknowledgment was filed. If another man
6 is presumed under this section to be the child's father,
7 acknowledgment may be effected only with the written consent
8 of the presumed father or after the presumption has been
9 rebutted.

10 (2) A presumption under this section may be rebutted
11 in an appropriate action only by clear and convincing
12 evidence. ~~If two (2) or more presumptions arise which~~
13 ~~conflict with each other, the presumption which on the facts~~
14 ~~is founded on the weightier considerations of policy and~~
15 ~~logic controls. The presumption is rebutted by a court~~
16 ~~decree establishing paternity of the child by another man.~~

17 Section 6. Artificial insemination. (1) If, under the
18 supervision of a licensed physician and with the consent of
19 her husband, a wife is inseminated artificially with semen
20 donated by a man not her husband, the husband is treated in
21 law as if he were the natural father of a child thereby
22 conceived. The husband's consent must be in writing and
23 signed by him and his wife. The physician shall certify
24 their signatures and the date of the insemination, and file
25 the husband's consent with the department of health and

1 environmental sciences, where it shall be kept confidential
 2 and in a sealed file. However, the physician's failure to
 3 do so does not affect the father and child relationship.
 4 All papers and records pertaining to the insemination,
 5 whether part of the permanent record of a court or of a file
 6 held by the supervising physician or elsewhere, are subject
 7 to inspection only upon an order of the court for good cause
 8 shown.

9 (2) The donor of semen provided to a licensed
 10 physician for use in artificial insemination of a married
 11 woman other than the donor's wife is treated in law as if he
 12 were not the natural father of a child thereby conceived.

13 Section 7. Determination of father and child
 14 relationship — who may bring action — ~~when action may be~~
 15 ~~brought.~~ (1) A child, his natural mother, or a man presumed
 16 to be his father under paragraph (a), (b), or (c) of section
 17 5(1), may bring an action.

18 ~~(a) at any time for the purpose of declaring the~~
 19 ~~existence of the father and child relationship presumed~~
 20 ~~under paragraph (a), (b), or (c) of section 5(1); or~~

21 ~~(b) for the purpose of declaring the nonexistence of~~
 22 ~~the father and child relationship presumed under paragraph~~
 23 ~~(a), (b), or (c) of section 5(1) only if the action is~~
 24 ~~brought within a reasonable time after obtaining knowledge~~
 25 ~~of relevant facts, but in no event later than five (5) years~~

1 ~~after the child's birth. After the presumption has been~~
 2 ~~rebutted, paternity of the child by another man may be~~
 3 ~~determined in the same action, if he has been made a party.~~

4 (2) Any interested party may bring an action at any
 5 time for the purpose of determining the existence or
 6 nonexistence of the father and child relationship presumed
 7 pursuant to section 5.

8 (3) An action to determine the existence of the father
 9 and child relationship with respect to a child who has no
 10 presumed father under section 5 may be brought by the child,
 11 the mother or personal representative of the child, the
 12 department of social and rehabilitation services or ITS the
 13 appropriate ~~county welfare department~~ LOCAL AFFILIATE, the
 14 personal representative or a parent of the mother if the
 15 mother has died, a man alleged or alleging himself to be the
 16 father, or the personal representative or a parent of the
 17 alleged father if the alleged father has died or is a minor.

18 (4) Regardless of its terms, an agreement, other than
 19 an agreement approved by the court in accordance with
 20 section 14(2), between an alleged or presumed father and the
 21 mother or child, does not bar an action under this section.

22 (5) If an action under this section is brought before
 23 the birth of the child, all proceedings shall be stayed
 24 until after the birth, except service of process and the
 25 taking of depositions to perpetuate testimony.

1 Section 8. Statute of limitations. (1) LIMITATION WHEN
 2 FATHER AND CHILD RELATIONSHIP IS PRESUMED.

3 (A) AN ACTION MAY BE COMMENCED AT ANY TIME FOR THE
 4 PURPOSE OF DECLARING THE EXISTENCE OF THE FATHER AND CHILD
 5 RELATIONSHIP PRESUMED UNDER PARAGRAPH (A), (B), OR (C) OF
 6 SECTION 5(1); OR

7 (B) FOR THE PURPOSE OF DECLARING THE NONEXISTENCE OF
 8 THE FATHER AND CHILD RELATIONSHIP PRESUMED UNDER PARAGRAPH
 9 (A), (B), OR (C) OF SECTION 5(1) ONLY IF THE ACTION IS
 10 BROUGHT WITHIN A REASONABLE TIME AFTER OBTAINING KNOWLEDGE
 11 OF RELEVANT FACTS, BUT IN NO EVENT LATER THAN FIVE (5) YEARS
 12 AFTER THE CHILD'S BIRTH. AFTER THE PRESUMPTION HAS BEEN
 13 REBUTTED, PATERNITY OF THE CHILD BY ANOTHER MAN MAY BE
 14 DETERMINED IN THE SAME ACTION, IF HE HAS BEEN MADE A PARTY.

15 (2) LIMITATIONS WHEN FATHER-CHILD RELATIONSHIP IS NOT
 16 PRESUMED. An action to determine the existence OR
 17 NONEXISTENCE of the father and child relationship as to a
 18 child who has no presumed father under section 5 may not be
 19 brought later than ~~three (3)~~ FIVE (5) years after the birth
 20 of the child, or later than ~~three (3)~~ FIVE (5) years after
 21 the effective date of this act, whichever is later.
 22 ~~However, an action brought by or on behalf of a child whose~~
 23 ~~paternity has not been determined is not barred until three~~
 24 ~~(3) years after the child reaches the age of majority.~~
 25 Sections 7 and 8 do not extend the time within which a right

1 of inheritance or a right to a succession may be asserted
 2 beyond the time provided by law relating to distribution and
 3 closing of decedents' estates or to the determination of
 4 heirship, or otherwise.

5 (3) AFTER THE CONCLUSION OF AN ADOPTION PROCEEDING
 6 UNDER CHAPTER 2, TITLE 61, NO FURTHER ACTION TO DECLARE THE
 7 EXISTENCE OR NONEXISTENCE OF THE FATHER AND CHILD
 8 RELATIONSHIP OF THE ADOPTED CHILD MAY BE COMMENCED EXCEPT AS
 9 PROVIDED FOR IN SECTION 25 OF THIS ACT FOR FRAUD, AND
 10 SECTION 61-206, R.C.M. 1947.

11 Section 9. Jurisdiction--venue. (1) The district court
 12 has jurisdiction of an action brought under this act. The
 13 action may be joined with an action for divorce, annulment,
 14 separate maintenance, ~~or~~ support, OR ADOPTION.

15 (2) A person who has sexual intercourse in this state
 16 thereby submits to the jurisdiction of the courts of this
 17 state as to an action brought under this act with respect to
 18 a child who may have been conceived by that act of
 19 intercourse. In addition to any other method provided by
 20 rule or statute, including Rule 4B of the Montana Rules of
 21 Civil Procedure, personal jurisdiction may be acquired by
 22 service in accordance with Rule 4B of the Montana Rules of
 23 Civil Procedure.

24 (3) The action may be brought in the county in which
 25 the child or the alleged father resides or is found or, if

1 or, if the father is deceased, in which proceedings for
2 probate of his estate have been or could be commenced.

3 Section 10. Parties. The child shall be made a party
4 to the action. If he is a minor he shall be represented by
5 his general guardian or a guardian ad litem appointed by the
6 court. The child's mother or father may not represent the
7 child as guardian or otherwise. The court may appoint the
8 department of social and rehabilitation services or the
9 appropriate county welfare department as guardian ad litem
10 for the child. The natural mother, each man presumed to be
11 the father under section 5, and each man alleged to be the
12 natural father, shall be made parties or, if not subject to
13 the jurisdiction of the court, shall be given notice of the
14 action in a manner prescribed by the court and an
15 opportunity to be heard. The court may align the parties.

16 Section 11. Pre-trial proceedings. (1) As soon as
17 practicable after an action to declare the existence or
18 nonexistence of the father and child relationship has been
19 brought, an informal hearing shall be held. The court may
20 order that the hearing be held before a referee. The public
21 shall be barred from the hearing. A record of the
22 proceeding ~~or any portion thereof~~ shall be kept ~~if any party~~
23 ~~requests, or the court orders. Rules of evidence need not~~
24 ~~be observed.~~

25 (2) Upon refusal of any witness, including a party, to

1 testify under oath or produce evidence, the court may order
2 him to testify under oath and produce evidence concerning
3 all relevant facts. If the refusal is upon the ground that
4 his testimony or evidence might tend to incriminate him, the
5 court may grant him immunity from all criminal liability on
6 account of the testimony or evidence he is required to
7 produce. An order granting immunity bars prosecution of the
8 witness for any offense shown in whole or in part by
9 testimony or evidence he is required to produce, except for
10 perjury committed in his testimony. The refusal of a
11 witness, who has been granted immunity, to obey an order to
12 testify or produce evidence is a civil contempt of the
13 court.

14 (3) Testimony of a physician concerning the medical
15 circumstances of the pregnancy and the condition and
16 characteristics of the child upon birth is not privileged.

17 Section 12. Blood tests. (1) The court may, and upon
18 request of a party shall, require the child, mother, or
19 alleged father to submit to blood tests. The tests shall be
20 performed by an expert qualified as an examiner of blood
21 types, appointed by the court.

22 (2) The court, upon reasonable request by a party,
23 shall order that independent tests be performed by other
24 experts qualified as examiners of blood types.

25 (3) In all cases, the court shall determine the number

1 and qualifications of the experts.

2 Section 13. Evidence relating to paternity. Evidence
3 relating to paternity may include:

4 (1) evidence of sexual intercourse between the mother
5 and alleged father at any possible time of conception;

6 (2) an expert's opinion concerning the statistical
7 probability of the alleged father's paternity based upon the
8 duration of the mother's pregnancy;

9 (3) blood test results, weighted in accordance with
10 evidence, if available, of the statistical probability of
11 the alleged father's paternity;

12 (4) medical or anthropological evidence relating to
13 the alleged father's paternity of the child based on tests
14 performed by experts. If a man has been identified as a
15 possible father of the child, the court may, and upon
16 request of a party shall, require the child, the mother and
17 the man to submit to appropriate tests; and

18 (5) all other evidence relevant to the issue of
19 paternity of the child.

20 Section 14. Pre-trial recommendations. (1) On the
21 basis of the information produced at the pre-trial hearing,
22 the judge or referee conducting the hearing shall evaluate
23 the probability of determining the existence or nonexistence
24 of the father and child relationship in a trial and whether
25 a judicial declaration of the relationship would be in the

1 best interest of the child. On the basis of the evaluation,
2 an appropriate recommendation for settlement shall be made
3 to the parties, which may include any or the following:

4 (a) that the action be dismissed with or without
5 prejudice;

6 (b) that the matter be compromised by an agreement
7 among the alleged father, the mother, and the child, in
8 which the father and child relationship is not determined
9 but in which a defined economic obligation is undertaken by
10 the alleged father in favor of the child and, if
11 appropriate, in favor of the mother, subject to approval by
12 the judge or referee conducting the hearing. In reviewing
13 the obligation undertaken by the alleged father in a
14 compromise agreement, the judge or referee conducting the
15 hearing shall consider the best interest of the child in the
16 light of the factors enumerated in section 16(5), discounted
17 by the improbability, as it appears to him, of establishing
18 the alleged father's paternity or nonpaternity of the child
19 in a trial of the action. In the best interest of the
20 child, the court may order that the alleged father's
21 identity be kept confidential. In that case, the court may
22 designate a person or agency to receive from the alleged
23 father and disburse on behalf of the child all amounts paid
24 by the alleged father in fulfillment of obligations imposed
25 on him; and

1 (c) that the alleged father voluntarily acknowledge
2 his paternity of the child.

3 (2) If the parties accept a recommendation made in
4 accordance with subsection (1), judgment shall be entered
5 accordingly.

6 (3) If a party refuses to accept a recommendation made
7 under subsection (1) and blood tests have not been taken,
8 the court shall require the parties to submit to blood
9 tests, if practicable. Thereafter the judge or referee
10 shall make an appropriate final recommendation. If a party
11 refuses to accept the final recommendation, the action shall
12 be set for trial.

13 (4) IF THE SCIENTIFIC EVIDENCE RESULTING FROM THE
14 BLOOD TESTS CONCLUSIVELY SHOWS THAT THE DEFENDANT COULD NOT
15 HAVE BEEN THE FATHER THEN THE INSTANT ACTION SHALL BE
16 DISMISSED.

17 ~~(4)~~(5) The guardian ad litem may accept or refuse to
18 accept a recommendation under this section.

19 ~~(5)~~(6) The informal hearing may be terminated and the
20 action set for trial if the judge or referee conducting the
21 hearing finds unlikely that all parties would accept a
22 recommendation he might make under subsection (1) or (3).

23 Section 15. Civil action. (1) An action under this act
24 is a civil action governed by the rules of civil procedure.
25 The mother of the child and the alleged father are competent

1 to testify and may be compelled to testify. Section 11,
2 subsections (2) and (3) and sections 12 and 13 apply to all
3 action brought under this act.

4 (2) Testimony relating to sexual access to the mother
5 by an unidentified man at any time or by an identified man
6 at a time other than the probable time of conception of the
7 child is inadmissible in evidence, unless offered by the
8 mother.

9 (3) In an action against an alleged father, evidence
10 offered by him with respect to a man who is not subject to
11 the jurisdiction of the court concerning his sexual
12 intercourse with the mother at or about the probable time of
13 conception of the child is admissible in evidence only if
14 the alleged father has undergone and made available to the
15 court blood tests the results of which do not exclude the
16 possibility of his paternity of the child. A man who is
17 identified and is subject to the jurisdiction of the court
18 shall be made a defendant in the action.

19 Section 16. Judgment or order. (1) The judgment or
20 order of the court determining the existence or nonexistence
21 of the parent and child relationship is determinative for
22 all purposes.

23 (2) If the judgment or order of the court is at
24 variance with the child's birth certificate, the court shall
25 order that a substitute birth certificate be issued under

1 section 24.

2 (3) The judgment or order may contain any other
 3 provision directed against the appropriate party to the
 4 proceeding, concerning the duty of support, the custody and
 5 guardianship of the child, visitation privileges with the
 6 child, the furnishing of bond or other security for the
 7 payment of the judgment, or any other matter in the best
 8 interest of the child. The judgment or order may direct the
 9 father to pay the reasonable expenses of the mother's
 10 pregnancy and confinement.

11 (4) Support judgments or orders ordinarily shall be
 12 for periodic payments which may vary in amount. In the best
 13 interest of the child, a lump-sum payment or the purchase of
 14 an annuity may be ordered in lieu of periodic payments of
 15 support. The court may limit the father's liability for
 16 past support of the child to the proportion of the expenses
 17 already incurred that the court deems just.

18 (5) In determining the amount to be paid by a parent
 19 for support of the child and the period during which the
 20 duty of support is owed, a court enforcing the obligation of
 21 support shall consider all relevant facts, including:

- 22 (a) the needs of the child;
- 23 (b) the standard of living and circumstances of the
 24 parents;
- 25 (c) the relative financial means of the parents;

- 1 (d) the earning ability of the parents;
- 2 (e) the need and capacity of the child for education,
 3 including higher education;
- 4 (f) the age of the child;
- 5 (g) the financial resources and the earning ability of
 6 the child;
- 7 (h) the responsibility of the parents for the support
 8 of others; and
- 9 (i) the value of services contributed by the custodial
 10 parent.

11 Section 17. Costs. The court may order reasonable fees
 12 of counsel, experts, and the child's guardian ad litem, and
 13 other costs of the action and pre-trial proceedings,
 14 including blood tests, to be paid by the parties in
 15 proportions and at times determined by the court. The court
 16 may order the proportion of any indigent party to be paid
 17 out of the treasury of the county in which the action is
 18 brought.

19 Section 18. Enforcement of judgment or order. (1) If
 20 existence of the father and child relationship is declared,
 21 or paternity or a duty of support has been acknowledged or
 22 adjudicated under this act or under prior law, ~~the~~
 23 ~~obligation of the father may be enforced in the case or~~
 24 ~~other proceedings by the mother, the child, the public~~
 25 ~~authority that has furnished or may furnish the reasonable~~

1 ~~expenses of pregnancy, confinement, education, support, or~~
 2 ~~funeral, or by any other person, including a private agency,~~
 3 ~~to the extent he has furnished or is furnishing these~~
 4 ~~expenses.~~

5 ~~(2)~~ The THE court may order support payments to be
 6 made to the mother, the clerk of the court, or a person,
 7 corporation, or agency designated to administer them for the
 8 benefit of the child under the supervision of the court.

9 ~~(3)~~ (2) willful failure to obey the judgment or order
 10 of the court is a civil contempt of the court. All remedies
 11 for the enforcement of judgments apply.

12 Section 19. Modification of judgment or order. The
 13 court has continuing jurisdiction to modify or revoke a
 14 judgment or order

15 (1) for future education and support, and

16 (2) with respect to matters listed in section 16,
 17 subsections (3) and (4) and section 18(2), except that a
 18 court entering a judgment or order for the payment of a lump
 19 sum or the purchase of an annuity under section 16(4) may
 20 specify that the judgment or order may not be modified or
 21 revoked.

22 Section 20. Rights to counsel—free transcript on
 23 appeal. (1) At the pre-trial hearing and in further
 24 proceedings, any party may be represented by counsel. The
 25 court shall appoint counsel for a party who is financially

1 unable to obtain counsel.

2 (2) If a party is financially unable to pay the cost
 3 of a transcript, the court shall furnish on request a
 4 transcript for purposes of appeal.

5 Section 21. Hearings and records—confidentiality.
 6 Notwithstanding any other law concerning public hearings and
 7 records, any hearing or trial held under this act shall be
 8 held in closed court without admittance of any person other
 9 than those necessary to the action or proceeding. All
 10 papers and records, other than the final judgment,
 11 pertaining to the action or proceeding, whether part of the
 12 permanent record of the court or of a file in any agency of
 13 the state or of any political subdivision or elsewhere, are
 14 subject to inspection only upon consent of the court and all
 15 interested persons, or in exceptional cases only upon an
 16 order of the court for good cause shown.

17 Section 22. Action to declare mother and child
 18 relationship. Any interested party may bring an action to
 19 determine the existence or nonexistence of a mother and
 20 child relationship. Insofar as practicable, the provisions
 21 of this act applicable to the father and child relationship
 22 apply.

23 Section 23. Promise to render support. (1) Any promise
 24 in writing to furnish support for a child, growing out of a
 25 supposed or alleged father and child relationship, does not

1 require consideration and is enforceable according to its
2 terms, subject to section 7(4).

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

8 Section 24. Birth records. (1) Upon order of a court
9 of this state or upon request of a court of another state,
10 the department of health and environmental sciences shall
11 prepare a substitute certificate of birth consistent with
12 the findings of the court and shall substitute the new
13 certificate for the original certificate of birth.

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

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

24 Section 25. Custodial proceedings. (1) If a mother
25 relinquishes or proposes to relinquish for adoption a child

1 who has OR DOES NOT HAVE:

2 (a) a presumed father under section 5(1),

3 (b) a father whose relationship to the child has been
4 determined by a court, or

5 (c) a father as to whom the child is a legitimate
6 child under prior law of this state or under the law of
7 another jurisdiction, the PRESUMED OR NATURAL father shall
8 be given notice of the ~~adoption proceedings and have the~~
9 COURT HEARING TO DETERMINE THEIR rights provided under
10 sections 61-205 and 61-206, R.C.M. 1947, unless the PRESUMED
11 FATHER OR UNKNOWN father's relationship to the child has
12 been previously terminated or determined by a court not to
13 exist.

14 ~~(2) If a mother relinquishes or proposes to relinquish~~
15 ~~for adoption a child who does not have:~~

16 ~~(a) a presumed father under section 5(1),~~

17 ~~(b) a father whose relationship to the child has been~~
18 ~~determined by a court, or~~

19 ~~(c) a father as to whom the child is a legitimate~~
20 ~~child under prior law of this state or under the law of~~
21 ~~another jurisdiction, or if a child otherwise becomes the~~
22 ~~subject of an adoption proceedings, the agency or person to~~
23 ~~whom the child has been or is to be relinquished, or the~~
24 ~~mother or the person having custody of the child, shall file~~
25 ~~a petition in the district court to terminate the parental~~

~~rights of the father, unless the father's relationship to the child has been previously terminated or determined not to exist by a court.~~

~~(3) In an effort to identify the natural father, the court shall cause inquiry to be made of the mother and any other appropriate person. The inquiry shall include the following: whether the mother was married at the time of conception of the child at any time thereafter; whether the mother was cohabiting with a man at the time of conception or birth of the child; whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy; or whether any man has formally or informally acknowledged or declared his possible paternity of the child.~~

~~(4) If, after the inquiry, the natural father is identified to the satisfaction of the court, or if more than one man is identified as a possible father, each shall be given notice of the proceeding in accordance with subsection (6) of this section. If any of them fails to appear, or, if appearing, fails to claim custodial rights, his parental rights with reference to the child shall be terminated. If the natural father or a man representing himself to be the natural father, claims custodial rights, the court shall proceed to determine custodial rights.~~

~~(5)(2) If, after the inquiry, the court is unable to~~

identify the natural father, THE PRESUMED FATHER, or any possible natural father, and no person has appeared claiming to be the natural father and claiming FILED A NOTICE OF INTENT TO CLAIM PATERNITY AND CLAIM THE custodial rights, the court shall enter an order terminating the ~~unknown~~ natural father's parental rights with reference to the child. Subject to the disposition of an appeal, IF NO APPEAL IS TAKEN, THEN upon the expiration of six (6) months after an order terminating parental rights is issued under this subsection, the order cannot be questioned by any person, in any manner, or upon any ground, including EXCEPT fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter. IN THE CASE OF ALLEGED FRAUD, THE ORDER CANNOT BE QUESTIONED IF MORE THAN SIX (6) MONTHS HAS EXPIRED SINCE ALLEGED FRAUD IS DISCOVERED.

~~(6) Notice of the proceeding shall be given to every person identified as the natural father or a possible natural father in the manner appropriate under rules of civil procedure for the service of process in a civil action in this state, or in any manner the court directs. Proof of giving the notice shall be filed with the court before the petition is heard. If no person has been identified as the natural father or a possible father, the court, on the basis of all information available, shall determine whether~~

1 ~~publication or public posting of notice of the proceeding is~~
 2 ~~likely to lead to identification and, if so, shall order~~
 3 ~~publication or public posting at times and in places and~~
 4 ~~manner it deems appropriate.~~

5 Section 26. Uniformity of application and
 6 construction. This act shall be applied and construed to
 7 effectuate its general purpose to make uniform the law with
 8 respect to the subject of this act among states enacting it.

9 Section 27. Section 61-105, R.C.M. 1947, is amended to
 10 read as follows:

11 "61-105. Custody of legitimate child. The father and
 12 mother of a ~~legitimate~~ an unmarried minor child are equally
 13 entitled to its custody, services, and earnings. If either
 14 parent be dead, or unable, or refuse to take the custody, or
 15 has abandoned his or her family, the other is entitled to
 16 its custody, services, and earnings."

17 Section 28. Section 61-205, R.C.M. 1947, is amended to
 18 read as follows:

19 "61-205. Persons required to consent to the adoption.
 20 An adoption of a child may be decreed when there have been
 21 filed written consents to adoption executed by:

22 (1) Both parents, if living, or the surviving parent,
 23 of a ~~legitimate~~ child; provided, that consent shall not be
 24 required from a father or mother,

25 (a) adjudged guilty by a court of competent

1 jurisdiction of physical cruelty toward said child; or,
 2 (b) adjudged to be an habitual drunkard; or,
 3 (c) who has been judicially deprived of the custody of
 4 the child on account of cruelty or neglect toward the child;
 5 or,
 6 (d) who has, in the state of Montana, or in any other
 7 state of the United States, willfully abandoned such child;
 8 or,
 9 (e) who has caused the child to be maintained by any
 10 public or private children's institution, charitable agency,
 11 or any licensed adoption agency, or the state department of
 12 public welfare of the state of Montana for a period of one
 13 (1) year without contributing to the support of said child
 14 during said period, if able; or,
 15 (f) if it is proven to the satisfaction of the court
 16 that said father or mother, if able, has not contributed to
 17 the support of said child during a period of one (1) year
 18 before the filing of a petition for adoption; or (an
 19 adoption of a child may be decreed when there have been
 20 filed written consents to adoption executed by).
 21 ~~(2) The mother, alone, if the child is illegitimate,~~
 22 ~~or,~~
 23 ~~(2) (2)~~ The legal guardian of the person of the child
 24 if both parents are dead or if the rights of the parents
 25 have been terminated by judicial proceedings and such

1 guardian has authority by order of the court appointing him
 2 to consent to the adoption; or,

3 ~~(4)~~ (3) The executive head of an agency if the child
 4 has been relinquished for adoption to such agency or if the
 5 rights of the parents have been judicially terminated, or if
 6 both parents are dead, and custody of the child has been
 7 legally vested in such agency with authority to consent to
 8 adoption of the child; or,

9 ~~(5)~~ (4) Any person having legal custody of a child by
 10 court order if the parental rights of the parents have been
 11 judicially terminated, but in such case the court having
 12 jurisdiction of the custody of the child must consent to
 13 adoption, and a certified copy of its order shall be
 14 attached to the petition.

15 The consents required by paragraphs (1) and (2) shall
 16 be acknowledged before an officer authorized to take
 17 acknowledgments, or witnessed by a representative of the
 18 state department of public welfare or of an agency, or
 19 witnessed by a representative of the court."

20 SECTION 29. FOLLOWING A DETERMINATION OF THE EXISTENCE
 21 OF A PARENT-CHILD RELATIONSHIP AND UPON PETITION BY EITHER
 22 PARTY THE COURT SHALL THEREUPON DETERMINE THE CUSTODY OF
 23 SAID CHILD OR CHILDREN.

24 Section 30. Uniformity of application and
 25 construction. This act shall be applied and construed to

1 effectuate its general purpose to make uniform the law with
 2 respect to the subject of this act among states enacting it.

3 Section 31. Severability. If any provision of this
 4 act or the application thereof to any person or circumstance
 5 is held invalid, the invalidity does not affect other
 6 provisions or applications of the act which can be given
 7 effect without the invalid provision or application, and to
 8 this end the provisions of this act are severable.

9 Section 32. Repeal. Sections 93-2901-1 through
 10 93-2901-11, 61-103, and 61-108, H.C.M. 1947, are repealed.

-End-

HOUSE BILL NO. 10

INTRODUCED BY YARDLEY, STOLTZ

A BILL FOR AN ACT ENTITLED: "AN ACT TO BE KNOWN AS THE 'UNIFORM PARENTAGE ACT' RELATING TO MATTERS CONCERNING THE PARENT-CHILD RELATIONSHIP, ITS ESTABLISHMENT AND ITS TERMINATION; AMENDING SECTIONS 61-105 AND 61-205, R.C.M. 1947; AND REPEALING SECTIONS 61-103, 61-108, 93-2901-1 THROUGH 93-2901-11, R.C.M. 1947."

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

Section 1. Short title. This act may be cited as the "Uniform Parentage Act".

Section 2. Parent and child relationship defined. As used in this act, "parent and child relationship" means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

Section 3. Relationship not dependent on marriage. The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

Section 4. How parent and child relationship

established. The parent and child relationship between a child and

(1) the natural mother may be established by proof of her having given birth to the child, or under this act;

(2) the natural father may be established under this act;

(3) an adoptive parent may be established by proof of adoption.

Section 5. Presumption of paternity. (1) A man is presumed to be the natural father of a child if:

(a) he and the child's natural mother are or have been married to each other and the child is born during the marriage, or within three hundred (300) days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court;

(b) before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and,

(i) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within three hundred (300) days after its termination by death, annulment, declaration of

1 invalidity, or divorce; or

2 (ii) if the attempted marriage is invalid without a
3 court order, the child is born within three hundred (300)
4 days after the termination of cohabitation;

5 (c) after the child's birth, he and the child's
6 natural mother have married, or attempted to marry, each
7 other by a marriage solemnized in apparent compliance with
8 law, although the attempted marriage is or could be declared
9 invalid, and

10 (i) he has acknowledged his paternity of the child in
11 writing filed with the department of health and
12 environmental sciences or with the district court for the
13 county where he resides, or

14 (ii) with his consent, he is named as the child's
15 father on the child's birth certificate, or

16 (iii) he is obligated to support the child under a
17 written voluntary promise or by court order;

18 (d) while the child is under the age of majority, he
19 receives the child into his home and openly holds out the
20 child as his natural child; or

21 (e) he acknowledges his paternity of the child in a
22 writing filed with the department of health and
23 environmental sciences or with the district court of the
24 county where he resides, which court or department shall
25 promptly inform the mother of the filing of the

1 acknowledgment, and she does not dispute the acknowledgment
2 within a reasonable time after being informed thereof, in a
3 writing filed with the department of health and
4 environmental sciences or with the district court of the
5 county where the acknowledgment was filed. If another man
6 is presumed under this section to be the child's father,
7 acknowledgment may be effected only with the written consent
8 of the presumed father or after the presumption has been
9 rebutted.

10 (2) A presumption under this section may be rebutted
11 in an appropriate action only by clear and convincing
12 evidence. ~~If two (2) or more presumptions arise which~~
13 ~~conflict with each other, the presumption which on the facts~~
14 ~~is founded on the weightier considerations of policy and~~
15 ~~logic controls. The presumption is rebutted by a court~~
16 ~~decree establishing paternity of the child by another man.~~

17 Section 6. Artificial insemination. (1) If, under the
18 supervision of a licensed physician and with the consent of
19 her husband, a wife is inseminated artificially with semen
20 donated by a man not her husband, the husband is treated in
21 law as if he were the natural father of a child thereby
22 conceived. The husband's consent must be in writing and
23 signed by him and his wife. The physician shall certify
24 their signatures and the date of the insemination, and file
25 the husband's consent with the department of health and

1 environmental sciences, where it shall be kept confidential
 2 and in a sealed file. However, the physician's failure to
 3 do so does not affect the father and child relationship.
 4 All papers and records pertaining to the insemination,
 5 whether part of the permanent record of a court or of a file
 6 held by the supervising physician or elsewhere, are subject
 7 to inspection only upon an order of the court for good cause
 8 shown.

9 (2) The donor of semen provided to a licensed
 10 physician for use in artificial insemination of a married
 11 woman other than the donor's wife is treated in law as if he
 12 were not the natural father of a child thereby conceived.

13 Section 7. Determination of father and child
 14 relationship — who may bring action — ~~when action may be~~
 15 ~~brought.~~ (1) A child, his natural mother, or a man presumed
 16 to be his father under paragraph (a), (b), or (c) of section
 17 5(1), may bring an action.

18 ~~(a) at any time for the purpose of declaring the~~
 19 ~~existence of the father and child relationship presumed~~
 20 ~~under paragraph (a), (b), or (c) of section 5(1); or~~

21 ~~(b) for the purpose of declaring the nonexistence of~~
 22 ~~the father and child relationship presumed under paragraph~~
 23 ~~(a), (b), or (c) of section 5(1) only if the action is~~
 24 ~~brought within a reasonable time after obtaining knowledge~~
 25 ~~of relevant facts, but in no event later than five (5) years~~

1 ~~after the child's birth. After the presumption has been~~
 2 ~~rebutted, paternity of the child by another man may be~~
 3 ~~determined in the same action, if he has been made a party.~~

4 (2) Any interested party may bring an action ~~at any~~
 5 ~~time~~ for the purpose of determining the existence or
 6 nonexistence of the father and child relationship presumed
 7 pursuant to section 5.

8 (3) An action to determine the existence of the father
 9 and child relationship with respect to a child who has no
 10 presumed father under section 5 may be brought by the child,
 11 the mother or personal representative of the child, the
 12 department of social and rehabilitation services or ITS the
 13 appropriate ~~county welfare department~~ LOCAL AFFILIATE, the
 14 personal representative or a parent of the mother if the
 15 mother has died, a man alleged or alleging himself to be the
 16 father, or the personal representative or a parent of the
 17 alleged father if the alleged father has died or is a minor.

18 (4) Regardless of its terms, an agreement, other than
 19 an agreement approved by the court in accordance with
 20 section 14(2), between an alleged or presumed father and the
 21 mother or child, does not bar an action under this section.

22 (5) If an action under this section is brought before
 23 the birth of the child, all proceedings shall be stayed
 24 until after the birth, except service of process and the
 25 taking of depositions to perpetuate testimony.

1 Section 8. Statute of limitations. (1) LIMITATION WHEN
 2 FATHER AND CHILD RELATIONSHIP IS PRESUMED.

3 (A) AN ACTION MAY BE COMMENCED AT ANY TIME FOR THE
 4 PURPOSE OF DECLARING THE EXISTENCE OF THE FATHER AND CHILD
 5 RELATIONSHIP PRESUMED UNDER PARAGRAPH (A), (B), OR (C) OF
 6 SECTION 5(1); OR

7 (B) FOR THE PURPOSE OF DECLARING THE NONEXISTENCE OF
 8 THE FATHER AND CHILD RELATIONSHIP PRESUMED UNDER PARAGRAPH
 9 (A), (B), OR (C) OF SECTION 5(1) ONLY IF THE ACTION IS
 10 BROUGHT WITHIN A REASONABLE TIME AFTER OBTAINING KNOWLEDGE
 11 OF RELEVANT FACTS, BUT IN NO EVENT LATER THAN FIVE (5) YEARS
 12 AFTER THE CHILD'S BIRTH. AFTER THE PRESUMPTION HAS BEEN
 13 REBUTTED, PATERNITY OF THE CHILD BY ANOTHER MAN MAY BE
 14 DETERMINED IN THE SAME ACTION, IF HE HAS BEEN MADE A PARTY.

15 (2) LIMITATIONS WHEN FATHER-CHILD RELATIONSHIP IS NOT
 16 PRESUMED. An action to determine the existence OR
 17 NONEXISTENCE of the father and child relationship as to a
 18 child who has no presumed father under section 5 may not be
 19 brought later than ~~three~~ FIVE (5) years after the birth
 20 of the child, or later than ~~three~~ FIVE (5) years after
 21 the effective date of this act, whichever is later.
 22 ~~However, an action brought by or on behalf of a child whose~~
 23 ~~paternity has not been determined is not barred until three~~
 24 ~~(3) years after the child reaches the age of majority.~~
 25 Sections 7 and 8 do not extend the time within which a right

1 of inheritance or a right to a succession may be asserted
 2 beyond the time provided by law relating to distribution and
 3 closing of decedents' estates or to the determination of
 4 heirship, or otherwise.

5 (3) AFTER THE CONCLUSION OF AN ADOPTION PROCEEDING
 6 UNDER CHAPTER 2, TITLE 61, NO FURTHER ACTION TO DECLARE THE
 7 EXISTENCE OR NONEXISTENCE OF THE FATHER AND CHILD
 8 RELATIONSHIP OF THE ADOPTED CHILD MAY BE COMMENCED EXCEPT AS
 9 PROVIDED FOR IN SECTION 25 OF THIS ACT FOR FRAUD, AND
 10 SECTION 61-206, R.C.M. 1947.

11 Section 9. Jurisdiction--venue. (1) The district court
 12 has jurisdiction of an action brought under this act. The
 13 action may be joined with an action for divorce, annulment,
 14 separate maintenance, ~~or~~ support, OR ADOPTION.

15 (2) A person who has sexual intercourse in this state
 16 thereby submits to the jurisdiction of the courts of this
 17 state as to an action brought under this act with respect to
 18 a child who may have been conceived by that act of
 19 intercourse. In addition to any other method provided by
 20 rule or statute, including Rule 4B of the Montana Rules of
 21 Civil Procedure, personal jurisdiction may be acquired by
 22 service in accordance with Rule 4B of the Montana Rules of
 23 Civil Procedure.

24 (3) The action may be brought in the county in which
 25 the child or the alleged father resides or is found or, if

1 or, if the father is deceased, in which proceedings for
2 probate of his estate have been or could be commenced.

3 Section 10. Parties. The child shall be made a party
4 to the action. If he is a minor he shall be represented by
5 his general guardian or a guardian ad litem appointed by the
6 court. The child's mother or father may not represent the
7 child as guardian or otherwise. The court may appoint the
8 department of social and rehabilitation services or the
9 appropriate county welfare department as guardian ad litem
10 for the child. The natural mother, each man presumed to be
11 the father under section 5, and each man alleged to be the
12 natural father, shall be made parties or, if not subject to
13 the jurisdiction of the court, shall be given notice of the
14 action in a manner prescribed by the court and an
15 opportunity to be heard. The court may align the parties.

16 Section 11. Pre-trial proceedings. (1) As soon as
17 practicable after an action to declare the existence or
18 nonexistence of the father and child relationship has been
19 brought, an informal hearing shall be held. The court may
20 order that the hearing be held before a referee. The public
21 shall be barred from the hearing. A record of the
22 proceeding ~~or any portion thereof~~ shall be kept ~~if any party~~
23 ~~requests, or the court orders. Rules of evidence need not~~
24 ~~be observed.~~

25 (2) Upon refusal of any witness, including a party, to

1 testify under oath or produce evidence, the court may order
2 him to testify under oath and produce evidence concerning
3 all relevant facts. If the refusal is upon the ground that
4 his testimony or evidence might tend to incriminate him, the
5 court may grant him immunity from all criminal liability on
6 account of the testimony or evidence he is required to
7 produce. An order granting immunity bars prosecution of the
8 witness for any offense shown in whole or in part by
9 testimony or evidence he is required to produce, except for
10 perjury committed in his testimony. The refusal of a
11 witness, who has been granted immunity, to obey an order to
12 testify or produce evidence is a civil contempt of the
13 court.

14 (3) Testimony of a physician concerning the medical
15 circumstances of the pregnancy and the condition and
16 characteristics of the child upon birth is not privileged.

17 Section 12. Blood tests. (1) The court may, and upon
18 request of a party shall, require the child, mother, or
19 alleged father to submit to blood tests. The tests shall be
20 performed by an expert qualified as an examiner of blood
21 types, appointed by the court.

22 (2) The court, upon reasonable request by a party,
23 shall order that independent tests be performed by other
24 experts qualified as examiners of blood types.

25 (3) In all cases, the court shall determine the number

1 and qualifications of the experts.

2 Section 13. Evidence relating to paternity. Evidence
3 relating to paternity may include:

4 (1) evidence of sexual intercourse between the mother
5 and alleged father at any possible time of conception;

6 (2) an expert's opinion concerning the statistical
7 probability of the alleged father's paternity based upon the
8 duration of the mother's pregnancy;

9 (3) blood test results, weighted in accordance with
10 evidence, if available, of the statistical probability of
11 the alleged father's paternity;

12 (4) medical or anthropological evidence relating to
13 the alleged father's paternity of the child based on tests
14 performed by experts. If a man has been identified as a
15 possible father of the child, the court may, and upon
16 request of a party shall, require the child, the mother and
17 the man to submit to appropriate tests; and

18 (5) all other evidence relevant to the issue of
19 paternity of the child.

20 Section 14. Pre-trial recommendations. (1) On the
21 basis of the information produced at the pre-trial hearing,
22 the judge or referee conducting the hearing shall evaluate
23 the probability of determining the existence or nonexistence
24 of the father and child relationship in a trial and whether
25 a judicial declaration of the relationship would be in the

1 best interest of the child. On the basis of the evaluation,
2 an appropriate recommendation for settlement shall be made
3 to the parties, which may include any of the following:

4 (a) that the action be dismissed with or without
5 prejudice;

6 (b) that the matter be compromised by an agreement
7 among the alleged father, the mother, and the child, in
8 which the father and child relationship is not determined
9 but in which a defined economic obligation is undertaken by
10 the alleged father in favor of the child and, if
11 appropriate, in favor of the mother, subject to approval by
12 the judge or referee conducting the hearing. In reviewing
13 the obligation undertaken by the alleged father in a
14 compromise agreement, the judge or referee conducting the
15 hearing shall consider the best interest of the child in the
16 light of the factors enumerated in section 16(5), discounted
17 by the improbability, as it appears to him, of establishing
18 the alleged father's paternity or nonpaternity of the child
19 in a trial of the action. In the best interest of the
20 child, the court may order that the alleged father's
21 identity be kept confidential. In that case, the court may
22 designate a person or agency to receive from the alleged
23 father and disburse on behalf of the child all amounts paid
24 by the alleged father in fulfillment of obligations imposed
25 on him; and

1 (c) that the alleged father voluntarily acknowledge
2 his paternity of the child.

3 (2) If the parties accept a recommendation made in
4 accordance with subsection (1), judgment shall be entered
5 accordingly.

6 (3) If a party refuses to accept a recommendation made
7 under subsection (1) and blood tests have not been taken,
8 the court shall require the parties to submit to blood
9 tests, if practicable. Thereafter the judge or referee
10 shall make an appropriate final recommendation. If a party
11 refuses to accept the final recommendation, the action shall
12 be set for trial.

13 (4) IF THE SCIENTIFIC EVIDENCE RESULTING FROM THE
14 BLOOD TESTS CONCLUSIVELY SHOWS THAT THE DEFENDANT COULD NOT
15 HAVE BEEN THE FATHER THEN THE INSTANT ACTION SHALL BE
16 DISMISSED.

17 ~~(4)~~(5) The guardian ad litem may accept or refuse to
18 accept a recommendation under this section.

19 ~~(5)~~(6) The informal hearing may be terminated and the
20 action set for trial if the judge or referee conducting the
21 hearing finds unlikely that all parties would accept a
22 recommendation he might make under subsection (1) or (3).

23 Section 15. Civil action. (1) An action under this act
24 is a civil action governed by the rules of civil procedure.
25 The mother of the child and the alleged father are competent

1 to testify and may be compelled to testify. Section 11,
2 subsections (2) and (3) and sections 12 and 13 apply to all
3 action brought under this act.

4 (2) Testimony relating to sexual access to the mother
5 by an unidentified man at any time or by an identified man
6 at a time other than the probable time of conception of the
7 child is inadmissible in evidence, unless offered by the
8 mother.

9 (3) In an action against an alleged father, evidence
10 offered by him with respect to a man who is not subject to
11 the jurisdiction of the court concerning his sexual
12 intercourse with the mother at or about the probable time of
13 conception of the child is admissible in evidence only if
14 the alleged father has undergone and made available to the
15 court blood tests the results of which do not exclude the
16 possibility of his paternity of the child. A man who is
17 identified and is subject to the jurisdiction of the court
18 shall be made a defendant in the action.

19 Section 16. Judgment or order. (1) The judgment or
20 order of the court determining the existence or nonexistence
21 of the parent and child relationship is determinative for
22 all purposes.

23 (2) If the judgment or order of the court is at
24 variance with the child's birth certificate, the court shall
25 order that a substitute birth certificate be issued under

1 section 24.

2 (3) The judgment or order may contain any other
 3 provision directed against the appropriate party to the
 4 proceeding, concerning the duty of support, the custody and
 5 guardianship of the child, visitation privileges with the
 6 child, the furnishing of bond or other security for the
 7 payment of the judgment, or any other matter in the best
 8 interest of the child. The judgment or order may direct the
 9 father to pay the reasonable expenses of the mother's
 10 pregnancy and confinement.

11 (4) Support judgments or orders ordinarily shall be
 12 for periodic payments which may vary in amount. In the best
 13 interest of the child, a lump-sum payment or the purchase of
 14 an annuity may be ordered in lieu of periodic payments of
 15 support. The court may limit the father's liability for
 16 past support of the child to the proportion of the expenses
 17 already incurred that the court deems just.

18 (5) In determining the amount to be paid by a parent
 19 for support of the child and the period during which the
 20 duty of support is owed, a court enforcing the obligation of
 21 support shall consider all relevant facts, including:

- 22 (a) the needs of the child;
- 23 (b) the standard of living and circumstances of the
- 24 parents;
- 25 (c) the relative financial means of the parents;

- 1 (d) the earning ability of the parents;
- 2 (e) the need and capacity of the child for education,
- 3 including higher education;
- 4 (f) the age of the child;
- 5 (g) the financial resources and the earning ability of
- 6 the child;
- 7 (h) the responsibility of the parents for the support
- 8 of others; and
- 9 (i) the value of services contributed by the custodial
- 10 parent.

11 Section 17. Costs. The court may order reasonable fees
 12 of counsel, experts, and the child's guardian ad litem, and
 13 other costs of the action and pre-trial proceedings,
 14 including blood tests, to be paid by the parties in
 15 proportions and at times determined by the court. The court
 16 may order the proportion of any indigent party to be paid
 17 out of the treasury of the county in which the action is
 18 brought.

19 Section 18. Enforcement of judgment or order. (1) If
 20 existence of the father and child relationship is declared,
 21 or paternity or a duty of support has been acknowledged or
 22 adjudicated under this act or under prior law, ~~the~~
 23 ~~obligation of the father may be enforced in the same or~~
 24 ~~other proceedings by the mother, the child, the public~~
 25 ~~authority that has furnished or may furnish the reasonable~~

~~expenses of pregnancy, confinement, education, support, or funeral, or by any other person, including a private agency, to the extent he has furnished or is furnishing these expenses.~~

~~(2)~~ The THE court may order support payments to be made to the mother, the clerk of the court, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court.

~~(3)~~ (2) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply.

Section 19. Modification of judgment or order. The court has continuing jurisdiction to modify or revoke a judgment or order

(1) for future education and support, and

(2) with respect to matters listed in section 16, subsections (3) and (4) and section 18(2), except that a court entering a judgment or order for the payment of a lump sum or the purchase of an annuity under section 16(4) may specify that the judgment or order may not be modified or revoked.

Section 20. Rights to counsel—free transcript on appeal. (1) At the pre-trial hearing and in further proceedings, any party may be represented by counsel. The court shall appoint counsel for a party who is financially

unable to obtain counsel.

(2) If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes of appeal.

Section 21. Hearings and records—confidentiality. Notwithstanding any other law concerning public hearings and records, any hearing or trial held under this act shall be held in closed court without admittance of any person other than those necessary to the action or proceeding. All papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in any agency of the state or of any political subdivision or elsewhere, are 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.

Section 22. Action to declare mother and child relationship. Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship. Insofar as practicable, the provisions of this act applicable to the father and child relationship apply.

Section 23. 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

1 require consideration and is enforceable according to its
 2 terms, subject to section 7(4).

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

8 Section 24. Birth records. (1) Upon order of a court
 9 of this state or upon request of a court of another state,
 10 the department of health and environmental sciences shall
 11 prepare a substitute certificate of birth consistent with
 12 the findings of the court and shall substitute the new
 13 certificate for the original certificate of birth.

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

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

24 Section 25. Custodial proceedings. (1) If a mother
 25 relinquishes or proposes to relinquish for adoption a child

1 who has OR DOES NOT HAVE:

2 (a) a presumed father under section 5(1),

3 (b) a father whose relationship to the child has been
 4 determined by a court, or

5 (c) a father as to whom the child is a legitimate
 6 child under prior law of this state or under the law of
 7 another jurisdiction, the PRESUMED OR NATURAL father shall
 8 be given notice of the ~~adoption proceeding and have the~~
 9 COURT HEARING TO DETERMINE THEIR rights provided under
 10 sections 61-205 and 61-206, B.C.H. 1947, unless the PRESUMED
 11 FATHER OR UNKNOWN father's relationship to the child has
 12 been previously terminated or determined by a court not to
 13 exist.

14 ~~(2) If a mother relinquishes or proposes to relinquish~~
 15 ~~for adoption a child who does not have:~~

16 ~~(a) a presumed father under section 5(1),~~

17 ~~(b) a father whose relationship to the child has been~~
 18 ~~determined by a court, or~~

19 ~~(c) a father as to whom the child is a legitimate~~
 20 ~~child under prior law of this state or under the law of~~
 21 ~~another jurisdiction, or if a child otherwise becomes the~~
 22 ~~subject of an adoption proceedings, the agency or person to~~
 23 ~~whom the child has been or is to be relinquished, or the~~
 24 ~~mother or the person having custody of the child, shall file~~
 25 ~~a petition in the district court to terminate the parental~~

1 ~~rights of the father, unless the father's relationship to~~
 2 ~~the child has been previously terminated or determined not~~
 3 ~~to exist by a court.~~

4 ~~(3) In an effort to identify the natural father, the~~
 5 ~~court shall cause inquiry to be made of the mother and any~~
 6 ~~other appropriate person. The inquiry shall include the~~
 7 ~~following: whether the mother was married at the time of~~
 8 ~~conception of the child at any time thereafter; whether the~~
 9 ~~mother was cohabiting with a man at the time of conception~~
 10 ~~or birth of the child; whether the mother has received~~
 11 ~~support payments or promises of support with respect to the~~
 12 ~~child or in connection with her pregnancy; or whether any~~
 13 ~~man has formally or informally acknowledged or declared his~~
 14 ~~possible paternity of the child.~~

15 ~~(4) If, after the inquiry, the natural father is~~
 16 ~~identified to the satisfaction of the court, or if more than~~
 17 ~~one man is identified as a possible father, each shall be~~
 18 ~~given notice of the proceeding in accordance with subsection~~
 19 ~~(6) of this section. If any of them fails to appear, or, if~~
 20 ~~appearing, fails to claim custodial rights, his parental~~
 21 ~~rights with reference to the child shall be terminated. If~~
 22 ~~the natural father or a man representing himself to be the~~
 23 ~~natural father, claims custodial rights, the court shall~~
 24 ~~proceed to determine custodial rights.~~

25 ~~(5)(2) If, after the inquiry, the court is unable to~~

1 identify the natural father, THE PRESUMED FATHER, or any
 2 possible natural father, and no person has appeared claiming
 3 to be the natural father and claiming FILED A NOTICE OF
 4 INTENT TO CLAIM PATERNITY AND CLAIM THE custodial rights,
 5 the court shall enter an order terminating the ~~known~~
 6 natural father's parental rights with reference to the
 7 child. ~~Subject to the disposition of an appeal, IF NO~~
 8 APPEAL IS TAKEN, THEN upon the expiration of six (6) months
 9 after an order terminating parental rights is issued under
 10 this subsection, the order cannot be questioned by any
 11 person, in any manner, or upon any ground, including EXCEPT
 12 fraud, misrepresentation, failure to give any required
 13 notice, or lack of jurisdiction of the parties or of the
 14 subject matter. IN THE CASE OF ALLEGED FRAUD, THE ORDER
 15 CANNOT BE QUESTIONED IF MORE THAN SIX (6) MONTHS HAS EXPIRED
 16 SINCE ALLEGED FRAUD IS DISCOVERED.

17 ~~(6) Notice of the proceeding shall be given to every~~
 18 ~~person identified as the natural father or a possible~~
 19 ~~natural father in the manner appropriate under rules of~~
 20 ~~civil procedure for the service of process in a civil action~~
 21 ~~in this state, or in any manner the court directs. Proof of~~
 22 ~~giving the notice shall be filed with the court before the~~
 23 ~~petition is heard. If no person has been identified as the~~
 24 ~~natural father or a possible father, the court, on the basis~~
 25 ~~of all information available, shall determine whether~~

1 ~~publication or public posting of notice of the proceeding is~~
 2 ~~likely to lead to identification and, if so, shall order~~
 3 ~~publication or public posting at times and in places and~~
 4 ~~where it deems appropriate.~~

5 Section 26. Uniformity of application and
 6 construction. This act shall be applied and construed to
 7 effectuate its general purpose to make uniform the law with
 8 respect to the subject of this act among states enacting it.

9 Section 27. Section 61-105, R.C.M. 1947, is amended to
 10 read as follows:

11 "61-105. Custody of legitimate child. The father and
 12 mother of a legitimate an unmarried minor child are equally
 13 entitled to its custody, services, and earnings. If either
 14 parent be dead, or unable, or refuse to take the custody, or
 15 has abandoned his or her family, the other is entitled to
 16 its custody, services, and earnings."

17 Section 28. Section 61-205, R.C.M. 1947, is amended to
 18 read as follows:

19 "61-205. Persons required to consent to the adoption.
 20 An adoption of a child may be decreed when there have been
 21 filed written consents to adoption executed by:

22 (1) Both parents, if living, or the surviving parent,
 23 of a legitimate child; provided, that consent shall not be
 24 required from a father or mother,

25 (a) adjudged guilty by a court of competent

1 jurisdiction of physical cruelty toward said child; or,

2 (b) adjudged to be an habitual drunkard; or,

3 (c) who has been judicially deprived of the custody of
 4 the child on account of cruelty or neglect toward the child;
 5 or,

6 (d) who has, in the state of Montana, or in any other
 7 state of the United States, willfully abandoned such child;
 8 or,

9 (e) who has caused the child to be maintained by any
 10 public or private children's institution, charitable agency,
 11 or any licensed adoption agency, or the state department of
 12 public welfare of the state of Montana for a period of one
 13 (1) year without contributing to the support of said child
 14 during said period, if able; or,

15 (f) if it is proven to the satisfaction of the court
 16 that said father or mother, if able, has not contributed to
 17 the support of said child during a period of one (1) year
 18 before the filing of a petition for adoption; or (an
 19 adoption of a child may be decreed when there have been
 20 filed written consents to adoption executed by).

21 ~~(2) The mother, alone, if the child is illegitimate;~~
 22 ~~or,~~

23 ~~(3)~~ (2) The legal guardian of the person of the child
 24 if both parents are dead or if the rights of the parents
 25 have been terminated by judicial proceedings and such

1 guardian has authority by order of the court appointing him
2 to consent to the adoption; or,

3 ~~(4)~~-(3) The executive head of an agency if the child
4 has been relinquished for adoption to such agency or if the
5 rights of the parents have been judicially terminated, or if
6 both parents are dead, and custody of the child has been
7 legally vested in such agency with authority to consent to
8 adoption of the child; or,

9 ~~(5)~~-(4) Any person having legal custody of a child by
10 court order if the parental rights of the parents have been
11 judicially terminated, but in such case the court having
12 jurisdiction of the custody of the child must consent to
13 adoption, and a certified copy of its order shall be
14 attached to the petition.

15 The consents required by paragraphs (1) and (2) shall
16 be acknowledged before an officer authorized to take
17 acknowledgments, or witnessed by a representative of the
18 state department of public welfare or of an agency, or
19 witnessed by a representative of the court."

20 SECTION 29. FOLLOWING A DETERMINATION OF THE EXISTENCE
21 OF A PARENT-CHILD RELATIONSHIP AND UPON PETITION BY EITHER
22 PARTY THE COURT SHALL THEREUPON DETERMINE THE CUSTODY OF
23 SAID CHILD OR CHILDREN.

24 Section 30. Uniformity of application and
25 construction. This act shall be applied and construed to

1 effectuate its general purpose to make uniform the law with
2 respect to the subject of this act among states enacting it.

3 Section 31. Severability. If any provision of this
4 act or the application thereof to any person or circumstance
5 is held invalid, the invalidity does not affect other
6 provisions or applications of the act which can be given
7 effect without the invalid provision or application, and to
8 this end the provisions of this act are severable.

9 Section 32. Repeal. Sections 93-2901-1 through
10 93-2901-11, 61-103, and 61-108, H.C.H. 1947, are repealed.

-End-

April 7, 1975

SENATE COMMITTEE OF THE WHOLE
AMENDMENTS TO HOUSE BILL NO. 10

That House Bill No. 10, be amended as follows:

Amend Senate Committee on Judiciary Amendments dated March 24, 1975,
as follows:

1. Amend amendment no. 1.
Strike: amendment no. 1 in its entirety
2. Amend amendment no. 7.
Strike: amendment no. 7 in its entirety

and amend House Bill No. 10, third reading, as follows:

3. Amend page 8, section 9, lines 15 through 18 and line 19.
Following: "(2)"
Strike: "A person who has sexual intercourse in this state
thereby submits to the jurisdiction of the courts of
this state as to an action brought under this act with
respect to a child who may have been conceived by that
act of intercourse"
Insert: "For purposes of an action brought under this act
personal jurisdiction is established in the courts of
this state over any person who has had sexual intercourse
in this state which has resulted in the birth of a child
who is the subject of such proceedings"
4. Amend page 10, section 11, lines 14 through 16.
Following: line 13
Strike: subsection 3 in its entirety
5. Amend page 20, section 25, line 1.
Following: "has"
Strike: "OR DOES NOT HAVE"
6. Amend page 20, section 25, line 7.
Following: "the"
Strike: "PRESUMED OR NATURAL"
7. Amend page 20, section 25, line 9.
Following: line 8
Strike: "COURT HEARING TO DETERMINE THEIR"
Insert: "adoption proceeding and have the"
8. Amend page 20, section 25, lines 10 and 11.
Following: "unless the"
Strike: "PRESUMED FATHER OR UNKNOWN"

9. Amend page 20, section 25, line 13.

Following: line 13

Insert: "(2) If a mother relinquishes or proposes to relinquish for adoption a child who does not have:

(a) a presumed father under section 5(1),

(b) a father whose relationship to the child has been determined by a court, or

(c) a father as to whom the child is a legitimate child under prior law of this state or under the law of another jurisdiction, or if a child otherwise becomes the subject of an adoption proceedings the agency or person to whom the child has been or is to be relinquished, or the mother or the person having custody of the child, shall file a petition in the district court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined not to exist by a court.

(3) In an effort to identify the natural father, the court shall cause inquiry to be made of the mother and any other appropriate person. The inquiry shall include the following: whether the mother was married at the time of conception of the child at any time thereafter; whether the mother was cohabiting with a man at the time of conception or birth of the child; whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy; or whether any man has formally or informally acknowledged or declared his possible paternity of the child. Notwithstanding this section or any other provision of law and in consideration of her right to privacy, no mother of a child subject to proceedings under this act may be compelled to testify to, or divulge the identify of, the father or possible father of that child.

(4) If, after the inquiry, the natural father is identified to the satisfaction of the court, or if more than one man is identified as a possible father, each shall be given notice of the proceeding in accordance with subsection (6) of this section. If any of them fails to appear, or, if appearing, fails to claim custodial rights, his parental rights with reference to the child shall be terminated. If the natural father or a man representing himself to be the natural father, claims custodial rights, the court shall proceed to determine custodial rights."

10. Amend page 21, section 25, line 25.

Following: line 24

Strike: "(2)"

Insert: "(5)"

11. Amend page 22, section 25, line 1.

Following: "father"

Strike: "THE PRESUMED FATHER,"

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Page 3

H.B. 10

12. Amend page 22, section 25, lines 3 and 4.
Following: "~~claiming~~"
Strike: "FILED A NOTICE OF INTENT TO CLAIM PATERNITY AND CLAIM THE"
Insert: "appeared claiming to be the natural father and claiming"
13. Amend page 22, section 25, line 5.
Following: "terminating the"
Insert: "unknown natural"
14. Amend page 22, section 25, lines 7 and 8.
Following: "~~appeal,~~"
Strike: "IF NO APPEAL IS TAKEN, THEN"
Insert: "Subject to the disposition of an appeal,"
15. Amend page 22, section 25, line 11.
Following: "~~including~~"
Strike: "EXCEPT"
Insert: ",including"
16. Amend page 22, section 25, line 12.
Following: "fraud"
Insert: ", misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter "
17. Amend page 22, section 25, line 14.
Following: "~~matter.~~"
Strike: "IN THE CASE OF ALLEGED FRAUD, THE ORDER CANNOT BE QUESTIONED IF MORE THAN SIX (6) MONTHS HAS EXPIRED SINCE ALLEGED FRAUD IS DISCOVERED."
18. Amend page 22, section 25, line 16.
Following: line 16
Insert: "(6) Notice of the proceeding shall be given to every person identified as the natural father or a possible natural father in the manner appropriate under rules of civil procedure for the service of process in a civil action in this state, or in any manner the court directs. Proof of giving the notice shall be filed with the court before the petition is heard. If no person has been identified as the natural father or a possible father, the court, on the basis of all information available, shall determine whether publication or public posting of notice of the proceeding is likely to lead to identification and, if so, shall order publication or public posting at times and in places and manner it deems appropriate."
19. Amend page 23, section 26, lines 5 through 8.
Following: line 4
Strike: Section 26 in its entirety
Renumber: All subsequent sections

HOUSE BILL NO. 10
INTRODUCED BY YARDLEY, STOLTZ

A BILL FOR AN ACT ENTITLED: "AN ACT TO BE KNOWN AS THE
'UNIFORM PARENTAGE ACT' RELATING TO MATTERS CONCERNING THE
PARENT-CHILD RELATIONSHIP, ITS ESTABLISHMENT AND ITS
TERMINATION; AMENDING SECTIONS 61-105 AND 61-205, R.C.M.
1947; AND REPEALING SECTIONS 61-103, 61-108, 93-2901-1
THROUGH 93-2901-11, R.C.M. 1947."

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

Section 1. Short title. This act may be cited as the
"Uniform Parentage Act".

Section 2. Parent and child relationship defined. As
used in this act, "parent and child relationship" means the
legal relationship existing between a child and his natural
or adoptive parents incident to which the law confers or
imposes rights, privileges, duties, and obligations. It
includes the mother and child relationship and the father
and child relationship.

Section 3. Relationship not dependent on marriage. The
parent and child relationship extends equally to every child
and to every parent, regardless of the marital status of the
parents.

Section 4. How parent and child relationship

established. The parent and child relationship between a
child and

(1) the natural mother may be established by proof of
her having given birth to the child, or under this act;

(2) the natural father may be established under this
act;

(3) an adoptive parent may be established by proof of
adoption.

Section 5. Presumption of paternity. (1) A man is
presumed to be the natural father of a child if:

(a) he and the child's natural mother are or have been
married to each other and the child is born during the
marriage, or within three hundred (300) days after the
marriage is terminated by death, annulment, declaration of
invalidity, or divorce, or after a decree of separation is
entered by a court;

(b) before the child's birth, he and the child's
natural mother have attempted to marry each other by a
marriage solemnized in apparent compliance with law,
although the attempted marriage is or could be declared
invalid, and,

(i) if the attempted marriage could be declared
invalid only by a court, the child is born during the
attempted marriage, or within three hundred (300) days after
its termination by death, annulment, declaration of

1 invalidity, or divorce; or
 2 (ii) if the attempted marriage is invalid without a
 3 court order, the child is born within three hundred (300)
 4 days after the termination of cohabitation;
 5 (c) after the child's birth, he and the child's
 6 natural mother have married, or attempted to marry, each
 7 other by a marriage solemnized in apparent compliance with
 8 law, although the attempted marriage is or could be declared
 9 invalid, and
 10 (i) he has acknowledged his paternity of the child in
 11 writing filed with the department of health and
 12 environmental sciences or with the district court for the
 13 county where he resides, or
 14 (ii) with his consent, he is named as the child's
 15 father on the child's birth certificate, or
 16 (iii) he is obligated to support the child under a
 17 written voluntary promise or by court order;
 18 (d) while the child is under the age of majority, he
 19 receives the child into his home and openly holds out the
 20 child as his natural child; or
 21 (e) he acknowledges his paternity of the child in a
 22 writing filed with the department of health and
 23 environmental sciences or with the district court of the
 24 county where he resides, which court or department shall
 25 promptly inform the mother of the filing of the

1 acknowledgment, and she does not dispute the acknowledgment
 2 within a reasonable time after being informed thereof, in a
 3 writing filed with the department of health and
 4 environmental sciences or with the district court of the
 5 county where the acknowledgment was filed. If another man
 6 is presumed under this section to be the child's father,
 7 acknowledgment may be effected only with the written consent
 8 of the presumed father or after the presumption has been
 9 rebutted. ~~Or~~

10 ~~(F) HE FILES A TIMELY NOTICE OF INTENT TO CLAIM~~
 11 ~~PATERNITY PURSUANT TO SECTION 61-141 R.C.B. 1947.~~

12 (2) A presumption under this section may be rebutted
 13 in an appropriate action only by clear and convincing A
 14 PREPONDERANCE OF THE evidence. ~~If two (2) or more~~
 15 ~~presumptions arise which conflict with each other, the~~
 16 ~~presumption which on the facts is founded on the weightier~~
 17 ~~considerations of policy and logic controls. The~~
 18 ~~presumption is rebutted by a court decree establishing~~
 19 ~~paternity of the child by another man.~~

20 Section 6. Artificial insemination. (1) If, under the
 21 supervision of a licensed physician and with the consent of
 22 her husband, a wife is inseminated artificially with semen
 23 donated by a man not her husband, the husband is treated in
 24 law as if he were the natural father of a child thereby
 25 conceived. The husband's consent must be in writing and

1 signed by him and his wife. The physician shall certify
 2 their signatures and the date of the insemination, and file
 3 the husband's consent with the department of health and
 4 environmental sciences, where it shall be kept confidential
 5 and in a sealed file. However, the physician's failure to
 6 do so does not affect the father and child relationship.
 7 All papers and records pertaining to the insemination,
 8 whether part of the permanent record of a court or of a file
 9 held by the supervising physician or elsewhere, are subject
 10 to inspection only upon an order of the court for good cause
 11 shown.

12 (2) The donor of semen provided to a licensed
 13 physician for use in artificial insemination of a married
 14 woman other than the donor's wife is treated in law as if he
 15 were not the natural father of a child thereby conceived.

16 Section 7. Determination of father and child
 17 relationship -- who may bring action -- ~~when action may be~~
 18 ~~brought. (1) A child, his natural mother, or a man presumed~~
 19 ~~to be his father under paragraph (a), (b), or (c) of section~~
 20 ~~5(1), may bring an action,~~

21 ~~(a) at any time for the purpose of declaring the~~
 22 ~~existence of the father and child relationship presumed~~
 23 ~~under paragraph (a), (b), or (c) of section 5(1); or~~

24 ~~(b) for the purpose of declaring the nonexistence of~~
 25 ~~the father and child relationship presumed under paragraph~~

1 ~~(a), (b), or (c) of section 5(1) only if the action is~~
 2 ~~brought within a reasonable time after obtaining knowledge~~
 3 ~~of relevant facts, but in no event later than five (5) years~~
 4 ~~after the child's birth. After the presumption has been~~
 5 ~~rebutted, paternity of the child by another man may be~~
 6 ~~determined in the same action, if he has been made a party.~~

7 ~~(2)(1) Any interested party may bring an action at any~~
 8 ~~time for the purpose of determining the existence or~~
 9 ~~nonexistence of the father and child relationship presumed~~
 10 ~~pursuant to section 5.~~

11 ~~(3)(2) An action to determine the existence of the~~
 12 ~~father and child relationship with respect to a child who~~
 13 ~~has no presumed father under section 5 may be brought by the~~
 14 ~~child, the mother or personal representative of the child,~~
 15 ~~the department of social and rehabilitation services or ITS~~
 16 ~~the appropriate county welfare department LOCAL AFFILIATE,~~
 17 ~~the personal representative or a parent of the mother if the~~
 18 ~~mother has died, a man alleged or alleging himself to be the~~
 19 ~~father, or the personal representative or a parent of the~~
 20 ~~alleged father if the alleged father has died or is a minor.~~

21 ~~(4)(3) Regardless of its terms, an agreement, other~~
 22 ~~than an agreement approved by the court in accordance with~~
 23 ~~section 14(2), between an alleged or presumed father and the~~
 24 ~~mother or child, does not bar an action under this section.~~

25 ~~(5)(4) If an action under this section is brought~~

1 before the birth of the child, all proceedings shall be
 2 stayed until after the birth, except service of process and
 3 the taking of depositions to perpetuate testimony.

4 Section 8. Statute of limitations. (1) LIMITATION WHEN
 5 FATHER AND CHILD RELATIONSHIP IS PRESUMED.

6 (A) AN ACTION MAY BE COMMENCED AT ANY TIME FOR THE
 7 PURPOSE OF DECLARING THE EXISTENCE OF THE FATHER AND CHILD
 8 RELATIONSHIP PRESUMED UNDER PARAGRAPH (A), (B), OR (C) OF
 9 SECTION 5(1); OR

10 (B) FOR THE PURPOSE OF DECLARING THE NONEXISTENCE OF
 11 THE FATHER AND CHILD RELATIONSHIP PRESUMED UNDER PARAGRAPH
 12 (A), (B), OR (C) OF SECTION 5(1) ONLY IF THE ACTION IS
 13 BROUGHT WITHIN A REASONABLE TIME AFTER OBTAINING KNOWLEDGE
 14 OF RELEVANT FACTS, BUT IN NO EVENT LATER THAN FIVE (5) YEARS
 15 AFTER THE CHILD'S BIRTH. AFTER THE PRESUMPTION HAS BEEN
 16 REBUTTED, PATERNITY OF THE CHILD BY ANOTHER MAN MAY BE
 17 DETERMINED IN THE SAME ACTION, IF HE HAS BEEN MADE A PARTY.

18 (2) LIMITATIONS WHEN FATHER-CHILD RELATIONSHIP IS NOT
 19 PRESUMED. An action to determine the existence OR
 20 NONEXISTENCE of the father and child relationship as to a
 21 child who has no presumed father under section 5 may not be
 22 brought later than ~~three (3) FIVE (5) THREE (3)~~ years after
 23 the birth of the child, or later than ~~three (3) FIVE (5)~~
 24 THREE (3) years after the effective date of this act,
 25 whichever is later. ~~However, an action brought by or on~~

1 ~~behalf of a child whose paternity has not been determined is~~
 2 ~~not barred until three (3) years after the child reaches the~~
 3 ~~age of majority.~~ Sections 7 and 8 do not extend the time
 4 within which a right of inheritance or a right to a
 5 succession may be asserted beyond the time provided by law
 6 relating to distribution and closing of decedents' estates
 7 or to the determination of heirship, or otherwise.

8 (3) AFTER THE CONCLUSION OF AN ADOPTION PROCEEDING
 9 UNDER CHAPTER 2, TITLE 61, NO FURTHER ACTION TO DECLARE THE
 10 EXISTENCE OR NONEXISTENCE OF THE FATHER AND CHILD
 11 RELATIONSHIP OF THE ADOPTED CHILD MAY BE COMMENCED EXCEPT AS
 12 PROVIDED FOR IN SECTION 25 OF THIS ACT FOR FRAUD, AND
 13 SECTION 61-206, E.C.M. 1947.

14 Section 9. Jurisdiction—venue. (1) The district court
 15 has jurisdiction of an action brought under this act. The
 16 action may be joined with an action for divorce, annulment,
 17 separate maintenance, ~~or~~ support, OR ADOPTION.

18 (2) A person who has sexual intercourse in this state
 19 thereby submits to the jurisdiction of the courts of this
 20 state as to an action brought under this act with respect to
 21 a child who may have been conceived by that act of
 22 intercourse FOR PURPOSES OF AN ACTION BROUGHT UNDER THIS ACT
 23 PERSONAL JURISDICTION IS ESTABLISHED IN THE COURTS OF THIS
 24 STATE OVER ANY PERSON WHO HAS HAD SEXUAL INTERCOURSE IN THIS
 25 STATE WHICH HAS RESULTED IN THE BIRTH OF A CHILD WHO IS THE

1 SUBJECT OF SUCH PROCEEDINGS. In addition to any other
 2 method provided by rule or statute, including Rule 4B of the
 3 Montana Rules of Civil Procedure, personal jurisdiction may
 4 be acquired by service in accordance with Rule 4B of the
 5 Montana Rules of Civil Procedure.

6 (3) The action may be brought in the county in which
 7 the child or the alleged father resides or is found or, if
 8 the father is deceased, in which proceedings for probate of
 9 his estate have been or could be commenced.

10 Section 10. Parties. The child shall be made a party
 11 to the action. If he is a minor he shall be represented by
 12 his general guardian or a guardian ad litem appointed by the
 13 court. The child's mother or father may not represent the
 14 child as guardian or otherwise. The court may appoint the
 15 department of social and rehabilitation services or the
 16 appropriate county welfare department as guardian ad litem
 17 for the child. The natural mother, each man presumed to be
 18 the father under section 5, and each man alleged to be the
 19 natural father, shall be made parties or, if not subject to
 20 the jurisdiction of the court, shall be given notice of the
 21 action in a manner prescribed by the court and an
 22 opportunity to be heard. The court may align the parties.

23 Section 11. Pre-trial proceedings. (1) As soon as
 24 practicable after an action to declare the existence or
 25 nonexistence of the father and child relationship has been

1 brought, an informal hearing shall be held. The court may
 2 order that the hearing be held before a referee. The public
 3 shall be barred from the hearing. A record of the
 4 proceeding ~~or any portion thereof shall be kept if any party~~
 5 ~~requests, or the court orders. Rules of evidence need not~~
 6 ~~be observed.~~

7 (2) Upon refusal of any witness, including a party, to
 8 testify under oath or produce evidence, the court may order
 9 him to testify under oath and produce evidence concerning
 10 all relevant facts. If the refusal is upon the ground that
 11 his testimony or evidence might tend to incriminate him, the
 12 court may grant him immunity from all criminal liability on
 13 account of the testimony or evidence he is required to
 14 produce. An order granting immunity bars prosecution of the
 15 witness for any offense shown in whole or in part by
 16 testimony or evidence he is required to produce, except for
 17 perjury committed in his testimony. The refusal of a
 18 witness, who has been granted immunity, to obey an order to
 19 testify or produce evidence is a civil contempt of the
 20 court.

21 ~~(3) Testimony of a physician concerning the medical~~
 22 ~~circumstances of the pregnancy and the condition and~~
 23 ~~characteristics of the child upon birth is not privileged.~~

24 Section 12. Blood tests. (1) The court may, and upon
 25 request of a party shall, require the child, mother, or

1 alleged father to submit to blood tests. The tests shall be
 2 performed by an expert qualified as an examiner of blood
 3 types, appointed by the court.

4 (2) The court, upon reasonable request by a party,
 5 shall order that independent tests be performed by other
 6 experts qualified as examiners of blood types.

7 (3) In all cases, the court shall determine the number
 8 and qualifications of the experts.

9 Section 13. Evidence relating to paternity. Evidence
 10 relating to paternity may include:

11 (1) evidence of sexual intercourse between the mother
 12 and alleged father at any possible time of conception;

13 (2) an expert's opinion concerning the statistical
 14 probability of the alleged father's paternity based upon the
 15 duration of the mother's pregnancy;

16 (3) blood test results, weighted in accordance with
 17 evidence, if available, of the statistical probability of
 18 the alleged father's paternity;

19 (4) medical or anthropological evidence relating to
 20 the alleged father's paternity of the child based on tests
 21 performed by experts. If a man has been identified as a
 22 possible father of the child, the court may, and upon
 23 request of a party shall, require the child, the mother and
 24 the man to submit to appropriate tests; and

25 (5) all other evidence relevant to the issue of

1 paternity of the child.

2 Section 14. Pre-trial recommendations. (1) On the
 3 basis of the information produced at the pre-trial hearing,
 4 the judge or referee conducting the hearing shall evaluate
 5 the probability of determining the existence or nonexistence
 6 of the father and child relationship in a trial and whether
 7 a judicial declaration of the relationship would be in the
 8 best interest of the child. On the basis of the evaluation,
 9 an appropriate recommendation for settlement shall be made
 10 to the parties, which may include any of the following:

11 (a) that the action be dismissed with or without
 12 prejudice;

13 (b) that the matter be compromised by an agreement
 14 among the alleged father, the mother, and the child, in
 15 which the father and child relationship is not determined
 16 but in which a defined economic obligation is undertaken by
 17 the alleged father in favor of the child and, if
 18 appropriate, in favor of the mother, subject to approval by
 19 the judge or referee conducting the hearing. In reviewing
 20 the obligation undertaken by the alleged father in a
 21 compromise agreement, the judge or referee conducting the
 22 hearing shall consider the best interest of the child in the
 23 light of the factors enumerated in section 16(5), discounted
 24 by the improbability, as it appears to him, of establishing
 25 the alleged father's paternity or nonpaternity of the child

1 in a trial of the action. In the best interest of the
 2 child, the court may order that the alleged father's
 3 identity be kept confidential. In that case, the court may
 4 designate a person or agency to receive from the alleged
 5 father and disburse on behalf of the child all amounts paid
 6 by the alleged father in fulfillment of obligations imposed
 7 on him; and

8 (c) that the alleged father voluntarily acknowledge
 9 his paternity of the child.

10 (2) If the parties accept a recommendation made in
 11 accordance with subsection (1), judgment shall be entered
 12 accordingly.

13 (3) If a party refuses to accept a recommendation made
 14 under subsection (1) and blood tests have not been taken,
 15 the court shall require the parties to submit to blood
 16 tests, if practicable. Thereafter the judge or referee
 17 shall make an appropriate final recommendation. If a party
 18 refuses to accept the final recommendation, the action shall
 19 be set for trial.

20 (4) IF THE SCIENTIFIC EVIDENCE RESULTING FROM THE
 21 BLOOD TESTS CONCLUSIVELY SHOWS THAT THE DEFENDANT COULD NOT
 22 HAVE BEEN THE FATHER THEN THE INSTANT ACTION SHALL BE
 23 DISMISSED.

24 ~~(4)~~(5) The guardian ad litem may accept or refuse to
 25 accept a recommendation under this section.

1 ~~(5)~~(6) The informal hearing may be terminated and the
 2 action set for trial if the judge or referee conducting the
 3 hearing finds unlikely that all parties would accept a
 4 recommendation he might make under subsection (1) or (3).

5 Section 15. Civil action. (1) An action under this act
 6 is a civil action governed by the rules of civil procedure.
 7 The mother of the child and the alleged father are competent
 8 to testify and may be compelled to testify. Section 11,
 9 subsections (2) and (3) and sections 12 and 13 apply to all
 10 action brought under this act.

11 (2) Testimony relating to sexual access to the mother
 12 by an unidentified man at any time or by an identified man
 13 at a time other than the probable time of conception of the
 14 child is inadmissible in evidence, unless offered by the
 15 mother.

16 (3) In an action against an alleged father, evidence
 17 offered by him with respect to a man who is not subject to
 18 the jurisdiction of the court concerning his sexual
 19 intercourse with the mother at or about the probable time of
 20 conception of the child is admissible in evidence only if
 21 the alleged father has undergone and made available to the
 22 court blood tests the results of which do not exclude the
 23 possibility of his paternity of the child. A man who is
 24 identified and is subject to the jurisdiction of the court
 25 shall be made a defendant in the action.

1 Section 16. Judgment or order. (1) The judgment or
 2 order of the court determining the existence or nonexistence
 3 of the parent and child relationship is determinative for
 4 all purposes.

5 (2) If the judgment or order of the court is at
 6 variance with the child's birth certificate, the court shall
 7 order that a substitute birth certificate be issued under
 8 section 24.

9 (3) The judgment or order may contain any other
 10 provision directed against the appropriate party to the
 11 proceeding, concerning the duty of support, the custody and
 12 guardianship of the child, visitation privileges with the
 13 child, the furnishing of bond or other security for the
 14 payment of the judgment, or any other matter in the best
 15 interest of the child. The judgment or order may direct the
 16 father to pay the reasonable expenses of the mother's
 17 pregnancy and confinement.

18 (4) Support judgments or orders ordinarily shall be
 19 for periodic payments which may vary in amount. In the best
 20 interest of the child, a lump-sum payment or the purchase of
 21 an annuity may be ordered in lieu of periodic payments of
 22 support. The court may limit the father's liability for
 23 past support of the child to the proportion of the expenses
 24 already incurred that the court deems just.

25 (5) In determining the amount to be paid by a parent

1 for support of the child and the period during which the
 2 duty of support is owed, a court enforcing the obligation of
 3 support shall consider all relevant facts, including:

4 (a) the needs of the child;

5 (b) the standard of living and circumstances of the
 6 parents;

7 (c) the relative financial means of the parents;

8 (d) the earning ability of the parents;

9 (e) the need and capacity of the child for education,
 10 including higher education;

11 (f) the age of the child;

12 (g) the financial resources and the earning ability of
 13 the child;

14 (h) the responsibility of the parents for the support
 15 of others; and

16 (i) the value of services contributed by the custodial
 17 parent.

18 Section 17. Costs. The court may order reasonable fees
 19 of counsel, experts, and the child's guardian ad litem, and
 20 other costs of the action and pre-trial proceedings,
 21 including blood tests, to be paid by the parties in
 22 proportions and at times determined by the court. The court
 23 may order the proportion of any indigent party to be paid
 24 out of the treasury of the county in which the action is
 25 brought.

1 Section 18. Enforcement of judgment or order. (1) If
 2 existence of the father and child relationship is declared,
 3 or paternity or a duty of support has been acknowledged or
 4 adjudicated under this act or under prior law, ~~the~~
 5 ~~obligation of the father may be enforced in the case of~~
 6 ~~other proceedings by the mother, the child, the public~~
 7 ~~authority that has furnished or may furnish the reasonable~~
 8 ~~expenses of pregnancy, confinement, education, support, or~~
 9 ~~funeral, or by any other person, including a private agency,~~
 10 ~~to the extent he has furnished or is furnishing these~~
 11 ~~expenses.~~

12 ~~(2) The~~ THE court may order support payments to be
 13 made to the mother, the clerk of the court, or a person,
 14 corporation, or agency designated to administer them for the
 15 benefit of the child under the supervision of the court.

16 ~~(3)(2)~~ Willful failure to obey the judgment or order
 17 of the court is a civil contempt of the court. All remedies
 18 for the enforcement of judgments apply.

19 Section 19. Modification of judgment or order. The
 20 court has continuing jurisdiction to modify or revoke a
 21 judgment or order

22 (1) for future education and support, and

23 (2) with respect to matters listed in section 16,
 24 subsections (3) and (4) and section 18(2), except that a
 25 court entering a judgment or order for the payment of a lump

1 sum or the purchase of an annuity under section 16(4) may
 2 specify that the judgment or order may not be modified or
 3 revoked.

4 Section 20. Rights to counsel—free transcript on
 5 appeal. (1) At the pre-trial hearing and in further
 6 proceedings, any party may be represented by counsel. The
 7 court shall appoint counsel for a party who is financially
 8 unable to obtain counsel.

9 (2) If a party is financially unable to pay the cost
 10 of a transcript, the court shall furnish on request a
 11 transcript for purposes of appeal.

12 Section 21. Hearings and records—confidentiality.
 13 Notwithstanding any other law concerning public hearings and
 14 records, any hearing or trial held under this act shall be
 15 held in closed court without admittance of any person other
 16 than those necessary to the action or proceeding. All
 17 papers and records, other than the final judgment,
 18 pertaining to the action or proceeding, whether part of the
 19 permanent record of the court or of a file in any agency of
 20 the state or of any political subdivision or elsewhere, are
 21 subject to inspection only upon consent of the court and all
 22 interested persons, or in exceptional cases only upon an
 23 order of the court for good cause shown.

24 Section 22. Action to declare mother and child
 25 relationship. Any interested party may bring an action to

1 determine the existence or nonexistence of a mother and
 2 child relationship. Insofar as practicable, the provisions
 3 of this act applicable to the father and child relationship
 4 apply.

5 Section 23. Promise to render support. (1) Any promise
 6 in writing to furnish support for a child, growing out of a
 7 supposed or alleged father and child relationship, does not
 8 require consideration and is enforceable according to its
 9 terms, subject to section 7(4).

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

15 Section 24. Birth records. (1) Upon order of a court
 16 of this state or upon request of a court of another state,
 17 the department of health and environmental sciences shall
 18 prepare a substitute certificate of birth consistent with
 19 the findings of the court and shall substitute the new
 20 certificate for the original certificate of birth.

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

25 (3) The evidence upon which the new certificate was

1 made and the original birth certificate shall be kept in a
 2 sealed and confidential file and shall be subject to
 3 inspection only upon consent of the court and all interested
 4 persons, or in exceptional cases only upon an order of the
 5 court for good cause shown.

6 Section 25. Custodial proceedings. (1) If a mother
 7 relinquishes or proposes to relinquish for adoption a child
 8 who has ~~OR DOES NOT HAVE:~~

- 9 (a) a presumed father under section 5(1),
- 10 (b) a father whose relationship to the child has been
- 11 determined by a court, or

12 (c) a father as to whom the child is a legitimate
 13 child under prior law of this state or under the law of
 14 another jurisdiction, the ~~PRESUMED OR NATURAL~~ father shall
 15 be given notice of the ~~adoption proceeding and have the~~
 16 ~~COURT HEARING TO DETERMINE THEIR ADOPTION PROCEEDING AND~~
 17 ~~HAVE THE~~ rights provided under sections 61-205 and 61-206,
 18 R.C.M. 1947, unless the ~~PRESUMED FATHER OR UNKNOWN~~ father's
 19 relationship to the child has been previously terminated or
 20 determined by a court not to exist.

21 (2) IF A MOTHER RELINQUISHES OR PROPOSES TO RELINQUISH
 22 FOR ADOPTION A CHILD WHO DOES NOT HAVE:

- 23 (A) A PRESUMED FATHER UNDER SECTION 5 (1),
- 24 (B) A FATHER WHOSE RELATIONSHIP TO THE CHILD HAS BEEN
- 25 DETERMINED BY A COURT, OR

1 (C) A FATHER AS TO WHOM THE CHILD IS A LEGITIMATE
 2 CHILD UNDER PRIOR LAW OF THIS STATE OR UNDER THE LAW OF
 3 ANOTHER JURISDICTION, OR IF A CHILD OTHERWISE BECOMES THE
 4 SUBJECT OF AN ADOPTION PROCEEDING, THE AGENCY OR PERSON TO
 5 WHOM THE CHILD HAS BEEN OR IS TO BE RELINQUISHED, OR THE
 6 MOTHER OR THE PERSON HAVING CUSTODY OF THE CHILD, SHALL FILE
 7 A PETITION IN THE DISTRICT COURT TO TERMINATE THE PARENTAL
 8 RIGHTS OF THE FATHER, UNLESS THE FATHER'S RELATIONSHIP TO
 9 THE CHILD HAS BEEN PREVIOUSLY TERMINATED OR DETERMINED NOT
 10 TO EXIST BY A COURT.

11 (3) IN AN REPORT TO IDENTIFY THE NATURAL FATHER, THE
 12 COURT SHALL CAUSE INQUIRY TO BE MADE OF THE MOTHER AND ANY
 13 OTHER APPROPRIATE PERSON. THE INQUIRY SHALL INCLUDE THE
 14 FOLLOWING: WHETHER THE MOTHER WAS MARRIED AT THE TIME OF
 15 CONCEPTION OF THE CHILD OR AT ANY TIME THEREAFTER; WHETHER
 16 THE MOTHER WAS COHABITING WITH A MAN AT THE TIME OF
 17 CONCEPTION OR BIRTH OF THE CHILD; WHETHER THE MOTHER HAS
 18 RECEIVED SUPPORT PAYMENTS OR PROMISES OF SUPPORT WITH
 19 RESPECT TO THE CHILD OR IN CONNECTION WITH HER PREGNANCY; OR
 20 WHETHER ANY MAN HAS FORMALLY OR INFORMALLY ACKNOWLEDGED OR
 21 DECLARED HIS POSSIBLE PATERNITY OF THE CHILD.
 22 NOTWITHSTANDING THIS SECTION OR ANY OTHER PROVISION OF LAW
 23 AND IN CONSIDERATION OF HER RIGHT TO PRIVACY, NO MOTHER OF A
 24 CHILD SUBJECT TO PROCEEDINGS UNDER THIS ACT MAY BE COMPELLED
 25 TO TESTIFY TO, OR DIVULGE THE IDENTIFY OF, THE FATHER OR

1 POSSIBLE FATHER OF THAT CHILD.

2 (4) IF, AFTER THE INQUIRY, THE NATURAL FATHER IS
 3 IDENTIFIED TO THE SATISFACTION OF THE COURT, OR IF MORE THAN
 4 ONE MAN IS IDENTIFIED AS A POSSIBLE FATHER, EACH SHALL BE
 5 GIVEN NOTICE OF THE PROCEEDING IN ACCORDANCE WITH SUBSECTION
 6 (6) OF THIS SECTION. IF ANY OF THEM FAILS TO APPEAR, OR, IF
 7 APPEARING, FAILS TO CLAIM CUSTODIAL RIGHTS, HIS PARENTAL
 8 RIGHTS WITH REFERENCE TO THE CHILD SHALL BE TERMINATED. IF
 9 THE NATURAL FATHER OR A MAN REPRESENTING HIMSELF TO BE THE
 10 NATURAL FATHER, CLAIMS CUSTODIAL RIGHTS, THE COURT SHALL
 11 PROCEED TO DETERMINE CUSTODIAL RIGHTS.

12 ~~(2)--if-a-mother-relinquishes-or-proposes-to-relinquish~~
 13 ~~for-adoption-a-child-who-does-not-have:~~
 14 ~~(a)--a-presumed-father-under-section-5(1);~~
 15 ~~(b)--a-father-whose-relationship-to-the-child-has--been~~
 16 ~~determined-by-a-court,-or~~
 17 ~~(c)--a--father--as--to--whom--the-child-is-a-legitimate~~
 18 ~~child-under-prior-law-of-this-state--or--under--the--law--of~~
 19 ~~another--jurisdiction,-or--if-a-child-otherwise-becomes-the~~
 20 ~~subject-of-an-adoption-proceedings,-the-agency-or-person--to~~
 21 ~~whom--the-child--has--been-or-is-to-be-relinquished,-or-the~~
 22 ~~mother-or-the-person-having-custody-of-the-child,-shall-file~~
 23 ~~a-petition-in-the-district-court-to-terminate--the--parental~~
 24 ~~rights--of--the--father,-unless-the-father's-relationship-to~~
 25 ~~the-child-has-been-previously-terminated-or--determined--not~~

1 to-exist-by-a-court;

2 (3)--In--an--effort--to--identify--the--natural--father,--the
 3 court--shall--cause--inquiry--to--be--made--of--the--mother--and--any
 4 other--appropriate--person;--The--inquiry--shall--include--the
 5 following:--whether--the--mother--was--married--at--the--time--of
 6 conception--of--the--child--at--any--time--thereafter;--whether--the
 7 mother--was--cohabiting--with--a--man--at--the--time--of--conception
 8 or--birth--of--the--child;--whether--the--mother--has--received
 9 support--payments--or--promises--of--support--with--respect--to--the
 10 child--or--in--connection--with--her--pregnancy;--or--whether--any
 11 man--has--formally--or--informally--acknowledged--or--declared--his
 12 possible--paternity--of--the--child;

13 (4)--If,--after--the--inquiry,--the--natural--father--is
 14 identified--to--the--satisfaction--of--the--court,--or--if--more--than
 15 one--man--is--identified--as--a--possible--father,--each--shall--be
 16 given--notice--of--the--proceeding--in--accordance--with--subsection
 17 (6)--of--this--section;--if--any--of--them--fails--to--appear,--or,--if
 18 appearing,--fails--to--claim--custodial--rights,--his--parental
 19 rights--with--reference--to--the--child--shall--be--terminated;--if
 20 the--natural--father--or--a--man--representing--himself--to--be--the
 21 natural--father,--claims--custodial--rights,--the--court--shall
 22 proceed--to--determine--custodial--rights;

23 (5)(2)(5) If, after the inquiry, the court is unable
 24 to identify the natural father, ~~THE PRESUMED FATHER~~, or any
 25 possible natural father, and no person has appeared claiming

1 ~~to be the natural father and claiming FILED A NOTICE OF~~
 2 ~~INTEREST TO CLAIM PATERNITY AND CLAIM THE APPEARED CLAIMING TO~~
 3 ~~BE THE NATURAL FATHER AND CLAIMING~~ custodial rights, the
 4 court shall enter an order terminating the ~~unknown~~ natural
 5 ~~UNKNOWN NATURAL~~ father's parental rights with reference to
 6 the child. ~~subject to the disposition of an appeal, IF NO~~
 7 ~~APPEAL IS TAKEN, THEN SUBJECT TO THE DISPOSITION OF AN~~
 8 ~~APPEAL~~, upon the expiration of six (6) months after an
 9 order terminating parental rights is issued under this
 10 subsection, the order cannot be questioned by any person, in
 11 any manner, or upon any ground, ~~including~~ ~~EXCEPT~~ ~~INCLUDING~~
 12 ~~fraud, MISREPRESENTATION, FAILURE TO GIVE ANY REQUIRED~~
 13 ~~NOTICE, OR LACK OF JURISDICTION OF THE PARTIES OR OF THE~~
 14 ~~SUBJECT MATTER~~, ~~misrepresentation, failure to give any~~
 15 ~~required notice, or lack of jurisdiction of the parties or~~
 16 ~~of the subject matter. IN THE CASE OF ALLEGED FRAUD, THE~~
 17 ~~ORDER CANNOT BE QUESTIONED IF MORE THAN SIX (6) MONTHS HAS~~
 18 ~~ELAPSED SINCE ALLEGED FRAUD IS DISCOVERED.~~

19 (6) NOTICE OF THE PROCEEDING SHALL BE GIVEN TO EVERY
 20 PERSON IDENTIFIED AS THE NATURAL FATHER OR A POSSIBLE
 21 NATURAL FATHER IN THE MANNER APPROPRIATE UNDER RULES OF
 22 CIVIL PROCEDURE FOR THE SERVICE OF PROCESS IN A CIVIL ACTION
 23 IN THIS STATE, OR IN ANY MANNER THE COURT DIRECTS. PROOF OF
 24 GIVING THE NOTICE SHALL BE FILED WITH THE COURT BEFORE THE
 25 PETITION IS HEARD. IF NO PERSON HAS BEEN IDENTIFIED AS THE

1 NATURAL FATHER OR A POSSIBLE FATHER, THE COURT, ON THE BASIS
 2 OF ALL INFORMATION AVAILABLE, SHALL DETERMINE WHETHER
 3 PUBLICATION OR PUBLIC POSTING OF NOTICE OF THE PROCEEDING IS
 4 LIKELY TO LEAD TO IDENTIFICATION AND, IF SO, SHALL ORDER
 5 PUBLICATION OR PUBLIC POSTING AT TIMES AND IN PLACES AND
 6 MANNER IT DEEMS APPROPRIATE.

7 ~~(c) Notice of the proceeding shall be given to every~~
 8 ~~person identified as the natural father or a possible~~
 9 ~~natural father in the manner appropriate under rules of~~
 10 ~~civil procedure for the service of process in a civil action~~
 11 ~~in this state, or in any manner the court directs. Proof of~~
 12 ~~giving the notice shall be filed with the court before the~~
 13 ~~petition is heard. If no person has been identified as the~~
 14 ~~natural father or a possible father, the court, on the basis~~
 15 ~~of all information available, shall determine whether~~
 16 ~~publication or public posting of notice of the proceeding is~~
 17 ~~likely to lead to identification and, if so, shall order~~
 18 ~~publication or public posting at times and in places and~~
 19 ~~manner it deems appropriate.~~

20 ~~Section 26. Uniformity of application and~~
 21 ~~construction. This act shall be applied and construed to~~
 22 ~~effectuate its general purpose to make uniform the law with~~
 23 ~~respect to the subject of this act among states enacting it.~~

24 Section 26. Section 61-105, R.C.M. 1947, is amended to
 25 read as follows:

1 "61-105. Custody of legitimate child. The father and
 2 mother of a legitimate ~~an~~ unmarried minor child are equally
 3 entitled to its custody, services, and earnings. If either
 4 parent be dead, or unable, or refuse to take the custody, or
 5 has abandoned his or her family, the other is entitled to
 6 its custody, services, and earnings."

7 Section 26. Section 61-205, R.C.M. 1947, is amended to
 8 read as follows:

9 "61-205. Persons required to consent to the adoption.
 10 An adoption of a child may be decreed when there have been
 11 filed written consents to adoption executed by:

12 (1) Both parents, if living, or the surviving parent,
 13 of a legitimate child; provided, that consent shall not be
 14 required from a father or mother,

15 (a) adjudged guilty by a court of competent
 16 jurisdiction of physical cruelty toward said child; or,

17 (b) adjudged to be an habitual drunkard; or,

18 (c) who has been judicially deprived of the custody of
 19 the child on account of cruelty or neglect toward the child;

20 or,

21 (d) who has, in the state of Montana, or in any other
 22 state of the United States, willfully abandoned such child;

23 or,

24 (e) who has caused the child to be maintained by any
 25 public or private children's institution, charitable agency,

1 ~~or any licensed adoption agency, or the state department of~~
 2 ~~public welfare of the state of Montana for a period of one~~
 3 ~~(1) year without contributing to the support of said child~~
 4 ~~during said period, if able; or,~~

5 ~~(f) if it is proven to the satisfaction of the court~~
 6 ~~that said father or mother, if able, has not contributed to~~
 7 ~~the support of said child during a period of one (1) year~~
 8 ~~before the filing of a petition for adoption; or (as~~
 9 ~~adoption of a child may be decreed when there have been~~
 10 ~~filed written consents to adoption executed by).~~

11 ~~(2) The mother, alone, if the child is illegitimate,~~
 12 ~~or,~~

13 ~~(3) (2) The legal guardian of the person of the child~~
 14 ~~if both parents are dead or if the rights of the parents~~
 15 ~~have been terminated by judicial proceedings and such~~
 16 ~~guardian has authority by order of the court appointing him~~
 17 ~~to consent to the adoption; or,~~

18 ~~(4) (2) The executive head of an agency if the child~~
 19 ~~has been relinquished for adoption to such agency or if the~~
 20 ~~rights of the parents have been judicially terminated, or if~~
 21 ~~both parents are dead, and custody of the child has been~~
 22 ~~legally vested in such agency with authority to consent to~~
 23 ~~adoption of the child; or,~~

24 ~~(5) (4) Any person having legal custody of a child by~~
 25 ~~court order if the parental rights of the parents have been~~

1 ~~judicially terminated, but in such case the court having~~
 2 ~~jurisdiction of the custody of the child must consent to~~
 3 ~~adoption, and a certified copy of its order shall be~~
 4 ~~attached to the petition.~~

5 ~~The consents required by paragraphs (1) and (2) shall~~
 6 ~~be acknowledged before an officer authorized to take~~
 7 ~~acknowledgments, or witnessed by a representative of the~~
 8 ~~state department of public welfare or of an agency, or~~
 9 ~~witnessed by a representative of the court."~~

10 SECTION 27. SECTION 61-205, R.C.M., 1947, IS AMENDED TO
 11 READ AS FOLLOWS:

12 "61-205. Persons required to consent to the adoption.
 13 An adoption of a child may be decreed when there have been
 14 filed written consents to adoption executed by:

15 (1) Both parents, if living, or the surviving parent,
 16 of a legitimate child; provided, that consent shall not be
 17 required from a father or mother,

18 (a) adjudged guilty by a court of competent
 19 jurisdiction of physical cruelty toward said child; or,

20 (b) adjudged to be an habitual drunkard; or,
 21 (c) who has been judicially deprived of the custody of
 22 the child on account of cruelty or neglect toward the child;

23 or,

24 (d) who has, in the state of Montana, or in any other
 25 state of the United States, willfully abandoned such child;

1 or,
 2 (e) who has caused the child to be maintained by any
 3 public or private children's institution, charitable agency,
 4 or any licensed adoption agency, or the state department of
 5 social and rehabilitation services of the state of Montana
 6 for a period of one (1) year without contributing to the
 7 support of said child during said period, if able; or,

8 (f) if it is proven to the satisfaction of the court
 9 that said father or mother, if able, has not contributed to
 10 the support of said child during a period of one (1) year
 11 before the filing of a petition for adoption; or (an
 12 adoption of a child may be decreed when there have been
 13 filed written consents to adoption executed by).

14 ~~(2) The mother, alone, if the child is illegitimate,~~
 15 ~~or,~~

16 ~~(3)(2)~~ The legal guardian of the person of the child
 17 if both parents are dead or if the rights of the parents
 18 have been terminated by judicial proceedings and such
 19 guardian has authority by order of the court appointing him
 20 to consent to the adoption; or,

21 ~~(4)(3)~~ The executive head of an agency if the child
 22 has been relinquished for adoption to such agency or if the
 23 rights of the parents have been judicially terminated, or if
 24 both parents are dead, and custody of the child has been
 25 legally vested in such agency with authority to consent to

1 adoption of the child; or,

2 ~~(5)(4)~~ Any person having legal custody of a child by
 3 court order if the parental rights of the parents have been
 4 judicially terminated, but in such case the court having
 5 jurisdiction of the custody of the child must consent to
 6 adoption, and a certified copy of its order shall be
 7 attached to the petition.

8 The consents required by paragraphs (1) and (2) shall
 9 be acknowledged before an officer authorized to take
 10 acknowledgments, or witnessed by a representative of the
 11 state department of social and rehabilitation services or of
 12 an agency, or witnessed by a representative of the court."

13 SECTION 28. FOLLOWING A DETERMINATION OF THE EXISTENCE
 14 OF A PARENT-CHILD RELATIONSHIP AND UPON PETITION BY EITHER
 15 PARTY THE COURT SHALL THEREUPON DETERMINE THE CUSTODY OF
 16 SAID CHILD OR CHILDREN.

17 Section 29. Uniformity of application and
 18 construction. This act shall be applied and construed to
 19 effectuate its general purpose to make uniform the law with
 20 respect to the subject of this act among states enacting it.

21 Section 30. Severability. If any provision of this
 22 act or the application thereof to any person or circumstance
 23 is held invalid, the invalidity does not affect other
 24 provisions or applications of the act which can be given
 25 effect without the invalid provision or application, and to

1 this end the provisions of this act are severable.

2 Section 31. Repeal. Sections 93-2901-1 through
3 93-2901-11, 61-103, and 61-106, R.C.M. 1947, are repealed.

-End-