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House BILL NO. *275*

INTRODUCED BY ~~*George Williams*~~
Benjamin Dugan *William Dugan*

A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE THE RIGHTS OF A FATHER WITH RESPECT TO HIS ILLEGITIMATE CHILD, AND TO CLARIFY THE STATUS OF CERTAIN ADOPTION PROCEEDINGS INVOLVING ILLEGITIMATE CHILDREN, AMENDING SECTIONS 61-108, 61-205, AND 61-209, R.C.M. 1947."

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

Section 1. Section 61-108, R.C.M. 1947, is amended to read as follows:

"61-108. Custody of illegitimate child. The mother of an illegitimate unmarried minor is entitled to its custody, services, and earnings. The father is also entitled to the custody, services and earnings of his minor illegitimate child if the father's paternity is established:

(1) by adjudication or other clear and convincing proof, and

(2) if he has openly treated the child as his own and has not refused to support the child."

Section 2. There is a new R.C.M. section numbered 61-141 that reads as follows:

61-141. Assertion of rights by father of illegitimate child -- notice. A man may not claim in any legal proceeding

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in this state to be father to an illegitimate child unless, prior to birth of the child, he has filed with the clerk of the district court in the county in which he resides a notice of intent to claim paternity. The department shall provide the forms for this notice and the form shall include: (1) claimant's name, (2) claimant's address, (3) name and last known address of the claimed child's mother, and (4) the month and year of the expected child's birth.

On the next business day after receipt of the notice, the clerk of district court shall transmit the notice to the department of social and rehabilitation services and shall send a copy to the mother at her stated address.

This notice (a) shall be admissible in any action for paternity, and (b) estops the claimant from denying his paternity of that child thereafter and shall contain language that he acknowledges liability for contribution to the support and education of the child after its birth and for contribution to the pregnancy-related medical expenses of the mother. The notice is conclusive evidence on the question of paternity for all purposes, unless the mother denies that the claimant is the father.

Section 3. Section 61-205, R.C.M. 1947, is amended to read as follows:

"61-205. Persons required to consent to the adoption. An adoption of a child may be decreed when there have been

1 filed written consents to adoption executed by:

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

5 (a) adjudged guilty by a court of competent
6 jurisdiction of physical cruelty toward said the child; or,

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

8 (c) who has been judicially deprived of the custody of
9 the child on account of cruelty or neglect toward the child;
10 or,

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

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

21 (f) who has not, if it is proven to the satisfaction
22 of the court, ~~that said father or mother, if able, has not~~
23 contributed to the support of said the child during a period
24 of one (1) year before the filing of a petition for
25 adoption, ~~or an adoption of a child may be decreed when~~

1 ~~there--have-been-filed-written-consents-to-adoption-executed~~
2 ~~by):~~

3 (2) ~~The mother, alone, if the child is illegitimate,~~
4 ery In the case of an illegitimate child, the mother; any
5 guardian of the child, and the father, if he has legal
6 custody.

7 (3) The legal guardian of the person of the child if
8 both parents are dead or if the rights of the parents have
9 been terminated by judicial proceedings and such guardian
10 has authority by order of the court appointing him to
11 consent to the adoption; or, .

12 (4) The executive head of an agency if the child has
13 been relinquished for adoption to such agency or if the
14 rights of the parents have been judicially terminated, or if
15 both parents are dead, and custody of the child has been
16 legally vested in such agency with authority to consent to
17 adoption of the child; or,

18 (5) Any person having legal custody of a child by
19 court order if the parental rights of the parents have been
20 judicially terminated, but in such case the court having
21 jurisdiction of the custody of the child must consent to
22 adoption, and a certified copy of its order shall be
23 attached to the petition.

24 The consents required by paragraphs subsection (1) and
25 ~~(2)~~ shall be acknowledged before an officer authorized to

1 take acknowledgments, or witnessed by a representative of
 2 the state department of social and rehabilitation services
 3 or of an agency, or witnessed by a representative of the
 4 court."

5 Section 4. Section 61-209, R.C.M. 1947, is amended to
 6 read as follows:

7 "61-209. Investigation. (1) Upon the filing of a
 8 petition for adoption the court may in its discretion order
 9 an investigation to be made by the state department of
 10 social and rehabilitation services or any other private
 11 agency licensed and approved for such investigatory purposes
 12 by the state department of social and rehabilitation
 13 services, and may in its discretion further order that a
 14 report of such investigation shall be filed with the court
 15 by the designated investigator within the time fixed by the
 16 court and in no event more than thirty (30) days from the
 17 issuance of the order for investigation, unless time
 18 therefor is extended by the court. Such investigation if
 19 ordered by the court shall include the conditions and
 20 antecedents of the child for the purpose of determining
 21 whether he is a proper subject for adoption; appropriate
 22 inquiry to determine whether the proposed home is a suitable
 23 one for the child; and any other circumstances and
 24 conditions which may have a bearing on the adoption and of
 25 which the court should have knowledge.

1 (2) The court may order agencies named in subsection
 2 (1) of this section located in one or more counties to make
 3 separate investigations on separate parts of the inquiry as
 4 may be appropriate.

5 (3) The report of such investigation shall become a
 6 part of the files in the case and shall contain a definite
 7 recommendation for or against the proposed adoption and
 8 state reasons therefor.

9 (4) The court shall inquire of the department of
 10 social and rehabilitation services to determine whether a
 11 notice of intent to claim paternity has been filed
 12 concerning the child to be adopted. This report shall be
 13 incorporated in the files of the case and it shall contain a
 14 certified copy of the notice if one has been filed.

15 (5) Upon application of a licensed adoption agency,
 16 the department shall report, as set forth in subsection (4)
 17 of this section, to that agency. Filing of this report with
 18 the court in an adoption proceeding constitutes compliance
 19 with subsection (4) of this section.

20 (6) If a notice of intent to claim paternity was not
 21 filed timely, the court shall so find.

22 (7) If a notice was filed timely, then the court shall
 23 set a date for hearing upon the question of paternity and
 24 the claimant shall be given ten (10) days' notice thereof by
 25 certified mail directed to the address listed in his notice

1 of intent to claim paternity, unless he has given his
 2 written consent to the adoption.

3 (a) If the mother contests the claim of paternity, the
 4 court shall take testimony necessary to determine the facts.
 5 If the claimant seeks to oppose the proposed adoption and
 6 requests custody of the child, the court shall inquire into
 7 (i) the fitness of the claimant, (ii) his ability to
 8 properly care for the child, and (iii) whether the best
 9 interests of the child are served by granting custody to the
 10 claimant if the mother relinquishes custody. Only upon
 11 relinquishment of custody by the mother and a finding by the
 12 court that the claimant is a fit person, can care for the
 13 child properly and that the child's best interests will be
 14 served by granting custody to the claimant, may custody be
 15 granted.

16 (b) The court may order agencies named in subsection
 17 (1) of this section to investigate the ability of the
 18 claimant to care for the child. The results of this
 19 investigation shall be made known to the parties involved
 20 before the time set for the hearing on that issue.

21 (8) If no claim of paternity is filed, the court shall
 22 establish on the record that the mother and father of the
 23 child (a) are not then living together as husband and wife
 24 openly and generally, and (b) that they have not done so nor
 25 married since the birth of the child. If they are or have

1 lived together as husband and wife and the father of the
 2 child has supported the child or the parents have married,
 3 then all reasonable efforts shall be made to give notice of
 4 the hearing to the father by personal service or by
 5 certified mail. If notice of the hearing is unsuccessful,
 6 then notice shall be by publication once a week for two (2)
 7 consecutive weeks in a newspaper of general circulation in
 8 the county where the father was last known to reside if in
 9 this state, or if not in this state then in the county where
 10 the proceedings are commenced. The form of publication
 11 shall not disclose the name of the mother, but shall state
 12 only that the father by name must appear at a hearing at the
 13 appointed time or forfeit all rights to the child he might
 14 otherwise have. If personal service is not obtained the
 15 court shall appoint a guardian ad litem for the child. Upon
 16 consent by the mother and a consent by the father or a
 17 finding of proper notice by mail or publication to the
 18 father, together with recommendation by the guardian ad
 19 litem and a finding that termination of the rights of the
 20 mother and father is in the best interest of the child, the
 21 court shall terminate the parental rights and transfer them
 22 to the agency seeking to place the child for adoption. The
 23 order is final upon entry and is not appealable except for
 24 fraud or duress. The order may not be appealed after
 25 placement of the child for adoption by any court in this or

1 any other state.
2 (9) Any licensed adoption agency or appropriate agency
3 of the state of Montana may apply to the district court for
4 a determination of the rights of a father of an illegitimate
5 child who has filed notice of intent to claim paternity.
6 The applicable procedure set forth in this section shall be
7 followed to conclusion."

-End-

Approved by Committee
on Judiciary

HOUSE BILL NO. 275

INTRODUCED BY FABREGA, WILLIAMS, CASEY, JACK MOORE, TROPILA,
MCKITTRICK, SEIFERT

A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE THE RIGHTS OF
A FATHER WITH RESPECT TO HIS ILLEGITIMATE CHILD, AND TO
CLARIFY THE STATUS OF CERTAIN ADOPTION PROCEEDINGS INVOLVING
ILLEGITIMATE CHILDREN, AMENDING SECTIONS 61-108, 61-205, AND
61-209, R.C.M. 1947."

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

Section 1. Section 61-108, R.C.M. 1947, is amended to
read as follows:

"61-108. Custody of illegitimate child. The mother of
an illegitimate unmarried minor is entitled to its custody,
services, and earnings. The father is also entitled to the
custody, services and earnings of his minor illegitimate
child if the father's paternity is established:

(1) by adjudication or other clear and convincing
proof, and

(2) if he has openly treated the child as his own and
has not refused to support the child."

Section 2. There is a new R.C.M. section numbered
61-141 that reads as follows:

61-141. Assertion of rights by father of illegitimate

child -- notice. A man may not claim in any legal proceeding
in this state to be father to an illegitimate child unless,
prior to birth of the child, he has filed with the clerk of
the district court in the county in which he resides a
notice of intent to claim paternity. The STATE department
OF SOCIAL AND REHABILITATION SERVICES shall provide the
forms for this notice and the form shall include: (1)
claimant's name, (2) claimant's address, (3) name and last
known address of the claimed child's mother, and (4) the
month and year of the expected child's birth.

On the next business day after receipt of the notice,
the clerk of district court shall transmit the notice to the
department of social and rehabilitation services and shall
send a copy to the mother at her stated address.

This notice (a) shall be admissible in any action for
paternity, and (b) estops the claimant from denying his
paternity of that child thereafter and shall contain
language that he acknowledges liability for contribution to
the support and education of the child after its birth and
for contribution to the pregnancy-related medical expenses
of the mother. The notice is conclusive evidence on the
question of paternity for all purposes, unless the mother
denies that the claimant is the father, OR SUCH CLAIM WAS
UNDER DURESS OR FRAUD.

Section 3. Section 61-205, R.C.M. 1947, is amended to

S E C O N D R E A D I N G

1 read as follows:

2 "61-205. Persons required to consent to the adoption.
3 An adoption of a child may be decreed when there have been
4 filed written consents to adoption executed by:

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

8 (a) adjudged guilty by a court of competent
9 jurisdiction of physical cruelty toward ~~said~~ the child; or,

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

11 (c) who has been judicially deprived of the custody of
12 the child on account of ABUSE, cruelty or neglect toward the
13 child AS SET FORTH IN SECTIONS 10-1300 THROUGH 10-1322,
14 R.C.M. 1947, AS AMENDED; or,

15 (d) who has, in the state of Montana, or in any other
16 state of the United States, willfully abandoned ~~such~~ the
17 child; or,

18 (e) who has caused the child to be maintained by any
19 public or private children's institution, charitable agency,
20 or any licensed adoption agency, or the state department of
21 social and rehabilitation services of the state of Montana
22 for a period of one (1) year without contributing to the
23 support of ~~said~~ the child during ~~said~~ that period, if able;
24 or,

25 (f) who has not, if it is proven to the satisfaction

1 of the court, ~~that-said-father-or-mother, if-able, has-not~~
2 contributed to the support of ~~said~~ the child during a period
3 of one (1) year before the filing of a petition for
4 adoption, ~~or--(an--adoption--of--a-child--may--be--decreed--when~~
5 ~~there-have-been-filed-written-consents-to-adoption--executed~~
6 ~~by):~~

7 (2) ~~The--mother,--alone,--if--the--child--is--illegitimate,~~
8 ~~or, In the case of an illegitimate child, the mother; any~~
9 ~~guardian of the child, and the father, if he has legal~~
10 ~~custody.~~

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

16 (4) The executive head of an agency if the child has
17 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) 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~~ subsection (1) and
4 (2) shall be acknowledged before an officer authorized to
5 take acknowledgments, or witnessed by a representative of
6 the state department of social and rehabilitation services
7 or of an agency, or witnessed by a representative of the
8 court."

9 Section 4. Section 61-209, R.C.M. 1947, is amended to
10 read as follows:

11 "61-209. Investigation. (1) Upon the filing of a
12 petition for adoption the court may in its discretion order
13 an investigation to be made by the state department of
14 social and rehabilitation services or any other private
15 agency licensed and approved for such investigatory purposes
16 by the state department of social and rehabilitation
17 services, and may in its discretion further order that a
18 report of such investigation shall be filed with the court
19 by the designated investigator within the time fixed by the
20 court and in no event more than thirty (30) days from the
21 issuance of the order for investigation, unless time
22 therefor is extended by the court. Such investigation if
23 ordered by the court shall include the conditions and
24 antecedents of the child for the purpose of determining
25 whether he is a proper subject for adoption; appropriate

1 inquiry to determine whether the proposed home is a suitable
2 one for the child; and any other circumstances and
3 conditions which may have a bearing on the adoption and of
4 which the court should have knowledge.

5 (2) The court may order agencies named in subsection
6 (1) of this section located in one or more counties to make
7 separate investigations on separate parts of the inquiry as
8 may be appropriate.

9 (3) The report of such investigation shall become a
10 part of the files in the case and shall contain a definite
11 recommendation for or against the proposed adoption and
12 state reasons therefor.

13 (4) The court shall inquire of the department of
14 social and rehabilitation services to determine whether a
15 notice of intent to claim paternity has been filed
16 concerning the child to be adopted. This report shall be
17 incorporated in the files of the case and it shall contain a
18 certified copy of the notice if one has been filed, EXCEPT
19 WHERE THE PROCEEDING IS INSTITUTED OR COMMENCED BY A
20 REPRESENTATIVE OF THE STATE DEPARTMENT OF SOCIAL AND
21 REHABILITATION SERVICES, A CITATION SHALL BE ISSUED AND
22 SERVED UPON A REPRESENTATIVE OF THE SOCIAL AND
23 REHABILITATION SERVICES PRIOR TO THE COURT HEARING TO
24 PROVIDE THE COURT A REPORT ON THE NOTICE OF INTENT TO CLAIM
25 PATERNITY FILED CONCERNING THE CHILD TO BE ADOPTED. THE

1 REPORT SHALL BE INCORPORATED IN THE FILES OF THE COURT CASE
 2 AND IT SHALL CONTAIN A CERTIFIED COPY OF THE NOTICE IF ONE
 3 HAS BEEN FILED.

4 (5) Upon application of a licensed adoption agency,
 5 the department shall report, as set forth in subsection (4)
 6 or this section, to that agency. Filing of this report with
 7 the court in an adoption proceeding constitutes compliance
 8 with subsection (4) of this section.

9 (6) If a notice of intent to claim paternity was not
 10 filed timely, the court shall so find.

11 (7) If a notice was filed timely, then the court shall
 12 set a date for hearing upon the question of paternity and
 13 the claimant shall be given ten (10) days' notice thereof by
 14 certified mail directed to the address listed in his notice
 15 of intent to claim paternity, unless he has given his
 16 written consent to the adoption.

17 (a) If the mother contests the claim of paternity, the
 18 court shall take testimony necessary to determine the facts.
 19 If the claimant seeks to oppose the proposed adoption and
 20 requests custody of the child, the court shall inquire into
 21 (i) the fitness of the claimant, (ii) his ability to
 22 properly care for the child, and (iii) whether the best
 23 interests of the child are served by granting custody to the
 24 claimant if the mother relinquishes custody. Only upon
 25 relinquishment of custody by the mother and a finding by the

1 court that the claimant is a fit person, can care for the
 2 child properly and that the child's best interests will be
 3 served by granting custody to the claimant, may custody be
 4 granted.

5 (b) The court may order agencies named in subsection
 6 (1) of this section to investigate the ability of the
 7 claimant to care for the child. The results of this
 8 investigation shall be made known to the parties involved
 9 before the time set for the hearing on that issue.

10 (8) If no claim of paternity is filed, the court shall
 11 establish on the record that the mother and father of the
 12 child (a) are not then living together as husband and wife
 13 openly and generally, and (b) that they have not done so nor
 14 married since the birth of the child. If they are or have
 15 lived together as husband and wife and the father of the
 16 child has supported the child or the parents have married,
 17 then all reasonable efforts shall be made to give notice of
 18 the hearing to the father by personal service or by
 19 certified mail. If notice of the hearing is unsuccessful,
 20 then notice shall be by publication once a week for two (2)
 21 consecutive weeks in a newspaper of general circulation in
 22 the county where the father was last known to reside if in
 23 this state, or if not in this state then in the county where
 24 the proceedings are commenced. The form of publication
 25 shall not disclose the name of the mother, but shall state

1 only that the father by name must appear at a hearing at the
 2 appointed time or forfeit all rights to the child he might
 3 otherwise have. If personal service is not obtained the
 4 court shall appoint a guardian ad litem for the child. Upon
 5 consent by the mother and a consent by the father or a
 6 finding of proper notice by mail or publication to the
 7 father, together with recommendation by the guardian ad
 8 litem and a finding that termination of the rights of the
 9 mother and father is in the best interest of the child, the
 10 court shall terminate the parental rights and transfer them
 11 to the agency seeking to place the child for adoption. The
 12 ~~order--is--final--upon--entry--and--is--not--appealable--except--for~~
 13 ~~fraud--or--duress.---The--order--may--not--be--appealed--after~~
 14 ~~placement--of--the--child--for--adoption--by--any--court--in--this--or~~
 15 ~~any--other--state.~~

16 (9) Any licensed adoption agency or appropriate agency
 17 of the state of Montana may apply to the district court for
 18 a determination of the rights of a father of an illegitimate
 19 child who has filed notice of intent to claim paternity.
 20 The applicable procedure set forth in this section shall be
 21 followed to conclusion."

22 SECTION 5. UNIFORMITY OF APPLICATION AND CONSTRUCTION.
 23 THIS ACT SHALL BE APPLIED AND CONSTRUED TO EFFECTUATE ITS
 24 GENERAL PURPOSE TO MAKE UNIFORM THE LAW WITH RESPECT TO THE
 25 SUBJECT OF THIS ACT AMONG STATES ENACTING IT.

1 SECTION 6. SEVERABILITY. IF ANY PROVISION OF THIS ACT
 2 OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCE IS
 3 HELD INVALID, THE INVALIDITY DOES NOT AFFECT OTHER
 4 PROVISIONS OR APPLICATIONS OF THE ACT WHICH CAN BE GIVEN
 5 EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO
 6 THIS END THE PROVISIONS OF THIS ACT ARE SEVERABLE.

-End-

1 HOUSE BILL NO. 275

2 INTRODUCED BY FABREGA, WILLIAMS, CASEY, JACK MOORE, TROPILA,
3 MCKITTRICK, SEIFERT
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE THE RIGHTS OF
6 A FATHER WITH RESPECT TO HIS ILLEGITIMATE CHILD, AND TO
7 CLARIFY THE STATUS OF CERTAIN ADOPTION PROCEEDINGS INVOLVING
8 ILLEGITIMATE CHILDREN, AMENDING SECTIONS 61-108, 61-205, AND
9 61-209, R.C.M. 1947."
10

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

12 Section 1. Section 61-108, R.C.M. 1947, is amended to
13 read as follows:

14 "61-108. Custody of illegitimate child. The mother of
15 an illegitimate unmarried minor is entitled to its custody,
16 services, and earnings. The father is also entitled to the
17 custody, services and earnings of his minor illegitimate
18 child if the father's paternity is established:

19 (1) by adjudication or other clear and convincing
20 proof, and

21 (2) if he has openly treated the child as his own and
22 has not refused to support the child."

23 Section 2. There is a new R.C.M. section numbered
24 61-141 that reads as follows:

25 61-141. Assertion of rights by father of illegitimate

1 child -- notice. A man may not claim in any legal proceeding
2 in this state to be father to an illegitimate child unless,
3 prior to birth of the child, he has filed with the clerk of
4 the district court in the county in which he resides a
5 notice of intent to claim paternity. The STATE department
6 OF SOCIAL AND REHABILITATION SERVICES shall provide the
7 forms for this notice and the form shall include: (1)
8 claimant's name, (2) claimant's address, (3) name and last
9 known address of the claimed child's mother, and (4) the
10 month and year of the expected child's birth.

11 On the next business day after receipt of the notice,
12 the clerk of district court shall transmit the notice to the
13 department of social and rehabilitation services and shall
14 send a copy to the mother at her stated address.

15 This notice (a) shall be admissible in any action for
16 paternity, and (b) estops the claimant from denying his
17 paternity of that child thereafter and shall contain
18 language that he acknowledges liability for contribution to
19 the support and education of the child after its birth and
20 for contribution to the pregnancy-related medical expenses
21 of the mother. The notice is conclusive evidence on the
22 question of paternity for all purposes, unless the mother
23 denies that the claimant is the father, OR SUCH CLAIM WAS
24 UNDER DURESS OR FRAUD.

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1 read as follows:

2 "61-205. Persons required to consent to the adoption.
3 An adoption of a child may be decreed when there have been
4 filed written consents to adoption executed by:

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

8 (a) adjudged guilty by a court of competent
9 jurisdiction of physical cruelty toward ~~said~~ the child; or,

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

11 (c) who has been judicially deprived of the custody of
12 the child on account of ABUSE, cruelty or neglect toward the
13 child AS SET FORTH IN SECTIONS 10-1300 THROUGH 10-1322,
14 R.C.M. 1947, AS AMENDED; or,

15 (d) who has, in the state of Montana, or in any other
16 state of the United States, willfully abandoned ~~such~~ the
17 child; or,

18 (e) who has caused the child to be maintained by any
19 public or private children's institution, charitable agency,
20 or any licensed adoption agency, or the state department of
21 social and rehabilitation services of the state of Montana
22 for a period of one (1) year without contributing to the
23 support of ~~said~~ the child during ~~said~~ that period, if able;
24 or,

25 (f) who has not, if it is proven to the satisfaction

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

7 (2) ~~The mother, alone, if the child is illegitimate;~~
8 or, In the case of an illegitimate child, the mother; any
9 guardian of the child, and the father, if he has legal
10 custody.

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

16 (4) The executive head of an agency if the child has
17 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) 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~~ subsection (1) and
4 ~~(2)~~ shall be acknowledged before an officer authorized to
5 take acknowledgments, or witnessed by a representative of
6 the state department of social and rehabilitation services
7 or of an agency, or witnessed by a representative of the
8 court."

9 Section 4. Section 61-209, R.C.M. 1947, is amended to
10 read as follows:

11 "61-209. Investigation. (1) Upon the filing of a
12 petition for adoption the court may in its discretion order
13 an investigation to be made by the state department of
14 social and rehabilitation services or any other private
15 agency licensed and approved for such investigatory purposes
16 by the state department of social and rehabilitation
17 services, and may in its discretion further order that a
18 report of such investigation shall be filed with the court
19 by the designated investigator within the time fixed by the
20 court and in no event more than thirty (30) days from the
21 issuance of the order for investigation, unless time
22 therefor is extended by the court. Such investigation if
23 ordered by the court shall include the conditions and
24 antecedents of the child for the purpose of determining
25 whether he is a proper subject for adoption; appropriate

1 inquiry to determine whether the proposed home is a suitable
2 one for the child; and any other circumstances and
3 conditions which may have a bearing on the adoption and of
4 which the court should have knowledge.

5 (2) The court may order agencies named in subsection
6 (1) of this section located in one or more counties to make
7 separate investigations on separate parts of the inquiry as
8 may be appropriate.

9 (3) The report of such investigation shall become a
10 part of the files in the case and shall contain a definite
11 recommendation for or against the proposed adoption and
12 state reasons therefor.

13 ~~(4) The court shall inquire of the department of~~
14 ~~social and rehabilitation services to determine whether a~~
15 ~~notice of intent to claim paternity has been filed~~
16 ~~concerning the child to be adopted. This report shall be~~
17 ~~incorporated in the files of the case and it shall contain a~~
18 ~~certified copy of the notice if one has been filed, EXCEPT~~
19 ~~WHERE THE PROCEEDING IS INSTITUTED OR COMMENCED BY A~~
20 ~~REPRESENTATIVE OF THE STATE DEPARTMENT OF SOCIAL AND~~
21 ~~REHABILITATION SERVICES, A CITATION SHALL BE ISSUED AND~~
22 ~~SERVED UPON A REPRESENTATIVE OF THE SOCIAL AND~~
23 ~~REHABILITATION SERVICES PRIOR TO THE COURT HEARING TO~~
24 ~~PROVIDE THE COURT A REPORT ON THE NOTICE OF INTENT TO CLAIM~~
25 ~~PATERNITY FILED CONCERNING THE CHILD TO BE ADOPTED. THE~~

1 REPORT SHALL BE INCORPORATED IN THE FILES OF THE COURT CASE
 2 AND IT SHALL CONTAIN A CERTIFIED COPY OF THE NOTICE IF ONE
 3 HAS BEEN FILED.

4 (5) Upon application of a licensed adoption agency,
 5 the department shall report, as set forth in subsection (4)
 6 of this section, to that agency. Filing of this report with
 7 the court in an adoption proceeding constitutes compliance
 8 with subsection (4) of this section.

9 (6) If a notice of intent to claim paternity was not
 10 filed timely, the court shall so find.

11 (7) If a notice was filed timely, then the court shall
 12 set a date for hearing upon the question of paternity and
 13 the claimant shall be given ten (10) days' notice thereof by
 14 certified mail directed to the address listed in his notice
 15 of intent to claim paternity, unless he has given his
 16 written consent to the adoption.

17 (a) If the mother contests the claim of paternity, the
 18 court shall take testimony necessary to determine the facts.
 19 If the claimant seeks to oppose the proposed adoption and
 20 requests custody of the child, the court shall inquire into
 21 (i) the fitness of the claimant, (ii) his ability to
 22 properly care for the child, and (iii) whether the best
 23 interests of the child are served by granting custody to the
 24 claimant if the mother relinquishes custody. Only upon
 25 relinquishment of custody by the mother and a finding by the

1 court that the claimant is a fit person, can care for the
 2 child properly and that the child's best interests will be
 3 served by granting custody to the claimant, may custody be
 4 granted.

5 (b) The court may order agencies named in subsection
 6 (1) of this section to investigate the ability of the
 7 claimant to care for the child. The results of this
 8 investigation shall be made known to the parties involved
 9 before the time set for the hearing on that issue.

10 (8) If no claim of paternity is filed, the court shall
 11 establish on the record that the mother and father of the
 12 child (a) are not then living together as husband and wife
 13 openly and generally, and (b) that they have not done so nor
 14 married since the birth of the child. If they are or have
 15 lived together as husband and wife and the father of the
 16 child has supported the child or the parents have married,
 17 then all reasonable efforts shall be made to give notice of
 18 the hearing to the father by personal service or by
 19 certified mail. If notice of the hearing is unsuccessful,
 20 then notice shall be by publication once a week for two (2)
 21 consecutive weeks in a newspaper of general circulation in
 22 the county where the father was last known to reside if in
 23 this state, or if not in this state then in the county where
 24 the proceedings are commenced. The form of publication
 25 shall not disclose the name of the mother, but shall state

1 only that the father by name must appear at a hearing at the
 2 appointed time or forfeit all rights to the child he might
 3 otherwise have. If personal service is not obtained the
 4 court shall appoint a guardian ad litem for the child. Upon
 5 consent by the mother and a consent by the father or a
 6 finding of proper notice by mail or publication to the
 7 father, together with recommendation by the guardian ad
 8 litem and a finding that termination of the rights of the
 9 mother and father is in the best interest of the child, the
 10 court shall terminate the parental rights and transfer them
 11 to the agency seeking to place the child for adoption. The
 12 order--is--final--upon--entry--and--is--not--appealable--except--for
 13 fraud--or--duress.---The--order--may--not--be--appealed--after
 14 placement--of--the--child--for--adoption--by--any--court--in--this--or
 15 any--other--state.

16 (?) Any licensed adoption agency or appropriate agency
 17 of the state of Montana may apply to the district court for
 18 a determination of the rights of a father of an illegitimate
 19 child who has filed notice of intent to claim paternity.
 20 The applicable procedure set forth in this section shall be
 21 followed to conclusion."

22 SECTION 5. UNIFORMITY OF APPLICATION AND CONSTRUCTION.
 23 THIS ACT SHALL BE APPLIED AND CONSTRUED TO EFFECTUATE ITS
 24 GENERAL PURPOSE TO MAKE UNIFORM THE LAW WITH RESPECT TO THE
 25 SUBJECT OF THIS ACT AMONG STATES ENACTING IT.

1 SECTION 6. SEVERABILITY. IF ANY PROVISION OF THIS ACT
 2 OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCE IS
 3 HELD INVALID, THE INVALIDITY DOES NOT AFFECT OTHER
 4 PROVISIONS OR APPLICATIONS OF THE ACT WHICH CAN BE GIVEN
 5 EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO
 6 THIS END THE PROVISIONS OF THIS ACT ARE SEVERABLE.

-End-

March 25, 1975

SENATE COMMITTEE ON JUDICIARY

AMENDMENTS TO HOUSE BILL NO. 275

That House Bill No. 275, third reading, be amended as follows:

Amend title, line 8.

Following: "SECTIONS"

Strike: "61-108,"

Amend title, line 8.

Following: "61-205"

Strike: ", "

Amend page 1, section 1, lines 12 through 22.

Following: line 11

Strike: section 1 in its entirety

Renumber: All subsequent sections

Amend page 2, section 2, line 1.

Following: "notice."

Strike: "A"

Insert: "Except as provided in section 61-209, a"

Amend page 3, section 3, line 6.

Following: "a"

Strike: "legitimate"

Amend page 7, section 4, line 10.

Following: "find."

Insert: "The court shall direct the adoption agency in question or the department of social and rehabilitation services, if no other agency is involved, to make inquiry to identify the natural father. Inquiry shall be made of the mother and any other appropriate person, and shall include the following:

(a) whether the mother was married at the time of conception of the child or at any time thereafter;

(b) whether the mother was cohabiting with a man at the time of conception or birth of the child;

(c) whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy; or

(d) whether any man has formally or informally acknowledged or declared his possible paternity of the child.

7. Amend page 8, section 4, lines 10 through 19.
Following: "(8)"
Strike: lines 10 through 19 in their entirety
Insert: "Whether or not a claim of paternity is filed, the court shall establish on the record whether any person is presumed to be the father of the child pursuant to section 5, uniform parentage act, and whether the identity of the natural father has been discovered through the inquiry conducted pursuant to section 6 of this act. Notice of the hearing to determine the father and child relationship shall be served upon any person presumed to be the father of the child or otherwise identified as the father of the child even though he has not filed a notice of intent to claim paternity. Service shall be made as provided in the Montana rules of civil procedure. If personal service of notice of the hearing cannot be made,"
8. Amend page 8, section 4, line 22.
Following: "where the"
Insert: "presumed or otherwise identified"
9. Amend page 9, section 4, line 1.
Following: "that the"
Insert: "presumed or otherwise identified"
10. Amend page 9, section 4, line 11.
Following: "adoption"
Insert: "or if no agency is involved, to the department of social and rehabilitation services"
11. Amend page 9, section 5, lines 22 through 25.
Following: "5."
Strike: Section 5 in its entirety
Insert: "In any action relating to the custody of a child who has been the subject of an adoption proceeding, the sole consideration shall be the best interest of the child."