

1 *Senate* BILL NO. 311
 2 INTRODUCED BY *Tracy Blunt*
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE
 5 PROCEDURES FOR THE TERMINATION OF THE PARENTAL RIGHTS OF
 6 CHILDREN PROPOSED TO BE RELEASED FOR ADOPTION; AMENDING
 7 SECTION 61-317, R.C.M. 1947; REPEALING SECTIONS 61-325 AND
 8 61-326, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. There is a new R.C.M. section numbered
 12 61-328 that reads as follows:

13 61-328. Form, execution, and revocation of releases --
 14 termination of parents' or guardians' rights. (1) Any parent
 15 or guardian who proposes to relinquish custody of a child
 16 for purposes of placing the child for adoption may do so by
 17 formally executing a release whereby all parental rights to
 18 the child are voluntarily relinquished to an agency of the
 19 state of Montana or a licensed adoption agency.

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

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

1 authorized by law to administer oaths.

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

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

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

20 (7) Upon petition of the person or persons who
 21 executed the release and of the agency of the state of
 22 Montana or licensed adoption agency to which the child was
 23 released, the court with which the release was filed may
 24 grant a hearing to consider whether the release should be
 25 revoked. A release may not be revoked if the child has been

1 placed for adoption. A verbatim record of testimony related
2 to a petition to revoke a release shall be made.

3 Section 2. There is a new R.C.M. section numbered
4 61-329 that reads as follows:

5 61-329. Children born out of wedlock -- release --
6 consent. (1) If the mother of a child born out of wedlock
7 proposes to release the child for adoption and the release
8 or consent of the natural father cannot be obtained, the
9 child may not be placed for adoption until the parental
10 rights of the father are terminated by the court as provided
11 in this chapter, by the court pursuant to Title 10, chapter
12 13, or by a court of competent jurisdiction in another state
13 or country.

14 (2) Pending the termination or other disposition of
15 the rights of the father of the child born out of wedlock,
16 the mother may execute a release terminating her rights to
17 the child. If the mother releases the child, the agency of
18 the state of Montana or the licensed adoption agency to
19 which the child is released may file a petition under this
20 chapter or a petition of dependency or neglect pursuant to
21 Title 10, chapter 13. Pending disposition of the petition,
22 the court may enter an order authorizing temporary care of
23 the child.

24 (3) At the request of the mother, her formal execution
25 of a release shall be delayed until after the court has

1 determined the identity of the father and has awarded
2 custody of the child to the father or terminated his rights
3 under this chapter.

4 Section 3. There is a new R.C.M. section numbered
5 61-330 that reads as follows:

6 61-330. Notice of intent to claim paternity. (1)
7 Before the birth of a child born out of wedlock, a person
8 claiming under oath to be the father of the child may file a
9 verified notice of intent to claim paternity with the
10 district court in any county of this state. The form of the
11 notice shall be prescribed by the director of the department
12 of health and environmental sciences and supplied to the
13 clerks of the district courts. The notice shall include the
14 claimant's address. On the next business day after receipt
15 of the notice, the court shall transmit the notice to the
16 records and statistics bureau of the department of health
17 and environmental sciences. If the mother's address is
18 stated on the notice, the records and statistics bureau
19 shall send a copy of the notice by first-class mail to the
20 mother of the child at the stated address.

21 (2) A person filing a notice of intent to claim
22 paternity or acknowledging paternity in accordance with
23 61-305 shall be presumed to be the father of the child for
24 purposes of this chapter unless the mother denies that the
25 claimant is the father. Such notice is admissible in a

1 paternity proceeding under 61-307 and creates a rebuttable
 2 presumption as to the paternity of that child for purposes
 3 of that section. Such notice creates a rebuttable
 4 presumption as to paternity of the child for purposes of a
 5 dependency or neglect proceeding under Title 10, chapter 13.

6 (3) A person who makes a timely filing of notice of
 7 intent to claim paternity or who formally acknowledges
 8 paternity under 61-305 is entitled to notice of any hearing
 9 to determine the identity of the father of the child and any
 10 hearing to determine or terminate his paternal rights to the
 11 child.

12 Section 4. There is a new R.C.M. section numbered
 13 61-331 that reads as follows:

14 61-331. Expected child -- intent to release or
 15 consent, petition and notice. (1) In order to provide due
 16 notice at the earliest possible time to a putative father
 17 who may have an interest in the custody of an expected child
 18 or in the mother's intended release of an expected child for
 19 adoption and in order to facilitate early placement of a
 20 child for adoption, a woman pregnant out of wedlock may file
 21 with the district court an ex parte petition which sets
 22 forth the following:

23 (a) her intent to release her expected child for
 24 adoption;

25 (b) the approximate date and location of conception;

1 (c) the expected date of her delivery; and

2 (d) the identity and whereabouts of the putative
 3 father of her expected child.

4 (2) The petition may allege more than one putative
 5 father whenever circumstances warrant. The petition shall be
 6 verified. Upon the filing of the petition, the court shall
 7 issue a notice of intent to release, which notice shall be
 8 served upon the putative father or fathers in the manner
 9 provided by the Montana rules of civil procedure or in any
 10 other manner which the court may direct. Proof of such
 11 service shall be filed with the court.

12 (3) A notice of intent to release shall:

13 (a) indicate the approximate date and location of
 14 conception of the child and the expected date of delivery;

15 (b) inform the putative father of his right under
 16 61-330 to file a notice of intent to claim paternity before
 17 the birth of the child;

18 (c) inform the putative father of the rights to which
 19 his filing of notice of intent to claim paternity will
 20 entitle him under 61-330(3); and

21 (d) inform the putative father that his failure to
 22 file a notice of intent to claim paternity before the
 23 expected date of delivery constitutes a waiver of his right
 24 to receive the notice to which he would otherwise be
 25 entitled under 61-330(3) and constitutes a denial of his

1 interest in the custody of the child, which denial shall
2 result in the court's termination of his rights to the
3 child.

4 (4) The petition shall be filed with the court not
5 later than 30 days prior to the expected date of delivery.

6 Section 5. There is a new R.C.M. section numbered
7 61-332 that reads as follows:

8 61-332. Proceeding to determine father's identity and
9 terminate rights. (1) If a child is born out of wedlock and
10 the mother executes or proposes to execute a release
11 terminating her rights to the child or if the child
12 otherwise becomes the subject of an adoption proceeding, the
13 agency or person to whom the child has been or is to be
14 relinquished or the mother or person having custody of the
15 child shall file a petition in the district court to
16 terminate the parental rights of the father, unless the
17 father's relationship to the child has been previously
18 terminated or determined not to exist by the court. The
19 court shall hold a hearing as soon as practical to determine
20 the identity of the father and to determine or terminate the
21 rights of the father as provided in this section and in
22 61-333 and 61-334.

23 (2) Proof of service of a notice of intent to release
24 or the putative father's verified acknowledgment of notice
25 of intent to release shall be filed with the court, if such

1 notice was given to the putative father. The court shall
2 request the records and statistics bureau of the department
3 of health and environmental sciences to send to the court a
4 copy of any notice of intent to claim paternity of the
5 particular child which the bureau has received.

6 (3) If the mother has failed to name a putative father
7 or has failed to file a notice of intent to release, the
8 court shall cause inquiry to be made of the mother in an
9 effort to identify the natural father. The inquiry shall
10 include the following: whether the mother was married at the
11 time of conception of the child or at any time thereafter;
12 whether the mother was cohabitating with a man at the time
13 of conception or birth of the child; whether the mother has
14 received support payments or promises of support payments
15 with respect to the child or in connection with her
16 pregnancy; or whether any man has formally or informally
17 acknowledged or declared his possible paternity of the
18 child. Notwithstanding this section or any other provisions
19 of law and in consideration of her right to privacy, no
20 mother of a child who is the subject of proceedings under
21 this act may be compelled to testify concerning, or to
22 divulge the identity of, the father or possible father of
23 that child.

24 (4) Notice of the hearing shall be served upon the
25 following persons in the manner appropriate under the

1 Montana rules of civil procedure or any manner which the
2 court shall direct:

3 (a) a putative father who has timely filed a notice of
4 intent to claim paternity as provided in 61-330 or 61-331;

5 (b) a putative father who has not been served with a
6 notice of intent to release at least 30 days before the
7 expected date of delivery specified in the notice of intent
8 to release;

9 (c) any other male who was not served pursuant to
10 61-331(1) with a notice of intent to release and who the
11 court, after inquiry of the mother or any other appropriate
12 person, has reason to believe may be the father of the
13 child.

14 (5) The notice of hearing shall inform the putative
15 father that his failure to appear at the hearing constitutes
16 a denial of his interest in custody of the child, which
17 denial will result in the court's termination of his rights
18 to the child.

19 (6) Proof of service of the notice of hearing required
20 by subsection (4) shall be filed with the court. A verified
21 acknowledgment of service by the party to be served is proof
22 of personal service. Notice of hearing may not be required
23 if the putative father is present at the hearing. A waiver
24 of notice of hearing by a person entitled to receive it is
25 sufficient. If no person has been identified as the natural

1 father or possible father, the court, on the basis of all
2 information available, shall determine whether publication
3 or public posting of notice of the proceeding is likely to
4 lead to identification and, if so, shall order publication
5 or public posting at the times and places and in the manner
6 it considers appropriate. The name of the natural mother may
7 be included in such publication only with her written
8 consent.

9 (7) At the hearing, the court shall receive evidence
10 as to the identity of the father of the child. Based upon
11 the evidence received and the court's inquiry, the court
12 shall enter a finding identifying the father or declaring
13 that the identity of the father cannot be determined.

14 (8) If the court finds that the father of the child is
15 a person who did not receive either a timely notice of
16 intent to release pursuant to 61-331 or a notice required
17 pursuant to 61-332(4) and who has not waived his right to
18 notice of hearing and is not present at the hearing, the
19 court shall adjourn further proceedings until that person is
20 served with a notice of hearing.

21 Section 6. There is a new R.C.M. section numbered
22 61-333 that reads as follows:

23 61-333. Grounds for termination of father's rights.
24 (1) If the court has proof that the person who it determines
25 pursuant to 61-332 to be the father of the child was timely

1 served with notice of intent to release pursuant to 61-331
 2 or was served with or waived the notice of hearing required
 3 by 61-332(4), the court may permanently terminate the rights
 4 of the putative father if:

5 (a) the putative father submits a verified
 6 acknowledgment of his paternity and a denial of his interest
 7 in custody of the child;

8 (b) the putative father files a denial of paternity.
 9 For purposes of this section the filing of the denial of
 10 paternity constitutes a waiver of notice of hearing and
 11 constitutes a denial of his interests in the custody of the
 12 child;

13 (c) the putative father was served with a notice of
 14 intent to release in accordance with 61-331(2) at least 30
 15 days before the expected date of delivery specified in that
 16 notice but failed to file an intent to claim paternity
 17 either before the expected date of delivery or before the
 18 birth of the child; or

19 (d) the putative father is given proper notice of
 20 hearing in accordance with subsection (4) or (6) of 61-332
 21 but either fails to appear at the hearing or appears and
 22 denies his interest in the custody of the child.

23 (2) If the identity of the father cannot be determined
 24 or if the identity of the father is known but his
 25 whereabouts cannot be determined, the court shall receive

1 evidence to determine the facts in the matter. The court may
 2 terminate the rights of the putative father if the court
 3 finds from the evidence that reasonable effort has been made
 4 to identify and locate the father and that any of the
 5 following circumstances exist:

6 (a) The putative father, whose identity is not known,
 7 has not made a provision for the child's care and did not
 8 provide support for the mother during her pregnancy or
 9 during her hospitalization.

10 (b) The putative father, whose identity is known but
 11 whose whereabouts are unknown, has not provided support for
 12 the mother, has not shown any interest in the child, and has
 13 not made provision for the child's care, for at least 90
 14 days preceding the hearing required under 61-332.

15 (3) Subject to the disposition of an appeal, upon the
 16 expiration of 6 months after an order terminating parental
 17 rights is issued under this section, the order cannot be
 18 questioned by any person, in any manner or upon any ground,
 19 including fraud, misrepresentation, failure to give any
 20 required notice, or lack of jurisdiction of the parties or
 21 of the subject matter.

22 Section 7. There is a new R.C.M. section numbered
 23 61-334 that reads as follows:

24 61-334. Best interests of the child -- custody to
 25 father -- legitimation. (1) If the putative father appears

1 at the hearing and requests custody of the child, the court
 2 shall inquire into his fitness and his ability to properly
 3 care for the child and shall determine whether the best
 4 interests of the child will be served by granting custody to
 5 him or to the agency of the state of Montana or licensed
 6 adoption agency to which the mother has released or proposed
 7 to release custody of the child. If the court finds that it
 8 would not be in the best interests of the child to grant
 9 custody to the putative father, the court shall terminate
 10 his rights to the child.

11 (2) If the mother of the child has released the
 12 custody of the child to an agency of the state of Montana or
 13 a licensed adoption agency, the agency shall be a proper
 14 party to petition the court for custody of the child.

15 (3) If the parental rights of the mother are
 16 terminated pursuant to this chapter or other law and if the
 17 court awards custody of the child out of wedlock to the
 18 putative father, the court shall enter an order granting
 19 custody to the putative father and legitimating the child
 20 for all purposes.

21 Section 8. Section 61-317, R.C.M. 1947, is amended to
 22 read as follows:

23 "61-317. Costs. The court may order reasonable fees of
 24 counsel, experts, and the child's guardian ad litem, and
 25 other costs of the action and pre-trial proceedings,

1 including blood tests, to be paid by the parties in
 2 proportions and at times determined by the court. The court
 3 may order the proportion of any indigent party to be paid
 4 out of the treasury of the county in which the action is
 5 brought. Attorneys' fees may not be assessed against an
 6 agency of the state of Montana or a licensed adoption agency
 7 which brings an action under this chapter to terminate the
 8 parental rights of a natural parent."

9 Section 9. Repealer. Sections 61-325 and 61-326,
 10 R.C.M. 1947, are repealed.

11 Section 10. Effective date. This act is effective on
 12 its passage and approval.

-End-

STATE OF MONTANA

REQUEST NO. 282-77

FISCAL NOTE

Form BD-15

In compliance with a written request received January 28, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 311 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Clarify procedures for termination of parental rights, of children proposed for release through adoption.

ASSUMPTIONS:

1. The number of infants placed for adoption remains at 50 per year.
2. The administrative procedures required of the mother and putative father will have been initiated prior to birth of the child.
3. The bill will reduce court administration time and therefore foster care time, from two months to one month.

FISCAL IMPACT:

The legislation reduces the foster care stay from two months to one month.

Number of adoptive children	50
Foster care monthly payment	<u>\$125</u>
Savings per year to the Foster Care Program	<u>\$6,250</u>

TECHNICAL NOTE:

Sec. 31-333 could offset any savings if the court exercises the 90 day lack of interest clause.

Richard L. Young
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-3-77

Approved by Committee
on Judiciary

SENATE BILL NO. 311

INTRODUCED BY TURNAGE, ROBERTS

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE
PROCEDURES FOR THE TERMINATION OF THE PARENTAL RIGHTS OF
CHILDREN PROPOSED TO BE RELEASED FOR ADOPTION; ~~AMENDING~~
~~SECTION--61-317,--R.C.M.--1947;~~ REPEALING SECTIONS ~~61-317,~~
~~61-325,~~ AND 61-326, R.C.M. 1947; AND PROVIDING AN EFFECTIVE
DATE."

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

Section 1. There is a new R.C.M. section numbered
61-328 that reads as follows:

61-328. Form, execution, and revocation of releases --
termination of parents' or guardians' rights. (1) Any parent
or guardian who proposes to relinquish custody of a child
for purposes of placing the child for adoption may do so by
formally executing a release whereby all parental rights to
the child are voluntarily relinquished to an agency of the
state of Montana ~~or~~ a licensed adoption agency OR A
PERSON.

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

(3) If the person from whom a release is required is a

member of any of the armed services or is in prison, the
release may be executed and acknowledged before any person
authorized by law to administer oaths.

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

(5) Upon the filing of the release of a child by a
parent or guardian, the court immediately shall issue an
order terminating the rights of that parent or guardian to
that child. If the rights of both parents, the surviving
parent, or the guardian have been terminated, the court
shall issue an order committing the child to the agency of
the state of Montana ~~or~~ the licensed adoption agency OR
THE PERSON to which the release was given.

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

(7) Upon petition of the person or persons who
executed the release and of the agency of the state of
Montana ~~or~~ licensed adoption agency OR PERSON to which the
child was released, the court with which the release was

1 filed may grant a hearing to consider whether the release
 2 should be revoked. A release may not be revoked if the child
 3 has been placed for adoption. A verbatim record of testimony
 4 related to a petition to revoke a release shall be made.

5 Section 2. There is a new R.C.M. section numbered
 6 61-329 that reads as follows:

7 61-329. Children born out of wedlock -- release --
 8 consent. (1) If the mother of a child born out of wedlock
 9 proposes to release the child for adoption and the release
 10 or consent of the natural father cannot be obtained, the
 11 child may not be placed for adoption until the parental
 12 rights of the father are terminated by the court as provided
 13 in this chapter, by the court pursuant to Title 10, chapter
 14 13, or by a court of competent jurisdiction in another state
 15 or country.

16 (2) Pending the termination or other disposition of
 17 the rights of the father of the child born out of wedlock,
 18 the mother may execute a release terminating her rights to
 19 the child. If the mother releases the child, the agency of
 20 the state of Montana or, the licensed adoption agency, OR
 21 THE PERSON to which the child is released may file a
 22 petition under this chapter or a petition of dependency or
 23 neglect pursuant to Title 10, chapter 13. Pending
 24 disposition of the petition, the court may enter an order
 25 authorizing temporary care of the child.

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

6 Section 3. There is a new R.C.M. section numbered
 7 61-330 that reads as follows:

8 61-330. Notice of intent to claim paternity. (1)
 9 Before the birth of a child born out of wedlock, a person
 10 claiming under oath to be the father of the child may file a
 11 verified notice of intent to claim paternity with the
 12 district court in any county of this state. The form of the
 13 notice shall be prescribed by the director of the department
 14 of health and environmental sciences and supplied to the
 15 clerks of the district courts. The notice shall include the
 16 claimant's address. On the next business day after receipt
 17 of the notice, the court shall transmit the notice to the
 18 records and statistics bureau of the department of health
 19 and environmental sciences. If the mother's address is
 20 stated on the notice, the records and statistics bureau
 21 shall send a copy of the notice by first-class mail to the
 22 mother of the child at the stated address.

23 (2) A person filing a notice of intent to claim
 24 paternity or acknowledging paternity in accordance with
 25 61-305 shall be presumed to be the father of the child for

1 purposes of this chapter unless the mother denies that the
 2 claimant is the father. Such notice is admissible in a
 3 paternity proceeding under 61-307 and creates a rebuttable
 4 presumption as to the paternity of that child for purposes
 5 of that section. Such notice creates a rebuttable
 6 presumption as to paternity of the child for purposes of a
 7 dependency or neglect proceeding under Title 10, chapter 13.

8 (3) A person who makes a timely filing of notice of
 9 intent to claim paternity or who formally acknowledges
 10 paternity under 61-305 is entitled to notice of any hearing
 11 to determine the identity of the father of the child and any
 12 hearing to determine or terminate his paternal rights to the
 13 child.

14 Section 4. There is a new R.C.M. section numbered
 15 61-331 that reads as follows:

16 61-331. Expected child -- intent to release or
 17 consent, petition and notice. (1) In order to provide due
 18 notice at the earliest possible time to a putative father
 19 who may have an interest in the custody of an expected child
 20 or in the mother's intended release of an expected child for
 21 adoption and in order to facilitate early placement of a
 22 child for adoption, a woman pregnant out of wedlock may file
 23 with the district court an ex parte petition which sets
 24 forth the following:

25 (a) her intent to release her expected child for

1 adoption;

2 (b) the approximate date and location of conception;

3 (c) the expected date of her delivery; and

4 (d) the identity and whereabouts of the putative
 5 father of her expected child.

6 (2) The petition may allege more than one putative
 7 father whenever circumstances warrant. The petition shall be
 8 verified. Upon the filing of the petition, the court shall
 9 issue a notice of intent to release, which notice shall be
 10 served upon the putative father or fathers in the manner
 11 provided by the Montana rules of civil procedure or in any
 12 other manner which the court may direct. Proof of such
 13 service shall be filed with the court.

14 (3) A notice of intent to release shall:

15 (a) indicate the approximate date and location of
 16 conception of the child and the expected date of delivery;

17 (b) inform the putative father of his right under
 18 61-330 to file a notice of intent to claim paternity before
 19 the birth of the child;

20 (c) inform the putative father of the rights to which
 21 his filing of notice of intent to claim paternity will
 22 entitle him under 61-330(3); and

23 (d) inform the putative father that his failure to
 24 file a notice of intent to claim paternity before the
 25 expected date of delivery constitutes a waiver of his right

1 to receive the notice to which he would otherwise be
 2 entitled under 61-330(3) and constitutes a denial of his
 3 interest in the custody of the child, which denial shall
 4 result in the court's termination of his rights to the
 5 child.

6 (4) The petition shall be filed with the court not
 7 later than 30 days prior to the expected date of delivery.

8 Section 5. There is a new R.C.M. section numbered
 9 61-332 that reads as follows:

10 61-332. Proceeding to determine father's identity and
 11 terminate rights. (1) If a child is born out of wedlock and
 12 the mother executes or proposes to execute a release
 13 terminating her rights to the child or if the child
 14 otherwise becomes the subject of an adoption proceeding, the
 15 agency or person to whom the child has been or is to be
 16 relinquished or the mother or person having custody of the
 17 child shall file a petition in the district court to
 18 terminate the parental rights of the father, unless the
 19 father's relationship to the child has been previously
 20 terminated or determined not to exist by the court. The
 21 court shall hold a hearing as soon as practical to determine
 22 the identity of the father and to determine or terminate the
 23 rights of the father as provided in this section and in
 24 61-333 and 61-334.

25 (2) Proof of service of a notice of intent to release

1 or the putative father's verified acknowledgment of notice
 2 of intent to release shall be filed with the court, if such
 3 notice was given to the putative father. The court shall
 4 request the records and statistics bureau of the department
 5 of health and environmental sciences to send to the court a
 6 copy of any notice of intent to claim paternity of the
 7 particular child which the bureau has received.

8 (3) If the mother has failed to name a putative father
 9 or has failed to file a notice of intent to release, the
 10 court shall cause inquiry to be made of the mother in an
 11 effort to identify the natural father. The inquiry shall
 12 include the following: whether the mother was married at the
 13 time of conception of the child or at any time thereafter;
 14 whether the mother was cohabitating with a man at the time
 15 of conception or birth of the child; whether the mother has
 16 received support payments or promises of support payments
 17 with respect to the child or in connection with her
 18 pregnancy; or whether any man has formally or informally
 19 acknowledged or declared his possible paternity of the
 20 child. Notwithstanding this section or any other provisions
 21 of law and in consideration of her right to privacy, no
 22 mother of a child who is the subject of proceedings under
 23 this act may be compelled to testify concerning, or to
 24 divulge the identity of, the father or possible father of
 25 that child.

1 (4) Notice of the hearing shall be served upon the
2 following persons in the manner appropriate under the
3 Montana rules of civil procedure or any manner which the
4 court shall direct:

5 (a) a putative father who has timely filed a notice of
6 intent to claim paternity as provided in 61-330 or 61-331;

7 (b) a putative father who has not been served with a
8 notice of intent to release at least 30 days before the
9 expected date of delivery specified in the notice of intent
10 to release;

11 (c) any other male who was not served pursuant to
12 61-331~~(1)~~(2) with a notice of intent to release and who the
13 court, after inquiry of the mother or any other appropriate
14 person, has reason to believe may be the father of the
15 child.

16 (5) The notice of hearing shall inform the putative
17 father that his failure to appear at the hearing constitutes
18 a denial of his interest in custody of the child, which
19 denial will result in the court's termination of his rights
20 to the child.

21 (6) Proof of service of the notice of hearing required
22 by subsection (4) shall be filed with the court. A verified
23 acknowledgment of service by the party to be served is proof
24 of personal service. Notice of hearing may ~~NEED~~ not be
25 required if the putative father is present at the hearing.

1 A waiver of notice of hearing by a person entitled to
2 receive it is sufficient. If no person has been identified
3 as the natural father or possible father, the court, on the
4 basis of all information available, shall determine whether
5 publication or public posting of notice of the proceeding
6 is likely to lead to identification and, if so, shall order
7 publication or public posting at the times and places and in
8 the manner it considers appropriate. The name of the natural
9 mother may be included in such publication only with her
10 written consent.

11 (7) At the hearing, the court shall receive evidence
12 as to the identity of the father of the child. Based upon
13 the evidence received and the court's inquiry, the court
14 shall enter a finding identifying the father or declaring
15 that the identity of the father cannot be determined.

16 (8) If the court finds that the father of the child is
17 a person who did not receive either a timely notice of
18 intent to release pursuant to 61-331 or a notice required
19 pursuant to 61-332(4) and who has not waived his right to
20 notice of hearing and is not present at the hearing, the
21 court shall adjourn further proceedings until that person is
22 served with a notice of hearing.

23 Section 6. There is a new R.C.M. section numbered
24 61-333 that reads as follows:

25 61-333. Grounds for termination of father's rights.

1 (1) If the court has proof that the person who it determines
 2 pursuant to 61-332 to be the father of the child was timely
 3 served with notice of intent to release pursuant to 61-331
 4 or was served with or waived the notice of hearing required
 5 by 61-332(4), the court may permanently terminate the rights
 6 of the putative father if:

7 (a) the putative father submits a verified
 8 acknowledgment of his paternity and a denial of his interest
 9 in custody of the child;

10 (b) the putative father files a denial of paternity.
 11 For purposes of this section the filing of the denial of
 12 paternity constitutes a waiver of notice of hearing and
 13 constitutes a denial of his interests in the custody of the
 14 child;

15 (c) the putative father was served with a notice of
 16 intent to release in accordance with 61-331(2) at least 30
 17 days before the expected date of delivery specified in that
 18 notice but failed to file an intent to claim paternity
 19 either before the expected date of delivery or before the
 20 birth of the child; or

21 (d) the putative father is given proper notice of
 22 hearing in accordance with subsection (4) or (6) of 61-332
 23 but either fails to appear at the hearing or appears and
 24 denies his interest in the custody of the child.

25 (2) If the identity of the father cannot be determined

1 or if the identity of the father is known but his
 2 whereabouts cannot be determined, the court shall receive
 3 evidence to determine the facts in the matter. The court may
 4 terminate the rights of the putative father if the court
 5 finds from the evidence that reasonable effort has been made
 6 to identify and locate the father and that any of the
 7 following circumstances exist:

8 (a) The putative father, whose identity is not known,
 9 has not made a provision for the child's care and did not
 10 provide support for the mother during her pregnancy or
 11 during her hospitalization.

12 (b) The putative father, whose identity is known but
 13 whose whereabouts are unknown, has not provided support for
 14 the mother, has not shown any interest in the child, and has
 15 not made provision for the child's care, for at least 90
 16 days preceding the hearing required under 61-332.

17 (3) Subject to the disposition of an appeal, upon the
 18 expiration of 6 months after an order terminating parental
 19 rights is issued under this section, the order cannot be
 20 questioned by any person, in any manner or upon any ground,
 21 including fraud, misrepresentation, failure to give any
 22 required notice, or lack of jurisdiction of the parties or
 23 of the subject matter.

24 Section 7. There is a new R.C.M. section numbered
 25 61-334 that reads as follows:

1 51-334. Best interests of the child -- custody to
 2 father -- legitimation. (1) If the putative father appears
 3 at the hearing and requests custody of the child, the court
 4 shall inquire into his fitness and his ability to properly
 5 care for the child and shall determine whether THE FATHER'S
 6 PARENTAL RIGHTS SHOULD BE GIVEN RECOGNITION IN VIEW OF HIS
 7 EFFORT OR LACK OF EFFORT TO MAKE PROVISION FOR THE MOTHER
 8 WHILE SHE WAS PREGNANT AND FOR THE CHILD UPON BIRTH AND
 9 WHETHER the best interests of the child will be served by
 10 granting custody to him or to the agency of the state of
 11 Montana OR a licensed adoption agency, OR PERSON to which the
 12 mother has released or proposed to release custody of the
 13 child. If the court finds that it would not be in the best
 14 interests of the child to grant custody to the putative
 15 father, the court shall terminate his rights to the child.

16 (2) If the mother of the child has released the
 17 custody of the child to an agency of the state of Montana
 18 OR a licensed adoption agency, OR A PERSON, the agency OR
 19 PERSON shall be a proper party to petition the court for
 20 custody of the child.

21 (3) If the parental rights of the mother are
 22 terminated pursuant to this chapter or other law and if the
 23 court awards custody of the child out of wedlock to the
 24 putative father, the court shall enter an order granting
 25 custody to the putative father and legitimating the child

1 for all purposes.

2 ~~Section 8. Section 61-317, R.C.M. 1947, is amended to~~
 3 ~~read as follows:~~

4 ~~"61-317. Costs. The court may order reasonable fees~~
 5 ~~of counsel, experts, and the child's guardian ad litem, and~~
 6 ~~other costs of the action and pre-trial proceedings,~~
 7 ~~including blood tests, to be paid by the parties in~~
 8 ~~proportions and at times determined by the court. The court~~
 9 ~~may order the proportion of any indigent party to be paid~~
 10 ~~out of the treasury of the county in which the action is~~
 11 ~~brought. Attorneys' fees may not be assessed against an~~
 12 ~~agency of the state of Montana or a licensed adoption agency~~
 13 ~~which brings an action under this chapter to terminate the~~
 14 ~~parental rights of a natural parent."~~

15 Section 8. Repealer. Sections 61-317, 61-325, and
 16 61-326, R.C.M. 1947, are repealed.

17 Section 9. Effective date. This act is effective on
 18 its passage and approval.

-End-

SENATE BILL NO. 311

INTRODUCED BY TURNAGE, ROBERTS

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE PROCEDURES FOR THE TERMINATION OF THE PARENTAL RIGHTS OF CHILDREN PROPOSED TO BE RELEASED FOR ADOPTION; AMENDING SECTION 61-317, R.C.M. 1947; REPEALING SECTIONS 61-317, 61-325, AND 61-326, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. There is a new R.C.M. section numbered 61-328 that reads as follows:

61-328. Form, execution, and revocation of releases -- termination of parents' or guardians' rights. (1) Any parent or guardian who proposes to relinquish custody of a child for purposes of placing the child for adoption may do so by formally executing a release whereby all parental rights to the child are voluntarily relinquished to an agency of the state of Montana ~~or~~, a licensed adoption agency, OR A PERSON.

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

(3) If the person from whom a release is required is a

member of any of the armed services or is in prison, the release may be executed and acknowledged before any person authorized by law to administer oaths.

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

(5) Upon the filing of the release of a child by a parent or guardian, the court immediately shall issue an order terminating the rights of that parent or guardian to that child. If the rights of both parents, the surviving parent, or the guardian have been terminated, the court shall issue an order committing the child to the agency of the state of Montana ~~or~~, the licensed adoption agency, OR THE PERSON to which the release was given.

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

(7) Upon petition of the person or persons who executed the release and of the agency of the state of Montana ~~or~~, licensed adoption agency, OR PERSON to which the child was released, the court with which the release was

1 filed may grant a hearing to consider whether the release
 2 should be revoked. A release may not be revoked if the child
 3 has been placed for adoption. A verbatim record of testimony
 4 related to a petition to revoke a release shall be made.

5 Section 2. There is a new R.C.M. section numbered
 6 61-329 that reads as follows:

7 61-329. Children born out of wedlock — release —
 8 consent. (1) If the mother of a child born out of wedlock
 9 proposes to release the child for adoption and the release
 10 or consent of the natural father cannot be obtained, the
 11 child may not be placed for adoption until the parental
 12 rights of the father are terminated by the court as provided
 13 in this chapter, by the court pursuant to Title 10, chapter
 14 13, or by a court of competent jurisdiction in another state
 15 or country.

16 (2) Pending the termination or other disposition of
 17 the rights of the father of the child born out of wedlock,
 18 the mother may execute a release terminating her rights to
 19 the child. If the mother releases the child, the agency of
 20 the state of Montana ~~or~~ the licensed adoption agency ~~or~~
 21 THE PERSON to which the child is released may file a
 22 petition under this chapter or a petition of dependency or
 23 neglect pursuant to Title 10, chapter 13. Pending
 24 disposition of the petition, the court may enter an order
 25 authorizing temporary care of the child.

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

6 Section 3. There is a new R.C.M. section numbered
 7 61-330 that reads as follows:

8 61-330. Notice of intent to claim paternity. (1)
 9 Before the birth of a child born out of wedlock, a person
 10 claiming under oath to be the father of the child may file a
 11 verified notice of intent to claim paternity with the
 12 district court in any county of this state. The form of the
 13 notice shall be prescribed by the director of the department
 14 of health and environmental sciences and supplied to the
 15 clerks of the district courts. The notice shall include the
 16 claimant's address. On the next business day after receipt
 17 of the notice, the court shall transmit the notice to the
 18 records and statistics bureau of the department of health
 19 and environmental sciences. If the mother's address is
 20 stated on the notice, the records and statistics bureau
 21 shall send a copy of the notice by first-class mail to the
 22 mother of the child at the stated address.

23 (2) A person filing a notice of intent to claim
 24 paternity or acknowledging paternity in accordance with
 25 61-305 shall be presumed to be the father of the child for

1 purposes of this chapter unless the mother denies that the
 2 claimant is the father. Such notice is admissible in a
 3 paternity proceeding under 61-307 and creates a rebuttable
 4 presumption as to the paternity of that child for purposes
 5 of that section. Such notice creates a rebuttable
 6 presumption as to paternity of the child for purposes of a
 7 dependency or neglect proceeding under Title 10, chapter 13.

8 (3) A person who makes a timely filing of notice of
 9 intent to claim paternity or who formally acknowledges
 10 paternity under 61-305 is entitled to notice of any hearing
 11 to determine the identity of the father of the child and any
 12 hearing to determine or terminate his paternal rights to the
 13 child.

14 Section 4. There is a new R.C.M. section numbered
 15 61-331 that reads as follows:

16 61-331. Expected child — intent to release or
 17 consent, petition and notice. (1) In order to provide due
 18 notice at the earliest possible time to a putative father
 19 who may have an interest in the custody of an expected child
 20 or in the mother's intended release of an expected child for
 21 adoption and in order to facilitate early placement of a
 22 child for adoption, a woman pregnant out of wedlock may file
 23 with the district court an ex parte petition which sets
 24 forth the following:

25 (a) her intent to release her expected child for

1 adoption;

2 (b) the approximate date and location of conception;

3 (c) the expected date of her delivery; and

4 (d) the identity and whereabouts of the putative
 5 father of her expected child.

6 (2) The petition may allege more than one putative
 7 father whenever circumstances warrant. The petition shall be
 8 verified. Upon the filing of the petition, the court shall
 9 issue a notice of intent to release, which notice shall be
 10 served upon the putative father or fathers in the manner
 11 provided by the Montana rules of civil procedure or in any
 12 other manner which the court may direct. Proof of such
 13 service shall be filed with the court.

14 (3) A notice of intent to release shall:

15 (a) indicate the approximate date and location of
 16 conception of the child and the expected date of delivery;

17 (b) inform the putative father of his right under
 18 61-330 to file a notice of intent to claim paternity before
 19 the birth of the child;

20 (c) inform the putative father of the rights to which
 21 his filing of notice of intent to claim paternity will
 22 entitle him under 61-330(3); and

23 (d) inform the putative father that his failure to
 24 file a notice of intent to claim paternity before the
 25 expected date of delivery constitutes a waiver of his right

1 to receive the notice to which he would otherwise be
 2 entitled under 61-330(3) and constitutes a denial of his
 3 interest in the custody of the child, which denial shall
 4 result in the court's termination of his rights to the
 5 child.

6 (4) The petition shall be filed with the court not
 7 later than 30 days prior to the expected date of delivery.

8 Section 5. There is a new R.C.M. section numbered
 9 61-332 that reads as follows:

10 61-332. Proceeding to determine father's identity and
 11 terminate rights. (1) If a child is born out of wedlock and
 12 the mother executes or proposes to execute a release
 13 terminating her rights to the child or if the child
 14 otherwise becomes the subject of an adoption proceeding, the
 15 agency or person to whom the child has been or is to be
 16 relinquished or the mother or person having custody of the
 17 child shall file a petition in the district court to
 18 terminate the parental rights of the father, unless the
 19 father's relationship to the child has been previously
 20 terminated or determined not to exist by the court. The
 21 court shall hold a hearing as soon as practical to determine
 22 the identity of the father and to determine or terminate the
 23 rights of the father as provided in this section and in
 24 61-333 and 61-334. THIS SECTION IS NOT APPLICABLE IF THE
 25 FATHER IS A PERSON WHOSE CONSENT TO ADOPTION IS NOT REQUIRED

1 UNDER 61-205.

2 (2) Proof of service of a notice of intent to release
 3 or the putative father's verified acknowledgment of notice
 4 of intent to release shall be filed with the court, if such
 5 notice was given to the putative father. The court shall
 6 request the records and statistics bureau of the department
 7 of health and environmental sciences to send to the court a
 8 copy of any notice of intent to claim paternity of the
 9 particular child which the bureau has received.

10 (3) If the mother has failed to name a putative father
 11 or has failed to file a notice of intent to release, the
 12 court shall cause inquiry to be made of the mother in an
 13 effort to identify the natural father. The inquiry shall
 14 include the following: whether the mother was married at the
 15 time of conception of the child or at any time thereafter;
 16 whether the mother was cohabitating with a man at the time
 17 of conception or birth of the child; whether the mother has
 18 received support payments or promises of support payments
 19 with respect to the child or in connection with her
 20 pregnancy; or whether any man has formally or informally
 21 acknowledged or declared his possible paternity of the
 22 child. Notwithstanding this section or any other provisions
 23 of law and in consideration of her right to privacy, no
 24 mother of a child who is the subject of proceedings under
 25 this act may be compelled to testify concerning, or to

1 divulge the identity of, the father or possible father of
2 that child.

3 (4) Notice of the hearing shall be served upon the
4 following persons in the manner appropriate under the
5 Montana rules of civil procedure or any manner which the
6 court shall direct:

7 (a) a putative father who has timely filed a notice of
8 intent to claim paternity as provided in 61-330 or 61-331;

9 (b) a putative father who has not been served with a
10 notice of intent to release at least 30 days before the
11 expected date of delivery specified in the notice of intent
12 to release;

13 (c) any other male who was not served pursuant to
14 61-331~~(4)~~⁽²⁾ with a notice of intent to release and who the
15 court, after inquiry of the mother or any other appropriate
16 person, has reason to believe may be the father of the
17 child.

18 (5) The notice of hearing shall inform the putative
19 father that his failure to appear at the hearing constitutes
20 a denial of his interest in custody of the child, which
21 denial will result in the court's termination of his rights
22 to the child.

23 (6) Proof of service of the notice of hearing required
24 by subsection (4) shall be filed with the court. A verified
25 acknowledgment of service by the party to be served is proof

1 of personal service. Notice of hearing ~~may~~ NEED not be
2 required if the putative father is present at the hearing.
3 A waiver of notice of hearing by a person entitled to
4 receive it is sufficient. If no person has been identified
5 as the natural father or possible father, the court, on the
6 basis of all information available, shall determine whether
7 publication or public posting of notice of the proceeding
8 is likely to lead to identification and, if so, shall order
9 publication or public posting at the times and places and in
10 the manner it considers appropriate. The name of the natural
11 mother may be included in such publication only with her
12 written consent.

13 (7) At the hearing, the court shall receive evidence
14 as to the identity of the father of the child. Based upon
15 the evidence received and the court's inquiry, the court
16 shall enter a finding identifying the father or declaring
17 that the identity of the father cannot be determined.

18 (8) If the court finds that the father of the child is
19 a person who did not receive either a timely notice of
20 intent to release pursuant to 61-331 or a notice required
21 pursuant to 61-332(4) and who has not waived his right to
22 notice of hearing and is not present at the hearing, the
23 court shall adjourn further proceedings until that person is
24 served with a notice of hearing.

25 Section 6. There is a new B.C.M. section numbered

1 61-333 that reads as follows:

2 61-333. Grounds for termination of father's rights.
3 (1) If the court has proof that the person who it determines
4 pursuant to 61-332 to be the father of the child was timely
5 served with notice of intent to release pursuant to 61-333
6 or was served with or waived the notice of hearing required
7 by 61-332(4), the court may permanently terminate the rights
8 of the putative father if:

9 (a) the putative father submits a verified
10 acknowledgment of his paternity and a denial of his interest
11 in custody of the child;

12 (b) the putative father files a denial of paternity.
13 For purposes of this section the filing of the denial of
14 paternity constitutes a waiver of notice of hearing and
15 constitutes a denial of his interests in the custody of the
16 child;

17 (c) the putative father was served with a notice of
18 intent to release in accordance with 61-331(2) at least 30
19 days before the expected date of delivery specified in that
20 notice but failed to file an intent to claim paternity
21 either before the expected date of delivery or before the
22 birth of the child; or

23 (d) the putative father is given proper notice of
24 hearing in accordance with subsection (4) or (6) of 61-332
25 but either fails to appear at the hearing or appears and

1 denies his interest in the custody of the child.

2 (2) If the identity of the father cannot be determined
3 or if the identity of the father is known but his
4 whereabouts cannot be determined, the court shall receive
5 evidence to determine the facts in the matter. The court may
6 terminate the rights of the putative father if the court
7 finds from the evidence that reasonable effort has been made
8 to identify and locate the father and that any of the
9 following circumstances exist:

10 (a) The putative father, whose identity is not known,
11 has not made a provision for the child's care and did not
12 provide support for the mother during her pregnancy or
13 during her hospitalization.

14 (b) The putative father, whose identity is known but
15 whose whereabouts are unknown, has not provided support for
16 the mother, has not shown any interest in the child, and has
17 not made provision for the child's care, for at least 90
18 days preceding the hearing required under 61-332.

19 (3) Subject to the disposition of an appeal, upon the
20 expiration of 6 months after an order terminating parental
21 rights is issued under this section, the order cannot be
22 questioned by any person, in any manner or upon any ground,
23 including fraud, misrepresentation, failure to give any
24 required notice, or lack of jurisdiction of the parties or
25 of the subject matter.

1 Section 7. There is a new R.C.M. section numbered
2 61-334 that reads as follows:

3 61-334. Best interests of the child -- custody to
4 father -- legitimation. (1) If the putative father appears
5 at the hearing and requests custody of the child, the court
6 shall inquire into his fitness and his ability to properly
7 care for the child and shall determine whether THE FATHER'S
8 PARENTAL RIGHTS SHOULD BE GIVEN RECOGNITION IN VIEW OF HIS
9 EFFORT OR LACK OF EFFORT TO MAKE PROVISION FOR THE MOTHER
10 WHILE SHE WAS PREGNANT AND FOR THE CHILD UPON BIRTH AND
11 WHETHER the best interests of the child will be served by
12 granting custody to him or to the agency of the state of
13 Montana ~~or~~, licensed adoption agency, OR PERSON to which the
14 mother has released or proposed to release custody of the
15 child. If the court finds that it would not be in the best
16 interests of the child to grant custody to the putative
17 father, the court shall terminate his rights to the child.

18 (2) If the mother of the child has released the
19 custody of the child to an agency of the state of Montana
20 ~~or~~, a licensed adoption agency, OR A PERSON, the agency OF
21 PERSON shall be a proper party to petition the court for
22 custody of the child.

23 (3) If the parental rights of the mother are
24 terminated pursuant to this chapter or other law and if the
25 court awards custody of the child out of wedlock to the

1 putative father, the court shall enter an order granting
2 custody to the putative father and legitimating the child
3 for all purposes.

4 ~~Section 8. Section 61-317, R.C.M. 1947, is amended to~~
5 ~~read as follows:~~

6 ~~"61-317. Costs. The court may order reasonable fees~~
7 ~~of counsel, experts, and the child's guardian ad litem, and~~
8 ~~other costs of the action and pre-trial proceedings,~~
9 ~~including blood tests, to be paid by the parties in~~
10 ~~proportions and at times determined by the court. The court~~
11 ~~may order the proportion of any indigent party to be paid~~
12 ~~out of the treasury of the county in which the action is~~
13 ~~brought. Attorneys' fees may not be assessed against an~~
14 ~~agency of the state of Montana or a licensed adoption agency~~
15 ~~which brings an action under this chapter to terminate the~~
16 ~~parental rights of a natural parent."~~

17 Section 8. Repealer. Sections 61-317, 61-325, and
18 61-326, R.C.M. 1947, are repealed.

19 Section 9. Effective date. This act is effective on
20 its passage and approval.

-End-

SENATE BILL NO. 311

INTRODUCED BY TURNAGE, ROBERTS

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE PROCEDURES FOR THE TERMINATION OF THE PARENTAL RIGHTS OF CHILDREN PROPOSED TO BE RELEASED FOR ADOPTION; ~~AMENDING SECTION--61-317, R.C.M.,--1947,~~ REPEALING SECTIONS ~~61-317,~~ 61-325, AND 61-326, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. There is a new R.C.M. section numbered 61-328 that reads as follows:

61-328. Form, execution, and revocation of releases -- termination of parents' or guardians' rights. (1) Any parent or guardian who proposes to relinquish custody of a child for purposes of placing the child for adoption may do so by formally executing a release whereby all parental rights to the child are voluntarily relinquished to an agency of the state of Montana ~~or~~ a licensed adoption agency, ~~OR A PERSON.~~

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

(3) If the person from whom a release is required is a

member of any of the armed services or is in prison, the release may be executed and acknowledged before any person authorized by law to administer oaths.

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

(5) Upon the filing of the release of a child by a parent or guardian, the court immediately shall issue an order terminating the rights of that parent or guardian to that child. If the rights of both parents, the surviving parent, or the guardian have been terminated, the court shall issue an order committing the child to the agency of the state of Montana ~~or~~ the licensed adoption agency, ~~OR THE PERSON~~ to which the release was given.

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

(7) Upon petition of the person or persons who executed the release and of the agency of the state of Montana ~~or~~ licensed adoption agency, ~~OR PERSON~~ to which the child was released, the court with which the release was

1 filed may grant a hearing to consider whether the release
2 should be revoked. A release may not be revoked if the child
3 has been placed for adoption. A verbatim record of testimony
4 related to a petition to revoke a release shall be made.

5 Section 2. There is a new R.C.M. section numbered
6 61-329 that reads as follows:

7 61-329. Children born out of wedlock -- release --
8 consent. (1) If the mother of a child born out of wedlock
9 proposes to release the child for adoption and the release
10 or consent of the natural father cannot be obtained, the
11 child may not be placed for adoption until the parental
12 rights of the father are terminated by the court as provided
13 in this chapter, by the court pursuant to Title 10, chapter
14 13, or by a court of competent jurisdiction in another state
15 or country.

16 (2) Pending the termination or other disposition of
17 the rights of the father of the child born out of wedlock,
18 the mother may execute a release terminating her rights to
19 the child. If the mother releases the child, the agency of
20 the state of Montana ~~or~~ the licensed adoption agency, ~~OR~~
21 THE PERSON to which the child is released may file a
22 petition under this chapter or a petition of dependency or
23 neglect pursuant to Title 10, chapter 13. Pending
24 disposition of the petition, the court may enter an order
25 authorizing temporary care of the child.

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

6 Section 3. There is a new R.C.M. section numbered
7 61-330 that reads as follows:

8 61-330. Notice of intent to claim paternity. (1)
9 Before the birth of a child born out of wedlock, a person
10 claiming under oath to be the father of the child may file a
11 verified notice of intent to claim paternity with the
12 district court in any county of this state. The form of the
13 notice shall be prescribed by the director of the department
14 of health and environmental sciences and supplied to the
15 clerks of the district courts. The notice shall include the
16 claimant's address. On the next business day after receipt
17 of the notice, the court shall transmit the notice to the
18 records and statistics bureau of the department of health
19 and environmental sciences. If the mother's address is
20 stated on the notice, the records and statistics bureau
21 shall send a copy of the notice by first-class mail to the
22 mother of the child at the stated address.

23 (2) A person filing a notice of intent to claim
24 paternity or acknowledging paternity in accordance with
25 61-305 shall be presumed to be the father of the child for

1 purposes of this chapter unless the mother denies that the
 2 claimant is the father. Such notice is admissible in a
 3 paternity proceeding under 61-307 and creates a rebuttable
 4 presumption as to the paternity of that child for purposes
 5 of that section. Such notice creates a rebuttable
 6 presumption as to paternity of the child for purposes of a
 7 dependency or neglect proceeding under Title 10, chapter 13.

8 (3) A person who makes a timely filing of notice of
 9 intent to claim paternity or who formally acknowledges
 10 paternity under 61-305 is entitled to notice of any hearing
 11 to determine the identity of the father of the child and any
 12 hearing to determine or terminate his paternal rights to the
 13 child.

14 Section 4. There is a new R.C.M. section numbered
 15 61-331 that reads as follows:

16 61-331. Expected child -- intent to release or
 17 consent, petition and notice. (1) In order to provide due
 18 notice at the earliest possible time to a putative father
 19 who may have an interest in the custody of an expected child
 20 or in the mother's intended release of an expected child for
 21 adoption and in order to facilitate early placement of a
 22 child for adoption, a woman pregnant out of wedlock may file
 23 with the district court an ex parte petition which sets
 24 forth the following:

25 (a) her intent to release her expected child for

1 adoption;

2 (b) the approximate date and location of conception;

3 (c) the expected date of her delivery; and

4 (d) the identity and whereabouts of the putative
 5 father of her expected child.

6 (2) The petition may allege more than one putative
 7 father whenever circumstances warrant. The petition shall be
 8 verified. Upon the filing of the petition, the court shall
 9 issue a notice of intent to release, which notice shall be
 10 served upon the putative father or fathers in the manner
 11 provided by the Montana rules of civil procedure or in any
 12 other manner which the court may direct. Proof of such
 13 service shall be filed with the court.

14 (3) A notice of intent to release shall:

15 (a) indicate the approximate date and location of
 16 conception of the child and the expected date of delivery;

17 (b) inform the putative father of his right under
 18 61-330 to file a notice of intent to claim paternity before
 19 the birth of the child;

20 (c) inform the putative father of the rights to which
 21 his filing of notice of intent to claim paternity will
 22 entitle him under 61-330(3); and

23 (d) inform the putative father that his failure to
 24 file a notice of intent to claim paternity before the
 25 expected date of delivery constitutes a waiver of his right

1 to receive the notice to which he would otherwise be
2 entitled under 61-330(3) and constitutes a denial of his
3 interest in the custody of the child, which denial shall
4 result in the court's termination of his rights to the
5 child.

6 (4) The petition shall be filed with the court not
7 later than 30 days prior to the expected date of delivery.

8 Section 5. There is a new R.C.M. section numbered
9 61-332 that reads as follows:

10 61-332. Proceeding to determine father's identity and
11 terminate rights. (1) If a child is born out of wedlock and
12 the mother executes or proposes to execute a release
13 terminating her rights to the child or if the child
14 otherwise becomes the subject of an adoption proceeding, the
15 agency or person to whom the child has been or is to be
16 relinquished or the mother or person having custody of the
17 child shall file a petition in the district court to
18 terminate the parental rights of the father, unless the
19 father's relationship to the child has been previously
20 terminated or determined not to exist by the court. The
21 court shall hold a hearing as soon as practical to determine
22 the identity of the father and to determine or terminate the
23 rights of the father as provided in this section and in
24 61-333 and 61-334. THIS SECTION IS NOT APPLICABLE IF THE
25 FATHER IS A PERSON WHOSE CONSENT TO ADOPTION IS NOT REQUIRED

1 UNDER 61-205.

2 (2) Proof of service of a notice of intent to release
3 or the putative father's verified acknowledgment of notice
4 of intent to release shall be filed with the court, if such
5 notice was given to the putative father. The court shall
6 request the records and statistics bureau of the department
7 of health and environmental sciences to send to the court a
8 copy of any notice of intent to claim paternity of the
9 particular child which the bureau has received.

10 (3) If the mother has failed to name a putative father
11 or has failed to file a notice of intent to release, the
12 court shall cause inquiry to be made of the mother in an
13 effort to identify the natural father. The inquiry shall
14 include the following: whether the mother was married at the
15 time of conception of the child or at any time thereafter;
16 whether the mother was cohabitating with a man at the time
17 of conception or birth of the child; whether the mother has
18 received support payments or promises of support payments
19 with respect to the child or in connection with her
20 pregnancy; or whether any man has formally or informally
21 acknowledged or declared his possible paternity of the
22 child. Notwithstanding this section or any other provisions
23 of law and in consideration of her right to privacy, no
24 mother of a child who is the subject of proceedings under
25 this act may be compelled to testify concerning, or to

1 divulge the identity of, the father or possible father of
2 that child.

3 (4) Notice of the hearing shall be served upon the
4 following persons in the manner appropriate under the
5 Montana rules of civil procedure or any manner which the
6 court shall direct:

7 (a) a putative father who has timely filed a notice of
8 intent to claim paternity as provided in 61-330 or 61-331;

9 (b) a putative father who has not been served with a
10 notice of intent to release at least 30 days before the
11 expected date of delivery specified in the notice of intent
12 to release;

13 (c) any other male who was not served pursuant to
14 61-331~~(1)~~(2) with a notice of intent to release and who the
15 court, after inquiry of the mother or any other appropriate
16 person, has reason to believe may be the father of the
17 child.

18 (5) The notice of hearing shall inform the putative
19 father that his failure to appear at the hearing constitutes
20 a denial of his interest in custody of the child, which
21 denial will result in the court's termination of his rights
22 to the child.

23 (6) Proof of service of the notice of hearing required
24 by subsection (4) shall be filed with the court. A verified
25 acknowledgment of service by the party to be served is proof

1 of personal service. Notice of hearing may NEED not be
2 required if the putative father is present at the hearing.
3 A waiver of notice of hearing by a person entitled to
4 receive it is sufficient. If no person has been identified
5 as the natural father or possible father, the court, on the
6 basis of all information available, shall determine whether
7 publication or public posting of notice of the proceeding
8 is likely to lead to identification and, if so, shall order
9 publication or public posting at the times and places and in
10 the manner it considers appropriate. The name of the natural
11 mother may be included in such publication only with her
12 written consent.

13 (7) At the hearing, the court shall receive evidence
14 as to the identity of the father of the child. Based upon
15 the evidence received and the court's inquiry, the court
16 shall enter a finding identifying the father or declaring
17 that the identity of the father cannot be determined.

18 (8) If the court finds that the father of the child is
19 a person who did not receive either a timely notice of
20 intent to release pursuant to 61-331 or a notice required
21 pursuant to 61-332(4) and who has not waived his right to
22 notice of hearing and is not present at the hearing, the
23 court shall adjourn further proceedings until that person is
24 served with a notice of hearing.

25 Section 6. There is a new R.C.M. section numbered

1 61-333 that reads as follows:

2 61-333. Grounds for termination of father's rights.

3 (1) If the court has proof that the person who it determines
4 pursuant to 61-332 to be the father of the child was timely
5 served with notice of intent to release pursuant to 61-331
6 or was served with or waived the notice of hearing required
7 by 61-332(4), the court may permanently terminate the rights
8 of the putative father if:

9 (a) the putative father submits a verified
10 acknowledgment of his paternity and a denial of his interest
11 in custody of the child;

12 (b) the putative father files a denial of paternity.
13 For purposes of this section the filing of the denial of
14 paternity constitutes a waiver of notice of hearing and
15 constitutes a denial of his interests in the custody of the
16 child;

17 (c) the putative father was served with a notice of
18 intent to release in accordance with 61-331(2) at least 30
19 days before the expected date of delivery specified in that
20 notice but failed to file an intent to claim paternity
21 either before the expected date of delivery or before the
22 birth of the child; or

23 (d) the putative father is given proper notice of
24 hearing in accordance with subsection (4) or (6) of 61-332
25 but either fails to appear at the hearing or appears and

1 denies his interest in the custody of the child.

2 (2) If the identity of the father cannot be determined
3 or if the identity of the father is known but his
4 whereabouts cannot be determined, the court shall receive
5 evidence to determine the facts in the matter. The court may
6 terminate the rights of the putative father if the court
7 finds from the evidence that reasonable effort has been made
8 to identify and locate the father and that any of the
9 following circumstances exist:

10 (a) The putative father, whose identity is not known,
11 has not made a provision for the child's care and did not
12 provide support for the mother during her pregnancy or
13 during her hospitalization.

14 (b) The putative father, whose identity is known but
15 whose whereabouts are unknown, has not provided support for
16 the mother, has not shown any interest in the child, and has
17 not made provision for the child's care, for at least 90
18 days preceding the hearing required under 61-332.

19 (3) Subject to the disposition of an appeal, upon the
20 expiration of 6 months after an order terminating parental
21 rights is issued under this section, the order cannot be
22 questioned by any person, in any manner or upon any ground,
23 including fraud, misrepresentation, failure to give any
24 required notice, or lack of jurisdiction of the parties or
25 of the subject matter.

1 Section 7. There is a new R.C.M. section numbered
2 61-334 that reads as follows:

3 61-334. Best interests of the child -- custody to
4 father -- legitimation. (1) If the putative father appears
5 at the hearing and requests custody of the child, the court
6 shall inquire into his fitness and his ability to properly
7 care for the child and shall determine whether THE FATHER'S
8 PARENTAL RIGHTS SHOULD BE GIVEN RECOGNITION IN VIEW OF HIS
9 EFFORT OR LACK OF EFFORT TO MAKE PROVISION FOR THE MOTHER
10 WHILE SHE WAS PREGNANT AND FOR THE CHILD UPON BIRTH AND
11 WHETHER the best interests of the child will be served by
12 granting custody to him or to the agency of the state of
13 Montana or, licensed adoption agency, OR PERSON to which the
14 mother has released or proposed to release custody of the
15 child. If the court finds that it would not be in the best
16 interests of the child to grant custody to the putative
17 father, the court shall terminate his rights to the child.

18 (2) If the mother of the child has released the
19 custody of the child to an agency of the state of Montana
20 or, a licensed adoption agency, OR A PERSON, the agency OR
21 PERSON shall be a proper party to petition the court for
22 custody of the child.

23 (3) If the parental rights of the mother are
24 terminated pursuant to this chapter or other law and if the
25 court awards custody of the child out of wedlock to the

1 putative father, the court shall enter an order granting
2 custody to the putative father and legitimating the child
3 for all purposes.

4 ~~Section 8. Section 61-317, R.C.M. 1947, is amended to~~
5 ~~read as follows:~~

6 ~~"61-317. Costs. The court may order reasonable fees~~
7 ~~of counsel, experts, and the child's guardian ad litem, and~~
8 ~~other costs of the action and pre-trial proceedings,~~
9 ~~including blood tests, to be paid by the parties in~~
10 ~~proportions and at times determined by the court. The court~~
11 ~~may order the proportion of any indigent party to be paid~~
12 ~~out of the treasury of the county in which the action is~~
13 ~~brought. Attorneys' fees may not be assessed against an~~
14 ~~agency of the state of Montana or a licensed adoption agency~~
15 ~~which brings an action under this chapter to terminate the~~
16 ~~parental rights of a natural parent."~~

17 Section 8. Repealer. Sections 61-317, 61-325, and
18 61-326, R.C.M. 1947, are repealed.

19 Section 9. Effective date. This act is effective on
20 its passage and approval.

-End-