

SENATE BILL 444

IN THE SENATE

February 10, 1979

Introduced and referred to
Committee on Judiciary.

February 16, 1979

Committee recommend bill,
do not pass.

1 *Senate* BILL NO. 444
2 INTRODUCED BY *Stony*
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
5 RIGHTS OF AN UNWED FATHER; AMENDING SECTIONS 40-6-107,
6 40-6-108, 40-6-125, 40-6-126, 40-6-128 THROUGH 40-6-130,
7 MCA."
8

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

10 Section 1. Section 40-6-107, MCA, is amended to read:
11 "40-6-107. Determination of father and child
12 relationship -- who may bring action. (1) Any interested
13 party may bring an action for the purpose of determining the
14 existence or nonexistence of the father and child
15 relationship presumed pursuant to 40-6-105.

16 (2) An action to determine the existence of the father
17 and child relationship with respect to a child who has no
18 presumed father under 40-6-105 may be brought by the child,
19 the mother or personal representative of the child, the
20 department of social and rehabilitation services or its
21 appropriate local affiliate, the personal representative or
22 a parent of the mother if the mother has died, a man alleged
23 or alleging himself to be the father, or the personal
24 representative or a parent of the alleged father if the
25 alleged father has died or is a minor.

1 (3) Regardless of its terms, an agreement, other than
2 an agreement approved by the court in accordance with
3 40-6-114(2), between an alleged or presumed father and the
4 mother or child does not bar an action under this section.

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

9 ~~(5) An alleged father must initiate action prior to
10 the birth of the child or he terminates his rights to the
11 child."~~

12 Section 2. Section 40-6-108, MCA, is amended to read:
13 "40-6-108. Statute of limitations. (1) An action may
14 be commenced:

15 (a) at any time for the purpose of declaring the
16 existence of the father and child relationship presumed
17 under subsection (a), (b), or (c) of 40-6-105(1); or

18 (b) for the purpose of declaring the nonexistence of
19 the father and child relationship presumed under subsection
20 (a), (b), or (c) of 40-6-105(1), only if the action is
21 brought within a reasonable time after obtaining knowledge
22 of relevant facts, but in no event later than 5 years after
23 the child's birth.

24 (2) After the presumption has been rebutted, paternity
25 of the child by another man may be determined in the same

1 action if he has been made a party.

2 (3) An action to determine the existence or
3 nonexistence of the father and child relationship as to a
4 child who has no presumed father under 40-6-105 may not be
5 brought later than 3 years after the birth of the child or
6 later than July 1, 1978, whichever is later, except that an
7 action brought by an alleged father may not be brought later
8 than birth.

9 (4) Sections 40-6-107 and 40-6-108 do not extend the
10 time within which a right of inheritance or a right to a
11 succession may be asserted beyond the time provided by law
12 relating to distribution and closing of decedents' estates
13 or to the determination of heirship or otherwise.

14 (5) After the conclusion of an adoption proceeding
15 under chapter 8, Title 40, no further action to declare the
16 existence or nonexistence of the father and child
17 relationship of the adopted child may be commenced, except
18 as provided in 40-8-112."

19 Section 3. Section 40-6-125, MCA, is amended to read:

20 "40-6-125. Children born out of wedlock -- release --
21 consent. (1) If the mother of a child born out of wedlock
22 proposes to release the child for adoption and the release
23 or consent of the natural father cannot be obtained, the
24 child may not be placed for adoption until the parental
25 rights of the father are terminated by the court as provided

1 in this part, by the court pursuant to Title 41, chapter 3,
2 or by a court of competent jurisdiction in another state or
3 country or by the failure of the father to file a notice of
4 intent to claim paternity prior to the birth of the child.

5 (2) Pending the termination or other disposition of
6 the rights of the father of the child born out of wedlock,
7 the mother may execute a release terminating her rights to
8 the child. If the mother releases the child, the agency of
9 the state of Montana, the licensed adoption agency, or the
10 person to whom the child is released may file a petition
11 under this part or a petition of dependency or neglect
12 pursuant to Title 41, chapter 3. Pending disposition of the
13 petition, the court may enter an order authorizing temporary
14 care of the child.

15 (3) At the request of the mother, her formal execution
16 of a release shall be delayed until after the court has
17 determined the identity of the father and has awarded
18 custody of the child to the father or terminated his rights
19 under this part."

20 Section 4. Section 40-6-126, MCA, is amended to read:

21 "40-6-126. Notice of intent to claim paternity. (1)
22 Before the birth of a child born out of wedlock, a person
23 claiming under oath to be the father of the child may must
24 file a verified notice of intent to claim paternity with the
25 district court in any county of this state or his rights

1 ~~will be terminated.~~ The form of the notice shall be
 2 prescribed by the director of the department of health and
 3 environmental sciences and supplied to the clerks of the
 4 district courts. The notice shall include the claimant's
 5 address. On the next business day after receipt of the
 6 notice, the court shall transmit the notice to the records
 7 and statistics bureau of the department of health and
 8 environmental sciences. If the mother's address is stated on
 9 the notice, the records and statistics bureau shall send a
 10 copy of the notice by first-class mail to the mother of the
 11 child at the stated address.

12 (2) A person filing a notice of intent to claim
 13 paternity or acknowledging paternity in accordance with
 14 40-6-105 shall be presumed to be the father of the child for
 15 purposes of this part unless the mother denies that the
 16 claimant is the father. Such notice is admissible in a
 17 paternity proceeding under 40-6-107 and creates a rebuttable
 18 presumption as to the paternity of that child for purposes
 19 of that section. Such notice creates a rebuttable
 20 presumption as to paternity of the child for purposes of a
 21 dependency or neglect proceeding under Title 41, chapter 3.

22 (3) A person who makes a timely filing of notice of
 23 intent to claim paternity or who formally acknowledges
 24 paternity under 40-6-105 is entitled to notice of any
 25 hearing to determine the identity of the father of the child

1 and any hearing to determine or terminate his paternal
 2 rights to the child."

3 Section 5. Section 40-6-128, MCA, is amended to read:
 4 "40-6-128. Proceeding to determine father's identity
 5 and terminate rights. (1) If a child is born out of wedlock
 6 and the mother executes or proposes to execute a release
 7 terminating her rights to the child or if the child
 8 otherwise becomes the subject of an adoption proceeding, the
 9 agency or person to whom the child has been or is to be
 10 relinquished or the mother or person having custody of the
 11 child shall file a petition in the district court to
 12 terminate the parental rights of the father, unless the
 13 father's relationship to the child has been previously
 14 terminated or determined not to exist by the court. The
 15 court shall hold a hearing as soon as practical to determine
 16 the identity of the father and to determine or terminate the
 17 rights of the father as provided in this section and in
 18 40-6-129 and 40-6-130. This section is not applicable if the
 19 father is a person whose consent to adoption is not required
 20 under 40-8-111.

21 (2) Proof of service of a notice of intent to release
 22 or the putative father's verified acknowledgment of notice
 23 of intent to release shall be filed with the court, if such
 24 notice was given to the putative father. The court shall
 25 request the records and statistics bureau of the department

1 of health and environmental sciences to send to the court a
2 copy of any notice of intent to claim paternity of the
3 particular child which the bureau has received.

4 ~~{3}--If the mother has failed to name a putative father~~
5 ~~or has failed to file a notice of intent to release, the~~
6 ~~court shall cause inquiry to be made of the mother in an~~
7 ~~effort to identify the natural father. The inquiry shall~~
8 ~~include the following:~~

9 ~~{a}--whether the mother was married at the time of~~
10 ~~conception of the child or at any time thereafter;~~

11 ~~{b}--whether the mother was cohabiting with a man at~~
12 ~~the time of conception or birth of the child;~~

13 ~~{c}--whether the mother has received support payments~~
14 ~~or promises of support payments with respect to the child or~~
15 ~~in connection with her pregnancy; or~~

16 ~~{d}--whether any man has formally or informally~~
17 ~~acknowledged or declared his possible paternity of the~~
18 ~~child.~~

19 ~~{4}{3}~~ Notwithstanding this section or any other
20 provisions of law and in consideration of her right to
21 privacy, no mother of a child who is the subject of
22 proceedings under this part may be compelled to testify
23 concerning or to divulge the identity of the father or
24 possible father of that child.

25 ~~{5}{4}~~ Notice of the hearing shall be served upon the

1 following persons a putative father who has timely filed a
2 notice of intent to claim paternity as provided in 40-6-126
3 or 40-6-127 in the manner appropriate under the Montana
4 rules Rules of civil procedure Civil Procedure or any manner
5 which the court shall direct.

6 ~~{a}--a putative father who has timely filed a notice of~~
7 ~~intent to claim paternity as provided in 40-6-126 or~~
8 ~~40-6-127;~~

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 ~~40-6-127(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 ~~{6}{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 ~~{7}{6}~~ Proof of service of the notice of hearing
24 required by subsection ~~{5}~~ ~~{4}~~ shall be filed with the
25 court. A verified acknowledgment of service by the party to

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

13 ~~{8}{17}~~ At the hearing, the court shall receive
 14 evidence as to the identity of the father of the child.
 15 Based upon the evidence received and the court's inquiry,
 16 the court shall enter a finding identifying the father or
 17 declaring that the identity of the father cannot be
 18 determined.

19 ~~{9}{18}~~ If the court finds that the father of the child
 20 is a person who did not receive either a timely notice of
 21 intent to release pursuant to 40-6-127 or a notice required
 22 pursuant to subsection ~~{5}{14}~~ of this section and who has
 23 not waived his right to notice of hearing and is not present
 24 at the hearing, the court shall adjourn further proceedings
 25 until that person is served with a notice of hearing."

1 Section 6. Section 40-6-129, MCA, is amended to read:
 2 "40-6-129. Grounds for termination of father's rights.
 3 (1) If the court has proof that the person whom it
 4 determines pursuant to 40-6-128 to be the father of the
 5 child was timely served with notice of intent to release
 6 pursuant to 40-6-127 or was served with or waived the notice
 7 of hearing required by 40-6-128(5), the court may
 8 permanently terminate the rights of the putative father if
 9 the putative father:

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

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

16 (c) ~~was served with a notice of intent to release in~~
 17 ~~accordance with 40-6-127(2) at least 30 days before the~~
 18 ~~expected date of delivery specified in that notice but~~
 19 ~~failed fails~~ to file an intent to claim paternity either
 20 before the expected date of delivery or before the birth of
 21 the child; or

22 (d) is given proper notice of hearing in accordance
 23 with subsection ~~{5}{14}~~ or ~~{7}{16}~~ of 40-6-129 but either
 24 fails to appear at the hearing or appears and denies his
 25 interest in the custody of the child.

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

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

13 (b) The putative father, whose identity is known but
14 whose whereabouts are unknown, has not provided support for
15 the mother, has not shown any interest in the child, and has
16 not made provision for the child's care, for at least 90
17 days preceding the hearing required under 40-6-128.

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

25 Section 7. Section 40-6-130, MCA, is amended to read:

1 "40-6-130. 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, licensed adoption agency, or person to whom 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, a
18 licensed adoption agency, or a person, the agency or person
19 shall be a proper party to petition the court for custody of
20 the child.

21 (3) If the parental rights of the mother are
22 terminated pursuant to this part 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

LC 0889/01

1 for all purposes.

2 (4) The offering or giving of support to the mother by

3 the father does not entitle the father to parental rights."

-End-