## SENATE BILL NO. 267

## INTRODUCED BY MAZUREK

BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

## IN THE SENATE

January 24, 1981	Introduced and referred to Committee on Judiciary.
February 16, 1981	Committee recommend bill do pass as amended. Reported adopted.
February 17, 1981	Bill printed and placed on members' desks.
February 18, 1981	Second reading, do pass.
February 19, 1981	Correctly engrossed.
February 20, 1981	Third reading, passed. Ayes, 50; Noas, 0. Transmitted to House.

## IN THE HOUSE

February 21, 1981

March 14, 1981

March 19, 1981

March 21, 1981

Introduced and referred to Committee on Judiciary.

Committee recommend bill be concurred in. Report adopted.

Second reading, concurred in.

Third reading, concurred in. Ayes, 75; Noes, 17.

## IN THE SENATE

March 21, 1981 March 25, 1981 March 26, 1981 March 31, 1981 April 10, 1981 April 11, 1981 Returned from House. Concurred in. Sent to enrolling.

Correctly enrolled.

Signed by President.

Delivered to Governor.

Returned from Governor with recommended amendments.

On motion, consideration be passed for the day.

Second reading, Governor's amendments concurred in.

On motion rules suspended. Governor's amendments placed on calendar for third reading this day.

Third reading, Governor's amendments concurred in. Ayes, 49; Noes, 0. Transmitted to House.

## IN THE HOUSE

April 21, 1981

Second reading, Governor's amendments concurred in.

On motion rules suspended and Governor's amendments placed on third reading this day.

Third reading, Governor's amendments concurred in. Ayes, 81; Noes, 10.

## IN THE SENATE

Returned from House. Concurred in. Sent to enrolling.

Reported correctly enrolled.

April 22, 1981

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 Introduced by
 Manual

 By Request of the department of social and

 By Request of the department of social and

 Rehabilitation services

 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE

 LAWS RELATING TO ADOPTION AND TO AMENO THE LAWS RELATING TO

R RELINQUISHMENT AND PLACEMENT OF CHILDREN FOR ADOPTION BY 9 THEIR PARENTS WITHOUT AGENCY INVOLVEMENT; AMENDING SECTIONS 10 40-6-125, 40-8-101, 40-8-103, 40-8-104, 40-8-111, 40-8-113, 11 40-8-121, 40-8-122, AND 40-8-123, MCA; AND REPEALING SECTION 12 40-6-124, MCA.\*

13

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

15 <u>NEW SECTION</u> Section 1. Petition for relinquishment 16 of custody of child. (1) Any parent who proposes to 17 relinquish custody of a child for purposes of placing the 18 child for adoption may do so by petitioning the district 19 court upon forms supplied by the court.

(2) The petition shall contain the following21 information:

(a) the name and age of both birth parents, if known;(b) the name, if any, and the age of the child;

24 (c) the race and religion of both birth parents, if25 known; and

(d) why relinquishment is desired.

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2 (3) Upon receipt of the petition, the court shall set
3 the time for hearing the matter.

4 (4) The parent-child legal relationship may not be 5 terminated by relinquishment proceedings unless both birth 6 parents join in the petition unless the parent-child legal 7 relationship of a parent not joining the petition has 8 terminated.

9 <u>NEW\_SECTION</u> Section 2. Relinquishment hearing ---10 requirements. (1) The court may not issue an order of 11 relinquishment until it is satisfied that the relinquishing 12 parent has been counseled and fully understands the 13 consequences of his act.

14 (2) If the court finds after the hearing that it is in 15 the best interests of the birth parents or child that no 16 relinquishment be granted, the court shall enter an order 17 dismissing the action.

18 (3) If the court is not satisfied that the 19 relinquishing parent has been counseled and fully 20 understands the consequences of his act, it may continue the 21 matter. The court may, after considering the best interests 22 of the child, order the child to be placed in foster care 23 while the matter is continued.

24 (4) If the court finds at the hearing that the25 relinquishing parent has been counseled as provided in

INTRODUCED BILL

subsection (1) of this section and that the relinquishment
 would best serve the interests of the birth parents and the
 child, it shall enter an order of relinquishment. The order
 shall contain language terminating the parent-child legal
 relationship.

6 <u>NEW\_SECTION</u> Section 3. Order of relinquishment --7 custody. (1) In the order of relinquishment terminating the 8 parent-child legal relationship of both parents or of the 9 only living parent, the court, after taking into account the 10 racial, cultural, and religious background of the child, 11 shall order legal custody transferred to:

12 (a) the department of social and rehabilitation13 services;

14 (b) a licensed child placement agency;

15 (c) a relative of the child;

16 (d) the person named in the notice filed by the 17 parents pursuant to [section 11]; or

18 (e) any other person eligible to adopt if the court
19 finds it is in the child's best interest.

(2) The order of relinquishment shall set forth all
pertinent facts brought forth at the hearing and shall also
state that the court is satisfied that the provisions of
[section 2(1)] have been satisfied.

24 (3) The order of relinquishment divests the25 relinquishing parent or parents of all legal rights and

obligations they may have with respect to the child
 relinquished. The order shall release the relinquished child
 from all legal obligations with respect to the relinquishing
 parent or parents.

5 Section 4. Section 40-6-125, MCA, is amended to read: 6 "40-6-125. Children born out of wedlock -- release 7 relinguishment -- consent. (1) If the mother of a child born 8 out of wedlock proposes to release relinquish the child for 9 adoption and the refease relinguishment or consent of the 10 natural birth father cannot be obtained, the child may not 11 be placed for adoption until the parental rights of the 12 father are terminated by the court as provided in this part, 13 by the court pursuant to Title 41, chapter 3, or by a court of competent jurisdiction in another state or country. 14 15 (2) Pending the termination or other disposition of the rights of the father of the child born out of wedlock, 16 17 the mother may execute-o-release-terminating-her--rights--to 18 the--childy--if-the-mother-releases-the-childy-the-agency-of 19 the-state-of-Montenav-the-licensed-odoption-adencyv--or--the person--to--whom--the--child--is--released--may-file deliver 20 21 physical custody of her child to the department by filing a patition under--this--part--or--a-patition-of-dependency-or 22 23 neglect pursuant to Title-41,-chapter-3 [section\_1]. Pending 24 disposition-of-the Upon petition, the court may enter an 25 order authorizing temporary care of the child.

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1	<del>{3}At-the-request-of-the-mothery-her-formal-execution</del>
2	<del>ofereleaseshellbedelayed-until-after-the-court-ha</del> s
3	de <del>termined-theidentityofthefatherandhasawarded</del>
4	eustodyof-the-child-to-the-father-of-terminated-his-rights
5	under-this-parts"
5	Section 5. Section 40-8-101, MCA, is amended to read:
7	<b>#40-8-101.</b> Short title. This part may be cited as the
8	"Uniform Adoption Act" <u>.as_amended</u> ."
9	Section 6. Section 40-8-103, MCA, is amended to read:
10	=40-8-103。 Definitions。 As used in this pert <u>chapter</u> ;
11	unless the context otherwise requires <del>y</del> :
12	(1) "adoptee" means a person of any age who has been
13	legally_adopted:
14	<pre>(2) #adoption#</pre>
15	relationship between parent and child when it did not exist
16	genetically:
17	(3) "adoptive_parent" means an adult who has become
18	<u>the mother or father of a child through the legal process of</u>
19	adoption1
20	(4) "adult adoptee" means a person who was adopted as
21	<u>a_child_and_who_has_attained_majority;</u>
22	15] "agency" means a public or voluntary agency
23	<u>licensed_by_any_jurisdiction_within_theUnited_States_and</u>
24	expressly_empowered_to_place_children_as_a_preliminary_to_a
25	possible_adoption:

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1	<pre>(6) "birth parent" means the mother or father of</pre>
2	genetic_origin_of_a_child:_but_does_oot_include_a_putative
3	father_of_a_child:
4	(7) "child" means any minor person and-magencymmeans
5	onypersony-authorityy-or-agency-legally-empawered-to-place
6	children-for-adoptionw-Singular-wordsmayextendandbe
7	applied-to-several-persons-or-thingsy-os-well-as-to-one
8	person-or-thingPlural-words-may-extend-and-beappliedto
9	onepersonorthingyeswellesto-several-persons-or
10	things under 18 years of age:
11	<pre>(8) "court" means a Montana district court or a triba)</pre>
12	<u>court of any Montana Indian reservation:</u>
13	[9] _=department=_means_the_department_ofsocial_and
14	rehabilitation_services.as_established_and_provided_for_in
15	<u>Title_2, chapter_15, part_22;</u>
16	[10] "extended family member" means an adult who is the
17	<u>child's grandparent. aunt or uncle. brother or sister. niece</u>
18	or_nephews_or_first_cousins
19	(11) "parent" means the birth or adoptive mother or the
20	birth:_adoptive:_or_legal_father_whose_parental_rights_have
21	Dot_beeD_terminated:
22	(12) "placement_for_adoption" means_the transfer_of
23	physical_custody_of_a_child_with_respect_to_whom_all
24	parental_rights_have_been_terminated_and_who_is_otherwise
25	legally free for adoption to a person who intends to adopt

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1	the child:
2	(13) "relinguishment" means the informed and voluntary
3	<u>release in writing of all parental rights with respect to a</u>
4	child_by_a_parent_to_an_individual_or_agency_pursuant_to
5	[sections_1_through_3].**
6	Section 7. Section 40-8-104, MCA, is amended to read:
7	¶40-8-104. Who may be adopted. [1] Any <del>child-present</del>
8	within-this-state-at-the-time-the-petition-foradaptionis
9	fitedy-irrespective-of-place-of-birth-or-place-of-residencey
10	<u>minor</u> may be adopted <del>e <u>if</u>:</del>
11	(a) the minor has no living parenti or
12	(b) the parental rights of the living parents of the
13	minor_baye_been_terminated_according_to_the_laws_of_this
14	state_or_of_another_jurisdictioni_or
15	(c) the living parents consent to the adoption.
16	<pre>121 An_adult_may_be_adopted_as_provided_in_part_2_of</pre>
17	this_chapter."
18	Section 8. Section 40-8-111, HCA, is amended to read:
19	#40-8-111. Consent required for adoption. (1) An
20	adoption of a child may be decreed when there have been
21	filed written consents to adoption executed by:
22	(a) both parents, if living, or the surviving parent
23	of a child, provided that consent is not required from a
24	father or mother:
25	(i) adjudged guilty by a court of competent

1	jurisdiction of <del>physical-crueity <u>assault on the childs</u> as</del>
2	provided in 45-2-202; endangering the welfare of children.
3	concerning the child+ as provided _ln_45-5-622: _orsexual
4	abuse of children: toward the childs as provided in
5	45 <u>-5-625;</u>
6	(II) who has been judicially deprived of the custody of
7	the child on account of cruelty or neglect toward the child ${\boldsymbol{x}}$
8	as_defined_in_41-3-102(3)(d);
9	(iii) who has, in the state of Montana or in any other
10	state of the United States, willfully abandoned the child;
11	(iv) who has caused the child to be maintained by any
12	public or private children's institution, charitable agency,
13	or any licensed adoption agency or the department of social
14	and rehabilitation services of the state of Montana for a
15	period of 1 year without contributing to the support of the
16	child during said period, if able;
17	(v) If it is proven to the satisfaction of the court
18	that the father or mother, if able, has not contributed to
19	the support of the child during a period of 1 year before
20	the filing of a petition for adoption; or
21	{vi} whose parental rights have been judicially
22	terminated;
23	(b) the legal guardian of the child if both parents
24	are dead or if the rights of the parents have been
25	terminated by judicial proceedings and such guardian has

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authority by order of the court appointing him to consent to
 the adoption;

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

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

15 (2) The consents required by subsections (1)(a) and 16 (1)(b) shall be acknowledged before an officer authorized to 17 take acknowledgments or witnessed by a representative of the 18 department of social and rehabilitation services or of an 19 agency or witnessed by a representative of the court.<sup>#</sup>

Section 9. Section 40-8-113, MCA, is amended to read:
"40-8-113. Consent of child. Consent-of-the-child-if
If\_a\_child\_is 12 years of age or over\_\_shall-be-required he
must\_consent\_to\_his\_adoption. Such-consent-shall Consent
must be given in court or be in writing in such form as the
court shall direct."

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1	<u>NEW_SECTION</u> Section 10. Who may place a child for
2	adoption. A child may be placed for adoption only by:
3	(1) the department;
4	(2) a licensed child placing agency; or
5	(2) the child's parents.
6	<u>NEW SECTION</u> . Section 11. Placement for adoption by
7	parents. (1) No parent may make a placement of a child for
8	adoption with a person who is not a stepparent or a member
9	of the child's extended family unless the parent files a
10	notice of parental placement with the district court for the
11	county in which the prospective adoptive parent or the
12	parent making the placement resides.
13	(2) The notice of parental placement shall be filed
14	prior to a parent's placement of the child with a person who
15	intends to adopt the child. The notice of parental placement
16	shall contain the following information:
17	(a) the name and address of each birth parent, if
18	known, and if unknown, the steps taken to ascertain the
19	whereabouts of the parent or parents;
20	(b) the name and address of each prospective adoptive
21	parent;
22	(c) the name and address or expected date and place of
23	birth of the child; and
24	(d) the name and address of counsel, guardian ad
25	litem, or other representative, if any, for each of the

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1 parties in subsection (2)(a) through (2)(c). 2 (3) Upon receipt of a notice of parental placement: З the court shall require that a licensed child placing agency 4 examine the child and conduct interviews with the birth parents and prospective adoptive parents and report to the 5 6 court within 30 days, but not earlier than 5 days after the 7 birth of the child. The report must state whether the 8 following requirements for placement have been met: 9 (a) that the decision to place was voluntarily made by 10 the birth parents; 11 (b) that the department has no temporary authority to 12 investigate or provide protective services to the family 13 under 41-3-402: 14 (c) that the birth parents, the prospective adoptive 15 parents, and their representatives have agreed in writing to 16 provide the court with sworn affidavits containing itemized 17 statements of all fees charged or to be charged, expenses 18 incurred or to be incurred, and payments received or to be 19 received in connection with the proposed adoptive placement; 20 (d) that the prospective adoptive parents have been 21 provided a medical and social history of the child and birth 22 parents; and 23 (e) that the proposed placement is in the child's best

24 interest.

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1 placement, the court shall schedule a hearing to consider the proposed placement. 2

3 (5) (a) At least 5 days' notice of the time and place of the hearing must be given to the birth parents, the 4 prospective adoptive parents, any named guardian ad litem, 5 6 and the agency or person who conducted the investigation under subsection (3). 7

8 (b) The hearing shall be closed to all persons except 9 those persons entitled to notice and their representatives 10 or counsel.

11 (6) If the court finds that all requirements for 12 placement have been met, the court may issue an order or 13 schedule a hearing for the purpose of terminating parental rights and granting temporary custody to the prospective 14 15 adoptive parents. The prospective adoptive parents must file 16 their petition to adopt within 30 days of the order.

17 (7) If the court finds that all requirements for the 18 adoptive placement have not been met, the court may issue 19 any order appropriate to protect the child.

Section 12. Section 40-8-121, NCA, is amended to read: 20 21 #40-8-121. Petition for adoption. (1) A petition for adoption shall be filed in duplicate, verified by the 22 petitioners, and shall specify: 23

(a) the full names, ages, and place of residence of 24 25 the petitioners and, if married, the place and date of the

(4) Within 45 days of filing of the notice of parental

1	marriage;	1	petit
2	(b) when the petitioners acquired or intend to acquire	2	inves
3	custody of the child and from what person or agency;	3	rehab
4	(c) the date and place of birth of child, if known;	4	licen
5	(d) the name used for the child in the proceeding and,	5	depar
6	if a change in name is desired, the new name;	6	such
7	(e) that it is the desire of the petitioners that the	Т	court
8	relationship of parent and child be established between them	8	<del>0fs</del>
9	and the child;	9	diser
10	(f) a full description and statement of value of all	10	stepp
11	property owned or possessed by the child;	11	nembe
12	(g) facts, if any, which excuse consent on the part of	12	inves
13	a parent to the adoption.	13	destg
14	(2) One copy of the petition shall be retained by the	14	and
15	court. The other shall be sent to the department of social	15	order
16	and rehabilitation services. An additional copy shall be	16	the c
17	sent to any agency participating in the adoption proceeding.	17	by-th
18	(3) Any written consent required by this part may be	18	
19	attached to the petition or may be filed after the filing of	19	<del>chi</del> łd
20	the petition, with the consent of the court.	20	<del>subje</del>
21	<pre>(4) Except as provided in Esection 11] a petition for</pre>	21	
22	adoption_must_be_filed_within_1_year_of_the_timethechild	22	propo
23	was placed for adoption with the petitioner."	23	
24	Section 13. Section 40-8-122, MCA, is amended to read:	24	provi
25	■40-8-122. Investigation. (1) Upon the filing of a	25	

1	petition for adoption, the court shall order an
2	investigation to be made by the department <del>of-social-and</del>
3	<del>rehabilitation-services</del> or <del>any-otherprivateagency <u>by</u>a</del>
4	licensed and-approved-for-such-investigatory-purpose-by-the
5	department-of-socialendrehabilitationservicesyunless
6	such <u>child_glacing_agency_or_other_person_named_by_the</u>
7	<u>court. The</u> investigation is <u>may be</u> waived by-thedepartment
8	<del>ofsocialandrehabilitationservicesvand-shall-in-its</del>
9	discretion-further-order-thata <u>lf_the_petitioner_is_a</u>
10	stepparent_of_the_child_or_if_one_of_the_petitioners_is_a
11	<pre>member of the child's extended family. The report of such</pre>
12	investigation shall be filed with the court by the
13	designated investigator within the-time-fixed-bythecourt
14	andinno-event-more-than 30 days from the issuance of the
15	order for investigation, unless time therefor is extended by
16	the court. <del>Such <u>The report of the</u> investigation ifordered</del>
17	by-the-court shall <u>state:</u>
18	<u>(a)</u> includetheconditionsandantecedentsof-the
19	child-for-the-purpose-of-determining whether ha-is-aproper
20	subject the child_is_legally_free for adoptiony:
21	<u>(b) oppropriateinquirytodetermine</u> whether the
22	proposed home is a suitable one for the childy;
23	<u>[c]_that_medical_and_social_histories_havebeen</u>
24	provided to the adoptive parent; and
25	(d) any other circumstances and conditions which may

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have a bearing on the adoption and of which the court should

2 have knowledge.

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

7 (3) The report of such the investigation shall become 8 a part of the files in the case and shall contain a definite 9 recommendation <u>stating\_the\_reasons</u> for or against the 10 proposed adoption and-state-reasons-therefor."

11 Section 14. Section 40-8-123, MCA, is amended to read: 12 #40-8-123. Summary decree. If the child is related-by 13 blood-to a member of the extended family of one of the petitioners or is a stepchild of the petitioner or the court 14 finds that the best interests of the child will be furthered 15 thereby, the court in its discretion, after examination of 16 17 the a report specified-in ordered\_pursuant\_to 40-8-122, if 18 such---report--had--been--ordered--by--said--courty--in--its discretion, may waive the entry of an interlocutory decree 19 20 and the waiting period of 6 months provided in 40-8-124 and 21 grant a final decree of adoption if satisfied that the 22 adoption is for in the best interests of the child."

23 Section 15. Repealer. Section 40-6-124; MCA, is
24 repealed.

25 Section 16. Codification instruction. (1) Sections 1

1 through 3 are intended to be codified as an integral part of

2 Title 40, chapter 6, part 1, and the provisions of Title 40,

3 chapter 6, part 1, apply to sections 1 through 3.

4 (2) Sections 10 and 11 are intended to be codified as

5 an integral part of Title 40, chapter 8, part 1, and the

6 provisions of Title 40, chapter 8, part 1, apply to sections

7 10 and 11.

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47th Legislature

#### \$8 0267/02

#### Approved by Committee on Judiciary

1	SENATE BILL NO. 267	1	(d)
z	INTRODUCED BY MAZUREK	2	(3)
3	BY REQUEST OF THE DEPARTMENT OF SOCIAL AND	3	the time f
4	REHABILITATION SERVICES	4	(4)
5		5	terminate
6	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE	6	parents jo
7	LAWS RELATING TO ADOPTION AND TO AMEND THE LAWS RELATING TO	7	relations
8	RELINQUISHMENT AND PLACEMENT OF CHILDREN FOR ADOPTION BY	8	terminate
9	THEIR PARENTS WITHOUT AGENCY INVOLVEMENT; AMENDING SECTIONS	9	NEW
10	40-6-125, 40-8-101, 40-8-103, 40-8-104, 40-8-111, 40-8-113,	10	requireme
11	40-8-121, 40-8-122, AND 40-8-123, MCA; AND REPEALING SECTION	11	<b>rel</b> inquis
12	40-6-124, MCA."	12	parent i
13		13	consequen
14	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	14	(2)
15	NEW SECTION. Section 1. Petition for relinquishment	15	the best
16	of custody of child. (1) Any parent who proposes to	16	relinquis
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19	court upon forms supplied by the court.	19	relinquis
20	(2) The petition shall contain the following	20	understan
21	information:	21	matter. T
22	(a) the name and age of both birth parents, if known;	22	of the
23	(b) the name, if any, and the age of the child;	23	while the
24	(c) the race and religion of both birth parents, if	24	(4)
25	known; and	25	relinguis

(d) why relinquishment is desired.

(3) Upon receipt of the petition, the court shall set the time for hearing the matter.

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14 (2) If the court finds after the hearing that it is in 15 the best interests of the birth parents or child that no 16 relinquishment be granted, the court shall enter an order 17 dismissing the action.

18 (3) If the court is not satisfied that the 19 relinquishing parent has been counseled and fully 20 understands the consequences of his act. it may continue the 21 matter. The court may, after considering the best interests 22 of the child, order the child to be placed in foster care 23 while the matter is continued.

24 (4) If the court finds at the hearing that the 25 relinquishing parent has been counseled as provided in

-2- SECOND READING

subsection (1) of this section and that the relinquishment
 would best serve the interests of the birth parents and the
 child, it shall enter an order of relinquishment. The order
 shall contain language terminating the parent-child legal
 relationship.

6 <u>NEW\_SECTION</u>. Section 3. Order of relinquishment ---7 custody. (1) In the order of relinquishment terminating the 8 parent-child legal relationship of both parents or of the 9 only living parent, the court, after taking into account the 10 racial, cultural, and religious background of the child, 11 shall order legal custody transferred to:

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13 services;

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18 (e) any other person eligible to adopt if the court
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 \$\$\scill pertinent facts brought forth at the hearing and shall also
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16 the rights of the father of the child born out of wedlock, 17 the mother may execute-a-release-terminating-her--rights--to 18 the--childs--if-the-mother-releases-the-childy-the-agency-of 19 the-state-of-Montonoy-the-licensed-adoption-agencyy--or--the 20 person--to--whom--the--child--is--released--may-file deliver 21 physical custody of her child to the department OR A ZZ LICENSED CHILD-PLACING AGENCY by filing a petition under 23 this-part-or-s-petition-of-dependency-or-neglect pursuant to 24 Title-Alv-chapter-3 [section 1]. Pending-disposition-of--the 25 upon petition, the court may enter an order authorizing

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l temporary care of the child.	
2 (3)At-the-request-of-the-mothery-her-formal-exec	tution
3 of-a-release-shall-be-delayeduntilafterthecourt	thas
4 determinedtheidentityofthefatherandhas-a	na <del>r de</del> d
5 custody-of-the-child-to-the-father-or-terminated-his	rights
6 under-this-parts"	
7 Section 5. Section 40-8-101, MCA, is amended to	read:
8 #40-8-101. Short title. This part may be cited as	s the
9 "Uniform Adoption Act" <u>2_as_amended</u> ."	
10 Section 6. Section 40-8-103, MCA, is amended to	read:
11 "40-8-103. Definitions. As used in this part cha	a <u>oter</u> ,
12 unless the context otherwise requires*:	
13 <u>tij#adoptee#Meansa-person-of-any-age-who-ha</u>	sibeen
14 <u>tegatly-adopted</u>	
15 <u>t27(1) "adoption" means the act of creating the</u>	<u>lega</u> )
16 relationship between parent and child when it did not	exist
17 <u>genetically;</u>	
18 <u>+3+(2)</u> "adoptive parent" means an adult who has	become
19 the mother or father of a child through the legal proce	ess of
20 adoption;	
21 <u>(+):="adult-adoptee"-means-a-person-who-was-adopte</u>	ed99
22 <u>a-child-and-who-has-sttained-majority</u>	
23 <u>f57(3) "agency" means a public or voluntary a</u>	agency
24 licensed by any jurisdiction within the United State	s_and
25 <u>expressly_suppowered_to_place_children_as_a_preliminar</u>	<u>y to a</u>

1	possible_adoption;
z	<u>f61(4) "birth parent" means the mother or father of</u>
3	<u>genetic origin of a child, but does not include a putative</u>
4	<u>father_of_a_chilg;</u>
5	<u>f77[5]</u> "child" means any <del>minor</del> person <del>and"agency"</del>
6	meansany-personauthority-or-agency-legally-empowered-to
7	place-children-for-adoption+-Singular-words-mayextendand
8	<del>beappliedto-several-persons-or-thingsy-as-well-as-to-one</del>
9	person-or-things-Plural-words-may-extend-and-beappliedto
10	onepersonorthingyaswellasto-several-persons-or
11	things under 18 years of age;
12	<u>t81(6) "court" means a Montana_district_court_or_a</u>
13	<u>tribal court of any Montana Indian reservation:</u>
14	<u>f9)(7) "department" means the department of social and</u>
15	rehabilitation_services, as established and provided for in
16	Title 2, chapter 15, part 22;
17	<pre>ft0;(8)extended family membermeans an adult who is</pre>
18	the child's grandparent, aunt or uncle, brother or sister,
19	niece or nephew, or first cousin.
20	<u>till() "parent" means the birth or adoptive mother or</u>
21	the <u>birth, adoptive, or legal father whose parental rights</u>
22	<u>have_not_been_terminated;</u>
23	<u> </u>
24	physical custody of a child with respect to whom all
25	<u>parental_rights_have_been_terminated_and_who_is_otherwise</u>

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1	legally free for adoption to a person who intends to adopt
2	the child;
3	<u>ft3}[ll]_"relinguishment" means the informed and</u>
4	voluntary release in writing of all parental rights with
5	respect to a child by a parent to an individual or agency
6	<u>pursuant_to [sections 1_through 3].</u> "
7	Section 7. Section 40-8-104, MCA, is amended to read:
8	₩40-8-104. Who may be adopted. <u>[1]</u> Any <del>child-present</del>
9	within-this-state-at-the-time-the-petition-for-~adoption-~is
10	filedv-frespective-of-place-of-birth-or-place-of-residencev
11	<u>minor</u> may be adopted <del>:</del> <u>if:</u>
12	<pre>[a] the minor has no living parent; or</pre>
13	(b) the parental rights of the living parents of the
14	<u>minor have been terminated according to the laws of this</u>
15	<u>state or of another jurisdiction; or</u>
16	<pre>(c) the living parents consent to the adoption.</pre>
17	[2] An adult may be adopted as provided in part 2 of
18	this chapter."
19	Section 8. Section 40-8-111, MCA, is amended to read:
20	♥40-8-111。 Consent required for adoption。 (1) An
21	adoption of a child may be decreed when there have been
22	filed written consents to adoption executed by:
23	(a) both parents, if living, or the surviving parent
24	of a child, provided that consent is not required from a
25	father or mother:

1	(i) adjudged guilty by a court of competent
2	jurisdiction of <del>physical-cruelty</del> <u>assault on the child; as</u>
3	provided in 45-2-202; endangering the welfare of children.
4	concerning the child, as provided in 45-5-622; or sexual
5	abuse of children, toward the child, as provided in
6	<u>45-5-625</u> ;
7	(ii) who has been judicially deprived of the custody of
8	the child on account of cruelty or neglect toward the child $\underline{v}$
9	<u>es-defined-in-41-3-102(3)(d)</u> ;
10	(iii) who has, in the state of Montana or in any other
11	state of the United States, willfully abandoned the child $\underline{m{v}}$
12	AS_DEFINED_IN_41-3-102(3)(D);
13	(iv) who has caused the child to be maintained by any
14	public or private children's institution, charitable agency,
15	or any licensed adoption agency or the department of social
16	and rehabilitation services of the state of Montana for a
17	period of 1 year without contributing to the support of the
18	child during said period, if able;
19	(v) if it is proven to the satisfaction of the court
20	that the father or mother, if able, has not contributed to
21	the support of the child during a period of 1 year before
22	the filing of a petition for adoption; or
23	(vi) whose parental rights have been judicially
24	terminated;
25	{b} the legal guardian of the child if both parents

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are dead or if the rights of the parents have been
 terminated by judicial proceedings and such guardian has
 authority by order of the court appointing him to consent to
 the adoption;

5 (c) the executive head of an agency if the child has 6 been relinquished for adoption to such agency or if the 7 rights of the parents have been judicially terminated or if 8 both parents are dead and custody of the child has been 9 legally vested in such agency with authority to consent to 10 adoption of the child; or

11 (d) any person having legal custody of a child by 12 court order if the parental rights of the parents have been 13 judicially terminated, but in such case the court having 14 jurisdiction of the custody of the child must consent to 15 adoption and a certified copy of its order shall be attached 16 to the petition.

17 (2) The consents required by subsections (1)(a) and 18 (1)(b) shall be acknowledged before an officer authorized to 19 take acknowledgments or witnessed by a representative of the 20 department of 'social and rehabilitation services or of an 21 agency or witnessed by a representative of the court."

Section 9. Section 40-8-113; MCA, is amended to read:
 "40-8-113. Consent of child. Gensent-of-the-child-if
 <u>If a child is</u> 12 years of age or over<u>1</u> shell-be-required <u>he</u>
 <u>must consent to his adoption</u>. Such-consent-shall <u>Consent</u>

1 <u>must</u> be given in court or be in writing in such form as the

2 court shall direct."

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<u>NEW SECTION</u>. Section 10. Who may place a child for
 adoption. A child may be placed for adoption only by:

5 (1) the department;

(2) a licensed child placing agency; or

(3) the child's parents.

8 <u>NEW SECTION</u>. Section 11. Placement for adoption by 9 parents. (1) No parent may make a placement of a child for 10 adoption with a person who is not a stepparent or a member 11 of the child's extended family unless the parent files a 12 notice of parental placement with the district court for the 13 county in which the prospective adoptive parent or the 14 parent making the placement resides.

15 (2) The notice of parental placement shall be filed 16 prior to a parent's placement of the child with a person who 17 intends to adopt the child. The notice of parental placement 18 shall contain the following information:

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

(b) the name and address of each prospective adoptiveparent;

24 (c) the name and address or expected date and place of25 birth of the child; and

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1 (d) the name and address of counsel, guardian ad 2 litem, or other representative, if any, for each of the 3 parties in subsection [2](a) through (2)(c).

4 (3) Upon receipt of a notice of parental placement. 5 the court shall require that a licensed child-placing-agency THE DEPARTMENT examine the child and conduct interviews with 5 7 the birth parents and prospective adoptive parents and 8 report to the court within 30 days, but not earlier than 5 9 days after the birth of the child. The report must state 10 whether the following requirements for placement have been 11 met:

12 (a) that the decision to place was voluntarily made by 13 the birth parents:

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

17 (c) that the birth parents, the prospective adoptive 18 parents, and their representatives have agreed in writing to 19 provide the court with sworn affidavits containing itemized 20 statements of all fees charged or to be charged, expenses 21 incurred or to be incurred, and payments received or to be 22 received in connection with the proposed adoptive placement; 23 (d) that the prospective adoptive parents have been 24 provided a medical and social history of the child and birth 25 parents; and

1 (e) that the proposed placement is in the child's best 2 interest.

3 (4) Within 45 days of filing of the notice of parental
4 placement, the court shall schedule a hearing to consider
5 the proposed placement.

6 (5) (a) At least 5 days\* notice of the time and place
7 of the hearing must be given to the birth parents, the
8 prospective adoptive parents, any named guardian ad litem,
9 and the agency or person who conducted the investigation
10 under subsection (3).

11 (b) The hearing shall be closed to all persons except 12 those persons entitled to notice and their representatives 13 or counsel.

14 (6) If the court finds that all requirements for 15 placement have been met, the court may issue an order or 16 schedule a hearing for the purpose of terminating parental 17 rights and granting temporary custody to the prospective 18 adoptive parents. The prospective adoptive parents must file 19 their petition to adopt within 30 days of the order.

20 (7) If the court finds that all requirements for the
21 adoptive placement have not been met, the court may issue
22 any order appropriate to protect the child.

Section 12. Section 40-8-121, MCA, is amended to read:
 "40-8-121. Petition for adoption. [1] A petition for
 adoption shall be filed in duplicate, verified by the

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1

1 petitioners, and shall specify:

2 (a) the full names, ages, and place of residence of
3 the petitioners and, if married, the place and date of the
4 marriage;

5 (b) when the petitioners acquired or intend to acquire
6 custody of the child and from what person or agency;

7 (c) the date and place of birth of child, if known;

8 {d} the name used for the child in the proceeding and,
9 if a change in name is desired, the new name;

10 (e) that it is the desire of the petitioners that the 11 relationship of parent and child be established between them 12 and the child:

13 (f) a full description and statement of value of all14 property owned or possessed by the child;

15 (g) facts, if any, which excuse consent on the part of 16 a parent to the adoption.

17 (2) One copy of the petition shall be retained by the
18 court. The other shall be sent to the department of social
19 and rehabilitation services. An additional copy shall be
20 sent to any agency participating in the adoption proceeding.
21 (3) Any written consent required by this part may be

22 attached to the petition or may be filed after the filing of 23 the petition, with the consent of the court.

24 <u>(4) Except as provided in [section 11], a petition for</u>
 25 <u>adoption must be filed within 1 year of the time the child</u>

#### was placed for adoption with the petitioner."

2 Section 13. Section 40-8-122, MCA, is amended to read: "49-8-122. Investigation. (1) Upon the filing of a 3 4 petition for adoption, the court shall order an 5 investigation to be made by the department of-social-and rehabilitation-services or any-other--private--agency by a 6 licensed and-approved-for-such-investigatory-purpose-by-the 7 8 department-of-social--and--rehabilitation--servicesy--unless 9 such child placing agency or other person named by the 10 court. The investigation is may be waived by-the--department 11 of--social--and--rehabilitation--servicesy--and-shall-in-its discretion-further-order-that--a if the petitioner is a 12 13 stepparent of the child or if one of the petitioners is a member of the child's extended family. The report of such 14 15 investigation shall be filed with the court by the 16 designated investigator within the time-fixed-by--the--court 17 and--in--no-event-more-than 30 days from the issuance of the 18 order for investigation, unless time therefor is extended by 19 the court. Such The report of the investigation if--ordered 20 by-the-court shall state: 21 (a) include--the--conditions--and--ontecedents--of-the 22 child-for-the-purpose-of-determining whether he-is-a--proper 23 subject the child is legally free for adoption; 24 (b) appropriate---inquiry--to--determine whether the

25 proposed home is a suitable one for the childri

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1(c) that medical and social histories have been2provided to the adoptive parent: and3(d) any other circumstances and conditions which may

4 have a bearing on the adoption and of which the court should5 have knowledge.

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

10 (3) The report of such the investigation shall become a part of the files in the case and shall contain a definite recommendation <u>stating the reasons</u> for or against the proposed adoption and-state-reasons-therefor."

14 Section 14. Section 40-8-123, MCA, is amended to read: 15 "40-8-123. Summary decree. If the child is related-by blasd-to a member of the extended family of one of the 16 17 petitioners or is a stepchild of the petitioner or the court 18 finds that the best interests of the child will be furthered 19 thereby, the court in its discretion, after examination of 20 the a report specified-in ordered pursuant to 40-8-122, if ---- Z1 suchar-reporter had--been dered--by--said--courty--in--its 22 discretion, may waive the entry of an interlocutory decree 23 and the waiting period of 6 months provided in 40-8-124 and 24 grant a final decree of adoption if satisfied that the 25 adoption is for in the best interests of the child."

Section 15. Repeater. Section 40-6-124; MCA, is
 repeated.

Section 16. Codification instruction. (1) Sections 1
through 3 are intended to be codified as an integral part of
Title 40, chapter 6, part 1, and the provisions of Title 40,
chapter 6, part 1, apply to sections 1 through 3.
(2) Sections 10 and 11 are intended to be codified as
an integral part of Title 40, chapter 8, part 1, and the

9 provisions of Title 40, chapter 8, part 1, apply to sections 10 i0 and 11.

-End-

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SENATE BILL NO. 267 1 (d) why relinguishment is desired. 1 2 (3) Upon receipt of the petition, the court shall set г INTRODUCED BY MAZUREK the time for hearing the matter. BY REQUEST OF THE DEPARTMENT OF SOCIAL AND 3 3 4 (4) The parent-child legal relationship may not be REHABILITATION SERVICES 4 5 terminated by relinquishment proceedings unless both birth 5 parents join in the petition unless the parent-child legal 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE 6 7 relationship of a parent not joining the petition has 7 LAWS RELATING TO ADOPTION AND TO AMEND THE LAWS RELATING TO 8 terminated. 8 RELINQUISHMENT AND PLACEMENT OF CHILDREN FOR ADOPTION BY 9 NEW SECTION. Section 2. Relinquishment hearing --9 THEIR PARENTS WITHOUT AGENCY INVOLVEMENT; AMENDING SECTIONS 10 requirements. (1) The court may not issue an order of 40-6-125, 40-8-101, 40-8-103, 40-8-104, 40-8-111, 40-8-113, 10 11 relinguishment until it is satisfied that the relinguishing 11 40-8-121, 40-8-122, AND 40-8-123, MCA; AND REPEALING SECTION 12 parent has been counseled and fully understands the 40-6-124. MCA." 12 13 consequences of his act. 13 14 (2) If the court finds after the hearing that it is in 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 15 the best interests of the birth parents or child that no 15 NEW SECTION. Section 1. Petition for relinquishment relinquishment be granted, the court shall enter an order 16 of custody of child. (1) Any parent who proposes to 16 17 relinguish custody of a child for purposes of placing the 17 dismissing the action. 18 [3] If the court is not satisfied that the 18 child for adoption may do so by petitioning the district 19 relinquishing parent has been counseled and fully 19 court upon forms supplied by the court. understands the consequences of his act, it may continue the (2) The petition shall contain the following 20 26 21 information: 21 matter. The court may, after considering the best interests 22 (a) the name and age of both birth parents, if known; 22 of the child, order the child to be placed in foster care 23 (b) the name, if any, and the age of the child; 23 while the matter is continued. (4) If the court finds at the hearing that the 24 (c) the race and religion of both birth parents, if 24 relinquishing parent has been counseled as provided in 25 25 known; and

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1 subsection (1) of this section and that the relinquishment 2 would best serve the interests of the birth parents and the 3 child, it shall enter an order of relinquishment. The order 4 shall contain language terminating the parent-child legal 5 relationship.

6 <u>NEW\_SECTION</u>. Section 3. Order of relinquishment ---7 custody. (1) In the order of relinquishment terminating the 8 parent-child legal relationship of both parents or of the 9 only living parent, the court, after taking into account the 10 racial; cultural, and religious background of the child. 11 shall order legal custody transferred to:

12 (a) the department of social and rehabilitation 13 services:

14 (b) a licensed child placement agency;

15 (c) a relative of the child;

16 (d) the person named in the notice filed by the 17 parents pursuant to [section 11]; or

18 (e) any other person eligible to adopt if the court 19 finds it is in the child's best interest.

20 (2) The order of relinquishment shall set forth all 21 pertinent facts brought forth at the hearing and shall also 22 state that the court is satisfied that the provisions of 23 [section 2(1)] have been satisfied.

24 (3) The order of relinquishment divests the25 relinquishing parent or parents of all legal rights and

obligations they may have with respect to the child
 relinquished. The order shall release the relinquished child
 from all legal obligations with respect to the relinquishing
 parent or parents.

5 Section 4. Section 40-6-125, MCA, is amended to read: 6 "40-6-125. Children born out of wedlock -- release 7 relinguishment -- consent. (1) If the mother of a child born 8 out of wedlock proposes to release relinquish the child for 9 adoption and the release relinguishment or consent of the 10 natural birth father cannot be obtained, the child may not 11 be placed for adoption until the parental rights of the 12 father are terminated by the court as provided in this part, 13 by the court pursuant to Title 41, chapter 3, or by a court 14 of competent jurisdiction in another state or country. 15 (2) Pending the termination or other disposition of 16 the rights of the father of the child born out of wedlock. 17 the mother may execute-a-release-terminating-her--rights--to 18 the--childy-lifethe-mother-releases-the-childy-the-agency-of 19 the-state-of-Montanoy-the-licensed-adoption-agencyv--or--the 20 person--to--whom--the--child--is--released--may-file deliver 21 physical custody of her child to the department OR A 22 LICENSED\_\_CHILD-PLACING AGENCY by filing a petition under 23 this-part-or-setition-of-dependency-or-neglect pursuant to 24 Title-41v-chapter-3 [section 1]. Pending-disposition-of--the 25 Upon petition, the court may enter an order authorizing

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1	temporary care of the child.
2	<del>(3)At-the-request-of-the-mothery-her-forma}-execution</del>
3	of-o-retease-shatt-be-detoyeduntitafterthecourthos
4	determinedtheidentity-ofthefatherandhas-awarded
5	custody-of-the-child-to-the-father-or-terminated-hisrights
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8	"40-8-101. Short title. This part may be cited as the
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15	<del>f2}[1] "adoption" means the act of creating the legal</del>
16	relationship between parent and child when it did not exist
17	genetically;
18	<u>f3+[2] "adoptive parent" means an adult who has become</u>
19	the mother or father of a child through the legal process of
20	adoption:
21	<u>f4}odułt_adoptesmeans_a-person_who_was_adoptedas</u>
22	<u>a-child-ond-who-hos-attained-majority</u>
23	<u>f5;[3] "agency" means a public or voluntary agency</u>
24	licensed by any jurisdiction within the United States and
25	<u>expressly empowered to place children as a preliminary to a</u>
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1	<u>possible_adoption;</u>
2	<u>f6;[4] "birth parent" means the mother or father of</u>
3	<u>genetic_origin_of_a_child; but_does_not_include_a_putative</u>
4	father of a child;
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9	person-or-thingPlural-words-may-extend-and-beappliedto
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11	things+ under 18 years of age;
12	<u>f81(6) "court" means a Montana_district_court_or_a</u>
13	<u>tribal court of any Montana Indian reservation;</u>
14	<pre>f9t[7] "department" means the department of social and</pre>
15	rehabilitation services, as established and provided for in
16	<u>Title 2, chapter 15, part 22;</u>
17	<pre>f10;(8) "extended family member" means an adult who is</pre>
18	the child's grandparent, aunt or uncle, brother or sister,
19	niece or nephew, or first cousin.
20	<pre>flit(9) "parent" means the birth or adoptive mother or</pre>
21	the birth, adoptive, or legal father whose parental rights
22	<u>have not been terminated;</u>
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24	physical custody of a child with respect to whom all
25	<u>parental_rights_bave_been_terminated_and_who_is_otherwise</u>

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12	(a) the minor has no living parent; or
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23	<pre>{a} both parents, if living, or the surviving parent</pre>
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Z	jurisdiction of <del>physical cruelty</del> assault on the child, as
3	provided in 45-2-202; endangering the welfare of children;
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5	abuse of children, toward the child <u>, as provided in</u>
6	<u>45-5-625;</u>
7	(ii) who has been judicially deprived of the custody of
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11	state of the United States, willfully abandoned the child $_{\underline{r}}$
12	AS DEFINED IN 41-3-102(3)(0);
13	(iv) who has caused the child to be maintained by any
14	public or private children's institution, charitable agency,
15	or any licensed adoption agency or the department of social
16	and rehabilitation services of the state of Montana for a
17	period of Lyear without contributing to the support of the
18	child during said period, if able;
19	(v) if it is proven to the satisfaction of the court
20	that the father or mother, if able, has not contributed to
21	the support of the child during a period of 1 year before
22	the filing of a petition for adoption; or
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Z 4	terminated;
25	(b) the legal guardian of the child if both parents

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are dead or if the rights of the parents have been
 terminated by judicial proceedings and such guardian has
 authority by order of the court appointing him to consent to
 the adoption;

5 (c) the executive head of an agency if the child has 6 been relinquished for adoption to such agency or if the 7 rights of the parents have been judicially terminated or if 8 both parents are dead and custody of the child has been 9 legally vested in such agency with authority to consent to 10 adoption of the child; or

11 (d) any person having legal custody of a child by 12 court order if the parental rights of the parents have been 13 judicially terminated, but in such case the court having 14 jurisdiction of the custody of the child must consent to 15 adoption and a certified copy of its order shall be attached 16 to the petition.

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1 <u>must</u> be given in court or be in writing in such form as the 2 court shall direct."

<u>NEW\_SECTION</u>. Section 10. Who may place a child for
 adoption. A child may be placed for adoption only by:

the department;

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(2) a licensed child placing agency; or

(3) the child's parents.

8 <u>NEW SECTION</u>. Section 11. Placement for adoption by 9 parents. (1) No parent may make a placement of a child for 10 adoption with a person who is not a stepparent or a member 11 of the child's extended family unless the parent files a 12 notice of parental placement with the district court for the 13 county in which the prospective adoptive parent or the 14 parent making the placement resides.

15 (2) The notice of parental placement shall be filed 16 prior to a parent's placement of the child with a person who 17 intends to adopt the child. The notice of parental placement 18 shall contain the following information:

19 (a) the name and address of each birth parent, if 20 known, and if unknown, the steps taken to ascertain the

21 whereabouts of the parent or parents;

22 {b} the name and address of each prospective adoptive 23 parent;

24 (c) the name and address or expected date and place of

-10-

25 birth of the child; and

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

4 (3) Upon receipt of a notice of parental placement. 5 the court shall require that a-ficensed-child-placing-agency 6 THE DEPARTMENT examine the child and conduct interviews with 7 the birth parents and prospective adoptive parents and report to the court within 30 days, but not earlier than 5 8 9 days after the birth of the child. The report must state 101 whether the following requirements for placement have been 11 net:

12 (a) that the decision to place was voluntarily made by13 the birth parents;

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

17 (c) that the birth parents, the prospective adoptive 18 parents, and their representatives have agreed in writing to 19 provide the court with sworn affidavits containing itemized 20 statements of all fees charged or to be charged, expenses 21 incurred or to be incurred, and payments received or to be 22 received in connection with the proposed adoptive placement; 23 (d) 'that the prospective adoptive parents have been 24 provided a medical and social history of the child and birth 25 parents; and

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

3 (4) Within 45 days of filing of the notice of parental
 4 placement, the court shall schedule a hearing to consider
 5 the proposed placement.

(5) (a) At least 5 days' notice of the time and place
7 of the hearing must be given to the birth parents, the
8 prospective adoptive parents, any named guardian ad litem,
9 and the agency or person who conducted the investigation
10 under subsection (3).

11 (b) The hearing shall be closed to all persons except 12 those persons entitled to notice and their representatives 13 or counsel.

14 (6) If the court finds that all requirements for 15 placement have been met, the court may issue an order or 16 schedule a hearing for the purpose of terminating parental 17 rights and granting temporary custody to the prospective 18 adoptive parents. The prospective adoptive parents must file 19 their petition to adopt within 30 days of the order.

20 (7) If the court finds that all requirements for the
21 adoptive placement have not been met, the court may issue
22 any order appropriate to protect the child.

23 Section 12. Section 40-8-121, MCA, is amended to read:
 24 "40-8-121. Petition for adoption. (1) A petition for
 25 adoption shall be filed in duplicate, verified by the

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1 petitioners, and shall specify:

2 (a) the full names, ages, and place of residence of
3 the petitioners and, if married, the place and date of the
4 marriage;

5 (b) when the petitioners acquired or intend to acquire
6 custody of the child and from what person or agency;

7 (c) the date and place of birth of child, if known;

8 (d) the name used for the child in the proceeding and,
9 if a change in name is desired, the new name;

10 (e) that it is the desire of the petitioners that the 11 relationship of parent and child be established between them 12 and the child;

(f) a full description and statement of value of all
property owned or possessed by the child;

15 (g) facts, if any, which excuse consent on the part of 16 a parent to the adoption.

17 {2} Une copy of the petition shall be retained by the 18 court. The other shall be sent to the department of social 19 and rehabilitation services. An additional copy shall be 20 sent to any agency participating in the adoption proceeding. 21 {3} Any written consent required by this part may be 22 attached to the petition or may be filed after the filing of

23 the petition, with the consent of the court.

24 (4) Except as provided in [section 11], a petition for
 25 adoption must be filed within 1 year of the time the child

1 was placed for adoption with the petitioner.

2 Section 13. Section 40-8-122, MCA, is amended to read: 3 "49-8-122. Investigation. (1) Upon the filing of a 4 petition for adoption, the court shall order an 5 investigation to be made by the department of-social-and 6 rehabilitation-services or any-other--private--agency by a 7 licensed and-approved-for-such-investigatory-purpose-by-the 8 department-of-social--and--rehabilitation--servicesy--unless 9 such child placing agency or other person named by the 10 court. The investigation is may be waived by-the--department of--social--and--rehabilitation--servicesy--and-shall-in-its 11 12 discretion-further-order-that--a if the petitioner is a 13 stepparent of the child or if one of the petitioners is a 14 member of the child's extended family. The report of such 15 investigation shall be filed with the court by the 16 designated investigator within the time-fixed-by--the--court 17 and--in--no-event-more-than 30 days from the issuance of the 18 order for investigation, unless time therefor is extended by 19 the court. Such The report of the investigation if--ordered 20 by-the-court shall state: 21 (a) include--the--conditions--and--antecedents--of-the 22 child-for-the-purpose-of-determining whether he-is-a--proper 23 subject the child is legally free for adoption; 24 (b) oppropriate---inquiry--to--determine whether the

25 proposed home is a suitable one for the childri

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# 2 provided to the adoptive parent; and 3 <u>(d)</u> any other circumstances and conditions which may

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4 have a bearing on the adoption and of which the court should
5 have knowledge.

(c)\_\_that medical and \_\_social histories have been

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

10 (3) The report of such the investigation shall become 11 a part of the files in the case and shall contain a definite 12 recommendation <u>stating the reasons</u> for or against the 13 proposed adoption and-state-reasons-therefor."

Section 14. Section 40-8-123, MCA, is amended to read: 14 15 "40-8-123. Summary decree. If the child is related-by 16 blosd-to a member of the extended family of one of the 17 petitioners or is a stepchild of the petitioner or the court finds that the best interests of the child will be furthered 16 19 thereby, the court in its discretion, after examination of the a report specified-in ordered pursuant to 40-8-122+ if 20 21 such---reports-had--been-ordered--by--said--caurty--its 22 discretion, may waive the entry of an interlocutory decree and the waiting period of 6 months provided in 40-8-124 and 23 24 grant a final decree of adoption if satisfied that the 25 adoption is for in the best interests of the child."

1 Section 15. Repealer. Section 40-6-124. MCA. is
2 repealed.

Section 16. Codification instruction. (1) Sections 1 3 through 3 are intended to be codified as an integral part of 4 5 Title 40, chapter 6, part 1, and the provisions of Title 40, chapter 6, part 1, apply to sections 1 through 3. 6 7 (2) Sections 10 and 11 are intended to be codified as 8 an integral part of Title 40, chapter 8, part 1, and the 9 provisions of Title 40, chapter 8, part 1, apply to sections 10 10 and 11.

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ı	SENATE BILL NO. 267
2	INTRODUCED BY MAZUREK
3	BY REQUEST OF THE DEPARTMENT OF SUCIAL AND
4	REHABILITATION SERVICES
5	
6	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
7	LAWS RELATING TO ADOPTION AND TO AMEND THE LAWS RELATING TO
8	RELINGUISHMENT AND PLACEMENT OF CHILDREN FOR ADOPTION BY
9	THEIR PARENTS WITHOUT AGENCY INVOLVEMENT; AMENDING SECTIONS
10	40-6-125, 40-8-101, 40-8-103, 40-8-104, 40-8-111, 40-8-113,
11	40-8-121, 40-8-122, AND 40-8-123, MCA; AND REPEALING SECTION
12	40-6-124, MCA."
13	
14	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
15	<u>NEW_SECTION.</u> Section 1. Petition for relinquishment
16	of custody of child. (1) Any parent who proposes to
17	relinguish custody of a child for purposes of placing the
18	child for adoption way do so by petitioning the district
19	court upon forms supplied by the court.
20	(2) The petition shall contain the following
21	information:
22	(a) the name and age of both birth parents, if known;
23	(b) the name, if any, and the age of the child;
24	(c) the race and religion of both birth parents, if
25	known; and

(d) why relinquishment is desired.

1

2 (3) Upon receipt of the petition, the court shall set
3 the time for hearing the matter.

4 (4) The parent-child legal relationship may not be
5 terminated by relinquishment proceedings unless both birth
6 parents join in the petition unless the parent-child legal
7 relationship of a parent not joining the petition has
8 terminated.

9 <u>NEW SECTION</u>. Section 2. Relinquishment hearing --10 requirements. (1) The court may not issue an order of 11 relinquishment until it is satisfied that the relinquishing 12 parent has been counseled and fully understands the 13 consequences of his act.

14 (2) If the court finds after the hearing that it is in 15 the best interests of the birth parents or child that no 16 relinquishment be granted, the court shall enter an order 17 dismissing the action.

18 (3) If the court is not satisfied that the 19 relinquishing parent has been counseled and fully 20 understands the consequences of his act, it may continue the 21 matter. The court may, after considering the best interests 22 of the child, order the child to be placed in foster care 23 while the matter is continued.

24 (4) If the court finds at the hearing that the 25 relinquishing parent has been counseled as provided in

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subsection (1) of this section and that the relinquishment 1 ob

2 would best serve the interests of the birth parents and the 3 child, it shall enter an order of relinquishment. The order 4 shall contain language terminating the parent-child legal 5 relationship.

6 <u>NEW\_SECTION</u>. Section 3. Order of relinquishment ---7 custody. (1) In the order of relinquishment terminating the 8 parent-child legal relationship of both parents or of the 9 only living parent, the court, after taking into account the 10 racial, cultural, and religious background of the child, 11 shall order legal custody transferred to:

12 (a) the department of social and rehabilitation 13 services;

14 (b) a licensed child placement agency;

15 (c) a relative of the child;

1

16 (d) the person named in the notice filed by the 17 parents pursuant to [section 11]; or

18 (e) any other person eligible to adopt if the court
19 finds it is in the child\*s best interest.

20 (2) The order of relinquishment shall set forth all 21 pertinent facts brought forth at the hearing and shall also 22 state that the court is satisfied that the provisions of 23 [section 2(1)] have been satisfied.

24 (3) The order of relinquishment divests the 25 relinquishing parent or parents of all legal rights and obligations they may have with respect to the child
 relinquished. The order shall release the relinquished child
 from all legal obligations with respect to the relinquishing
 parent or parents.

5 Section 4. Section 40-6-125, MCA, is amended to read: 6 "40-6-125. Children born out of wedlock --- release 7 relinguishment -- consent. (1) If the mother of a child born 8 out of wedlock proposes to refease relinguish the child for 9 adoption and the release relinquishment or consent of the 10 notural birth father cannot be obtained, the child may not 11 be placed for adoption until the parental rights of the 12 father are terminated by the court as provided in this part, by the court pursuant to Title 41, chapter 3, or by a court 13 14 of competent jurisdiction in another state or country.

15 (2) Pending the termination or other disposition of the rights of the father of the child born out of wedlock, 16 the mother may execute-a-release-terminating-her--rights--to 17 18 ene--childy--fi-the-mother-releases-the-childy-the-agency-of 19 the-state-of-Nontonay-the-ficensed-adoption-agencyv--of--the 20 person--to--whom--the--child--is--released--may-file deliver 21 physical custody of her child to the department OR A LICENSED CHILD PLACING AGENCY by filing a petition under 22 23 this-part-or-a-petition-of-dependency-or-neglect pursuant to 24 fitle-41--chapter-3 [section 1]. Pending-disposition-of--the 25 Upon petition, the court may enter an order authorizing

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1	temporary care of the child.
2	<del>{3}At-the-request-of-the-mothery-her-formal-execution</del>
3	of-a-retease-shatt-be-detayeduntitafterthecourthas
4	determinedtheidentityofthefatherandhas-awarded
5	custody-of-the-child-to-the-father-or-terminated-hisrights
6	under-this-parts"
7	Section 5. Section 40-8-101. MCA, is amended to read:
8	■40-8-101. Short title. This part may be cited as the
9	"Uniform Adoption Act" <u>; as amended</u> ."
10	Section 6. Section 40-8-103, MCA, is amended to read:
11	<pre>"40-8-103. Definitions. As used in this port chapter.</pre>
15	unless the context otherwise requires <del>v</del> :
13	<u> <u>tij*odoptee*means_sarperson-of-any-age-who-has-been</u></u>
14	<u>legelly_adopted</u> :
15	<u>f2j(1) "adoption" means the act of creating the legal</u>
16	<u>relationship_between_parent_and_child_when_it_did_not_exist</u>
17	genetically;
18	<del>[37[2] "adoptive parent" means an adult who has become</del>
19	the mother or father of a child through the legal process of
20	adoption;
21	<u>141"adult-adoptee"-means-arperson-who-was-adoptedas</u>
22	<u>e-child-and-who-has-attained-majority:</u>
23	<u>f5t[3] "agency" means a public or voluntary agency</u>
24	licensed by any jurisdiction within the United States and
25	<u>expressly_empowered_to_place_children_as_a_preliminary_to_a</u>
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	30 201

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1	possible_adoption;
2	
3	genetic origin of a child, but does not include a putative
4	father_of_a_child;
5	
6	meansany-persony-authorityy-or-agency-legally-empowered-to
7	place-children-for-adoption-Singular-words-mayextendand
8	beappliedto-several-persons-or-thingsy-as-well-as-to-one
9	person-or-thingw-flural-words-may-extend-and-beappliedto
10	onepersonorthingyosweilasto-several-persons-or
11	things= under 18 years of age;
12	<u>f8}(6) "court" means a Montana district court or a</u>
13	<u>tribal court of any Montana Indian reservation;</u>
14	<u>191(7) "department" means the department of social and</u>
15	rehabilitation services, as established and provided for in
16	<u>Title_2, chapter_15, part_22;</u>
17	<pre>fl0;(8) "extended family member" means an adult who is</pre>
18	the child's grandparent, aunt or uncle, brother or sister,
19	<u>niece or nephew, or first cousin.</u>
20	<pre>ttt:(9) "parent" means the birth or adoptive mother or</pre>
21	the birth, adoptive, or legal father whose parental rights
22	<u>have not been terminated;</u>
23	<u>fl2}(10) "placement for adoption" means the transfer of</u>
24	physical custody of a child with respect to whom all
25	parental rights have been terminated and who is otherwise

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1	legally free for adoption to a person who intends to adopt
Z	<u>the child;</u>
3	<del>[13]</del> [11] "relinguishment" means the informed and
4	voluntary release in writing of all parental rights with
5	respect to a child by a parent to an individual or agency
6	pursuant to [sections 1 through 3]."
7	Section 7. Section 40-8-104, MCA, is amended to read:
8	₩40-8-104. Who may be adopted. <u>[]</u> Any ch <del>il</del> d-present
9	within-this-state-st-the-time-the-petition-foradoptionis
10	fited <del>.irrespective-of-place-of-birth-or-place</del> -of-residence.
11	<u>minor</u> may be adopted <del>.</del> if:
12	[a] the minor has no living parent; or
13	(b) the parental rights of the living parents of the
14	minor have been terminated according to the laws of this
15	<u>state or of another jurisdiction; or</u>
16	(c) the living parents consent to the adoption.
17	(2) An adult may be adopted as provided in part 2 of
18	this chapter."
19	Section 8. Section 40-8-111. MCA, is amended to read:
20	"40-8-111. Consent required for adoption. (1) An
21	adoption of a child may be decreed when there have been
22	filed written consents to adoption executed by:
23	(a) both parents, if living, or the surviving parent
24	of a child, provided that consent is not required from a
25	father or mother:

1	(i) adjudged guilty by a court of competent
-	jurisdiction of physical-cruetty assault on the childs as
2	-
3	provided in 45-2-202; endangering the welfare of children.
4	concerning the child, as provided in 45-5-622; or sexual
5	abuse of children, toward the child, as provided in
6	45-5-625;
7	(ii) who has been judicially deprived of the custody of
8	the child on account of cruelty or neglect toward the child ${f y}$
9	<u>as-defined-in-41-3-102(3)(d)</u> ;
10	{iii) who has∗ in the state of Montana or in any other
11	state of the United States, willfully abandoned the childy
12	AS_DEFINED_IN_41-3-102(3)(D);
13	(iv) who has caused the child to be maintained by any
14	public or private children's institution; charitable agency;
15	or any licensed adoption agency or the department of social
16	and rehabilitation services of the state of Montana for a
17	period of 1 year without contributing to the support of the
18	child during said period, if able;
19	(v) if it is proven to the satisfaction of the court
20	that the father or mother, if able, has not contributed to
21	the support of the child during a period of 1 year before
22	the filing of a petition for adoption; or
23	{vi} whose parental rights have been judicially
24	terminated;
25	(b) the legal guardian of the child if both parents

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are dead or if the rights of the parents have been
 terminated by judicial proceedings and such guardian has
 authority by order of the court appointing him to consent to
 the adoption:

5 (c) the executive head of an agency if the child has 6 been relinquished for adoption to such agency or if the 7 rights of the parents have been judicially terminated or if 8 both parents are dead and custody of the child has been 9 legally vested in such agency with authority to consent to 10 adoption of the child; or

11 (d) any person having legal custody of a child by 12 court order if the parental rights of the parents have been 13 judicially terminated, but in such case the court having 14 jurisdiction of the custody of the child must consent to 15 adoption and a certified copy of its order shall be attached 16 to the petition.

17 (2) The consents required by subsections (1)(a) and 18 (1)(b) shall be acknowledged before an officer authorized to 19 take acknowledgments or witnessed by a representative of the 20 department of social and rehabilitation services or of an 21 agency or witnessed by a representative of the court."

22Section 9. Section 40-8-113. MCA. is amended to read:23"40-8-113. Consent of child. Consent-of-the-child-if24If a child is 12 years of age or over: shall-be-required he25must consent to his adoption. Such-consent-shall Consent

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<u>must</u> be given in court or be in writing in such form as the
 court shall direct."
 <u>NEW SECTION.</u> Section 10. Who may place a child for

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5 (1) the department;

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(3) the child's parents.

8 <u>NEW SECTION</u>. Section 11. Placement for adoption by 9 parents. (1) No parent may make a placement of a child for 10 adoption with a person who is not a stepparent or a member 11 of the child's extended family unless the parent files a 12 notice of parental placement with the district court for the 13 county in which the prospective adoptive parent or the 14 parent making the placement resides.

15 (2) The notice of parental placement shall be filed 16 prior to a parent's placement of the child with a person who 17 intends to adopt the child. The notice of parental placement 18 shall contain the following information:

19 (a) the name and address of each birth parent, if
20 known, and if unknown, the steps taken to ascertain the
21 whereabouts of the parent or parents;

22 (b) the name and address of each prospective adoptive23 parent;

(c) the name and address or expected date and place ofbirth of the child; and

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I (d) the name and address of counsel, guardian ad 2 litem, or other representative, if any, for each of the 3 parties in subsection (2)(a) through (2)(c).

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14 (b) that the department has no temporary authority to 15 investigate or provide protective services to the family 16 under 41-3-402;

17 (c) that the birth parents, the prospective adoptive 18 parents, and their representatives have agreed in writing to 19 provide the court with sworn affidavits containing itemized 20 statements of all fees charged or to be charged, expenses incurred or to be incurred, and payments received or to be 21 received in connection with the proposed adoptive placement; 22 23 (d) that the prospective adoptive parents have been 24 provided a medical and social history of the child and birth 25 parents; and

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 5 the proposed placement.

6 (5) (a) At least 5 days' notice of the time and place 7 of the hearing must be given to the birth parents, the 8 prospective adoptive parents, any named guardian ad litem, 9 and the agency or person who conducted the investigation 10 under subsection (3).

11 (b) The hearing shall be closed to all persons except
12 those persons entitled to notice and their representatives
13 or counsel.

14 (6) If the court finds that all requirements for 15 placement have been met, the court may issue an order or 16 schedule a hearing for the purpose of terminating parental 17 rights and granting temporary custody to the prospective 18 adoptive parents. The prospective adoptive parents must file 19 their petition to adopt within 30 days of the order.

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21 adoptive placement have not been met, the court may issue
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l petitioners. and shall specify:

2 (a) the full names, ages, and place of residence of
3 the petitioners and, if married, the place and date of the
4 marriage;

5 (b) when the petitioners acquired or intend to acquire
6 custody of the child and from what person or agency;

7 (c) the date and place of birth of child, if known;

8 (d) the name used for the child in the proceeding and.
9 if a change in name is desired, the new name;

(e) that it is the desire of the petitioners that the
relationship of parent and child be established between them
and the child;

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24 (4) Except as provided in [section 11], a petition for
 25 adoption must be filed within 1 year of the time the child

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1 was placed for adoption with the petitioner."

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22 child-for-the-purpose-of-determining whether he-is-a--proper

23 subject the child is legally free for adoption;

(b) appropriate---inquiry--to--determine whether the
 proposed home is a suitable one for the childy;

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2 provided to the adoptive parent; and

3 (d) any other circumstances and conditions which may
4 have a bearing on the adoption and of which the court should
5 have knowledge.

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6 (2) The court may order agencies named in subsection
7 (1) located in one or more counties to make separate
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1 Section 15. Repeater. Section 40-6-124, MCA. is 2 repeated.

3 Section 16. Codification instruction. (1) Sections 1
4 through 3 are intended to be codified as an integral part of
5 Title 40. chapter 6. part 1. and the provisions of Title 40.
6 chapter 6. part 1. apply to sections 1 through 3.
7 (2) Sections 10 and 11 are intended to be codified as
8 an integral part of Title 40. chapter 8. part 1. and the

9 provisions of Title 40+ chapter 8+ part 1+ apply to sections

10 10 and 11.

-End-

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1	SENATE BILL ND. 267	1	(d) why relinquishment is desired.
Z	INTRODUCED BY MAZUREK	2	(3) Upon receipt of the petition, the court shall set
3	BY REQUEST OF THE DEPARTMENT OF SOCIAL AND	3	the time for hearing the matter.
4	REHABILITATION SERVICES	4	(4) The parent-child legal relationship may not be
5		5	terminated by relinquishment proceedings unless both birth
6	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE	6	parents join in the petition unless the parent-child legal
7	LAWS RELATING TO ADOPTION AND TO AMEND THE LAWS RELATING TO	7	relationship of a parent not joining the petition has
8	RELINQUISHMENT AND PLACEMENT OF CHILDREN FOR ADOPTION BY	8	terminated.
9	THEIR PARENTS WITHOUT AGENCY INVOLVEMENT; AMENDING SECTIONS	9	<u>NEW_SECTION.</u> Section 2. Relinguishment hearing
10	40-6-125, 40-8-101, 40-8-103, 40-8-104, 40-8-111, 40-8-113,	10	requirements. (1) The court may not issue an order of
11	40-8-121, 40-8-122, AND 40-8-123, MCA; AND REPEALING SECTION	11	relinguishment until it is satisfied that the relinguishing
12	40-6-124, MCA."	12	parent has been counseled and fully understands the
13		13	consequences of his act.
14	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	14	(2) If the court finds after the hearing that it is in
15	NEW SECTION. Section 1. Petition for relinquishment	15	the best interests of the birth parents or child that no
16	of custody of child. [1] Any parent who proposes to	16	relinquishment be granted, the court shall enter an order
17	relinguish custody of a child for purposes of placing the	17	dismissing the action.
18	child for adoption may do so by petitioning the district	18	{3} If the court is not satisfied that the
19	court upon forms supplied by the court.	19	relinquishing parent has been counseled and fully
20	[2] The petition shall contain the following	20	understands the consequences of his act, it may continue the
21	information:	21	matter. The court may, after considering the best interests
22	(a) the name and age of both birth parents, if known;	22	of the child, order the child to be placed in foster care
23	(b) the name, if any, and the age of the child;	23	while the matter is continued.
24	(c) the race and religion of both birth parents, if	24	(4) If the court finds at the hearing that the
25	known; and	25	relinquishing parent has been counseled as provided in
			-2- SB 267

SB 267 REFERENCE BILL: INCLUDES GOVERNOR'S AMENDMENTS DATED <u>3-3/- f/</u>

#### SB 0267/03

subsection (1) of this section and that the relinquishment would best serve the interests of the birth parents and the child, it shall enter an order of relinquishment. The order shall contain language terminating the parent-child legal relationship.

6 <u>NEW\_SECTION</u>. Section 3. Order of relinquishment ---7 custody. (1) In the order of relinquishment terminating the 8 parent-child legal relationship of both parents or of the 9 only living parent, the court, after taking into account the 10 racial, cultural, and religious background of the child, 11 shall order legal custody transferred to:

12 (a) the department of social and rehabilitation 13 services;

14 (b) a licensed child placement agency;

15 (c) a relative of the child;

1.1.16

16 (d) the person named in the notice filed by the 17 parents pursuant to [section 11]; or

18 (e) any other person eligible to adopt if the court 19 finds it is in the child's best interest.

20 (2) The order of relinquishment shall set forth all 21 pertiment facts brought forth at the hearing and shall also 22 state that the court is satisfied that the provisions of 23 [section 2(1)] have been satisfied.

24 (3) The order of relinquishment divests the25 relinquishing parent or parents of all legal rights and

obligations' they may have with respect to the child
 relinquished. The order shall release the relinquished child
 from all legal obligations with respect to the relinquishing
 parent or parents.

5 Section 4. Section 40-6-125, MCA, is amended to read: "40-6-125. Children born out of wedlock -- refease 6 7 relinguishment -- consent. (1) If the mother of a child born 8 out of wedlock proposes to release relinquish the child for 9 adoption and the refease relinguishment or consent of the 10 natural birth father cannot be obtained, the child may not 11 be placed for adoption until the parental rights of the 12 father are terminated by the court as provided in this part, 13 by the court pursuant to Title 41, chapter 3, or by a court 14 of competent jurisdiction in another state or country. 15 (2) Pending the termination or other disposition of

16 the rights of the father of the child born out of wedlock, 17 the mother may execute-a-release-terminating-her--rights--to the--childw--If-the-mother-releases-the-childw-the-agency-of 18 19 the-state-of-Montanay-the-licensed-adoption-agency/--or--the 20 person--to--whom--the--child--is--released--may-file deliver 21 physical custody of her child to the department DR A 22 LICENSED\_CHILD\_PLACING\_AGENCY\_by\_filing a petition under 23 this-part-or-a-petition-of-dependency-or-neglect pursuant to Title-41y-chapter-3 [section 1]. Pending-disposition-of--the 24 25 Upon petition, the court may enter an order authorizing

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1 temporary care of the child. 2 +3+--At-the-request-of-the-mothery-her-formal-execution 3 of-a-release-shall-be-delayed--until--after--the--court--has 4 determined--the--identity--of--the--father--and--has-awarded 5 custody-of-the-child-to-the-father-or-terminated-his--rights 6 under-this-part\*" 7 Section 5. Section 40-8-101, MCA, is amended to read: 8 "40-8-101. Short title. This part may be cited as the 9 "Uniform Adoption Act", as amended." 10 Section 6. Section 40-8-103: MCA, is amended to read: 11 #40-8-103. Definitions. As used in this part chapter. 12 unless the context otherwise requires. 13 (1)-- #adoptee -- means--a-person-of-any-age-who-has-been 14 tegotty-adoptedt 15 t2)(1) "adoption" means the act of creating the legal 16 relationship between parent and child when it did not exist 17 genetically; 18 f3+(2) "adoptive parent" means an adult who has become 19 the mother or father of a child through the legal process of 20 adoption; 21 (4) -- "adult-adoptee"-means-apperson-who-was-adopted--as Z 2 a-child-and-who-has-attained-majorityf 23 t5}(3) "agency" means a public or voluntary agency 24 licensed by any jurisdiction within the United States and 25 expressly empowered to place children as a preliminary to a

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L	possible adoption;
2	<del>(6)</del> (4) "birth parent" means the mother or father of
3	genetic origin of a child, but does not include a putative
4	father of a chilq;
5	<u>f7}[5)</u> "child" means any minor person andmagency"
6	meansany-person-authority-or-agency-legally-empowered-to
7	place-children-for-adoption=-Singular-words-mayextendand
8	beappliedto-several-persons-or-thingsy-as-well-as-to-one
9	person-or-thingPlural-words-may-extend-and-beappliedto
10	onepersonorthing+mswellasto-several-persons-or
11	things. under 18 years of age;
12	<del>{8}</del> (6) "court" means a Montana_district_court_or_a
13	<u>tribal court of any Montana Indian reservation;</u>
14	<u> <del>191</del>(7)</u> "department" means the department of social and
15	rehabilitation services, as established and provided for in
16	<u>Title 2, chapter 15, part 22;</u>
17	<pre>ft0;(8) "extended family member" means an adult who is</pre>
18	the child's grandparent, aunt or uncle, brother or sister,
19	niece or nephew, or first cousin.
20	<pre>fttt(9) "parent" means the birth or adoptive mother or</pre>
21	<u>the birth, adoptive, or legal father whose parental rights</u>
22	<u>have not been terminated;</u>
23	<u>ft2;(10) "placement for adoption" means the transfer of</u>
24	physical custody of a child with respect to whom all
25	<u>parental_rights_have_been_terminated_and_who_is_otherwise</u>

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	1	legally free for adoption to a person who intends to adopt
	2	the_child;
	3	<pre>fi3t(11) "relinguishment" means the informed and</pre>
	4	voluntary release in writing of all parental rights with
	5	respect to a child by a parent to an individual or agency
	6	pursuant to [sections 1 through 3]."
	7	Section 7. Section 40-8-104, MCA, is amended to read:
	8	"40-8-104. Who may be adopted. (1) Any child-present
	9	within-this-state-at-the-time-the-petition-foradoptionis
	10	filedirrespective-of-place-of-birth-or-place-of-residence.
	11	<u>minor</u> may be adopted* <u>if:</u>
	12	(a) the minor has no living parent; or
	13	<pre>(b) the parental rights of the living parents of the</pre>
	L4	<u>minor have been terminated according to the laws of this</u>
	15	<u>state or of another jurisdiction; or</u>
	16	(c) the living parents consent to the adoption.
	17	<u>[2] An adult may be adopted as provided in part 2 of</u>
	18	this chapter."
	19	Section 8. Section 40-8-111, MCA, is amended to read:
	20	"40-8-111. Consent required for adoption. (1) An
65	21	adoption of a chì钟d may be decreed when there have been
	22	filed written consents to adoption executed by:
	23	(a) both parents, if living, or the surviving parent
	24	of a child, provided that consent is not required from a
	25	father or mother:

1	(i) adjudged guilty by a court of competent
Z	jurisdiction of physical-crueity assault on the child, as
3	provided in 45-2-202 45-5-201; endangering the welfare of
4	children, concerning the child, as provided in 45-5-622; or
5	sexual abuse of children; toward the child, as provided in
6	<u>45-5-625;</u>
7	(ii) who has been judicially deprived of the custody of
8	the child on account of cruelty or neglect toward the child $\underline{\mathbf{v}}$
9	<u>es-defined-in-41-3-10213)(d);</u>
10	[iii] who has, in the state of Montana or in any other
11	state of the United States, willfully abandoned the child ${f y}$
12	AS_DEFINED_IN_41-3-102(3)(D);
13	(iv) who has caused the child to be maintained by any
14	public or private children's institution, charitable agency.
15	or any licensed adoption agency or the department of social
16	and rehabilitation services of the state of Montana for a
17	period of L year without contributing to the support of the
18	child during said period, if able;
19	(v) if it is proven to the satisfaction of the court
20	that the father or mother, if able, has not contributed to
21	the support of the child during a period of 1 year before
22	the filing of a petition for adoption; or
23	(vi) whose parental rights have been judicially
24	terminated;
25	(b) the legal guardian of the child if both parents

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are dead or if the rights of the parents have been
 terminated by judicial proceedings and such guardian has
 authority by order of the court appointing him to consent to
 the adoption;

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5 (c) the executive head of an agency if the child has 6 been relinquished for adoption to such agency or if the 7 rights of the parents have been judicially terminated or if 8 both parents are dead and custody of the child has been 9 legally vested in such agency with authority to consent to 10 adoption of the child; or

11 (d) any person having legal custody of a child by 12 court order if the parental rights of the parents have been 13 judicially terminated, but in such case the court having 14 jurisdiction of the custody of the child must consent to 15 adoption and a certified copy of its order shall be attached 16 to the petition.

17 (2) The consents required by subsections (1)(a) and 18 (1)(b) shall be acknowledged before an officer authorized to 19 take acknowledgments or witnessed by a representative of the 20 department of social and rehabilitation services or of an 21 agency or witnessed by a representative of the court."

Section 9. Section 40-8-113. MCA, is amended to read:
 "40-8-113. Consent of child. Consent-of-the-child-if
 If a child is 12 years of age or over<u>s</u> shall-be-required <u>he</u>
 <u>must consent to his adoption</u>. Such-consent-shall <u>Consent</u>

1 <u>must</u> be given in court or be in writing in such form as the 2 court shall direct."

<u>NEW SECTION</u>. Section 10. Who may place a child for
 adoption. A child may be placed for adoption only by:

the department;

5

7

6 (2) a licensed child placing agency; or

(3) the child's parents.

8 <u>NEW SECTION</u>. Section 11. Placement for adoption by 9 parents. (1) No parent may make a placement of a child for 10 adoption with a person who is not a stepparent or a member 11 of the child's extended family unless the parent files a 12 notice of parental placement with the district court for the 13 county in which the prospective adoptive parent or the 14 parent making the placement resides.

15 (2) The notice of parental placement shall be filed 16 prior to a parent's placement of the child with a person who 17 intends to adopt the child. The notice of parental placement 18 shall contain the following information:

19 (a) the name and address of each birth parent, if20 known, and if unknown, the steps taken to ascertain the

21 whereabouts of the parent or parents;

22 (b) the name and address of each prospective adoptive 23 parent;

- 24 (c) the name and address or expected date and place of
- 25 birth of the child; and

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

4 (3) Upon receipt of a notice of parental placement. the court shall require that a licensed child-placing-agency 5 -6 THe DEPARTMENT examine the child and conduct interviews with 7 the birth parents and prospective adoptive parents and 8 report to the court within 30 days, but not earlier than 5 days after the birth of the child. The report must state 9 whether the following requirements for placement have been 10 met: 11

12 (a) that the decision to place was voluntarily made by 13 the birth parents;

14 (b) that the department has no temporary authority to
15 investigate or provide protective services to the family
16 under 41-3-402;

17 (c) that the birth parents, the prospective adoptive 18 parents, and their representatives have agreed in writing to provide the court with sworn affidavits containing itemized 19 statements of all fees charged or to be charged, expenses 20 . . 21 incurred or to be incurred, and payments received or to be received in connection with the proposed adoptive placement; 22 [d] that the prospective adoptive parents have been 23 24 provided a medical and social history of the child and birth 25 parents; and

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

3 (4) Within 45 days of filing of the notice of parental 4 placement, the court shall schedule a hearing to consider 5 the proposed placement.

6 (5) (a) At least 5 days' notice of the time and place
7 of the hearing must be given to the birth parents, the
8 prospective adoptive parents, any named guardian ad litem,
9 and the agency or person who conducted the investigation
10 under subsection (3).

11 (b) The hearing shall be closed to all persons except 12 those persons entitled to notice and their representatives 13 or counsel.

14 (6) If the court finds that all requirements for 15 placement have been met, the court may issue an order or 16 schedule a hearing for the purpose of terminating parental 17 rights and granting temporary custody to the prospective 18 adoptive parents. The prospective adoptive parents must file 19 their petition to adopt within 30 days of the order.

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

23 Section 12. Section 40-8-121, MCA, is amended to read:
24 "40-8-121. Petition for adoption. (1) A petition for
25 adoption shall be filed in duplicate, verified by the

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1 petitioners, and shall specify: 2 (a) the full names, ages, and place of residence of 3 the petitioners and, if married, the place and date of the 4 marriage; 5 (b) when the petitioners acquired or intend to acquire 6 custody of the child and from what person or agency; 7 (c) the date and place of birth of child, if known; 8 (d) the name used for the child in the proceeding and, if a change in name is desired, the new name; 9 10 (e) that it is the desire of the petitioners that the 11 relationship of parent and child be established between them 12 and the child; 13 (f) a full description and statement of value of all 14 property owned or possessed by the child; (g) facts, if any, which excuse consent on the part of 15 16 a parent to the adoption. 17 (2) One copy of the petition shall be retained by the 18 court. The other shall be sent to the department of social 19 and rehabilitation services. An additional copy shall be 20 sent to any agency participating in the adoption proceeding. 21 (3) Any written consent required by this part may be 22 attached to the petition or may be filed after the filing of 23 the petition, with the consent of the court. 24 (4) Except as provided in [section 11], a petition for 25 adoption must be filed within 1 year of the time the child

#### was placed for adoption with the petitioner."

Section 13. Section 40-8-122. MCA. is amended to read: 2 3 "40-8-122. Investigation. (1) Upon the filing of a 4 petition for adoption, the court shall order an 5 investigation to be made by the department of-sectal-and 6 rehabilitation-services or any-other--private--agency by a 7 licensed and-approved-for-such-investigatory-purpose-by-the 8 department-of-social--and--rehabilitation--servicesy--unless 9 such child placing agency or other person named by the 10 court. The investigation is may be waived by-the--department 11 of--social--and--rehabilitation--servicesy--and-shall-in-its 12 discretion-further-order-that--a if the petitioner is a 13 stepparent of the child or if one of the petitioners is a member of the child's extended family. The report of such 14 15 investigation shall be filed with the court by the 16 designated investigator within the-time-fixed-by--the--court 17 and--in--no-event-more-than 30 days from the issuance of the 18 order for investigation, unless time therefor is extended by 19 the court. Such The report of the investigation if--ordered 20 by-the-court shall state: 21 (a) include--the--conditions--and--antecedents--of-the child-for-the-purpose-of-determining whether he-is-a--proper 22 23 subject the child is legally free for adoption; 24 (b) appropriate---inquiry--to--determine whether the 25 proposed home is a suitable one for the childy;

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# (c) that medical and social histories have been

2 provided to the adoptive parent; and

3 (d) any other circumstances and conditions which may
4 have a bearing on the adoption and of which the court should
5 have knowledge.

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

10 (3) The report of such the investigation shall become 11 a part of the files in the case and shall contain a definite 12 recommendation <u>stating the reasons</u> for or against the 13 proposed adoption and-state-reasons-therefor."

14 Section 14- Section 40-8-123: MCA, is amended to read: 15 "40-8-123. Summary decree. If the child is related-by 16 blood-to a member of the extended family of one of the petitioners or is a stepchild of the petitioner or the court 17 18 finds that the best interests of the child will be furthered 19 thereby, the court in its discretion, after examination of 20 the a report specified-in ordered\_pursuant\_to 40-8-122+ if ·····21such---report--had--been--ordered--by--said--courty--in--its -22 discretion, may waive the entry of an interlocutory decree Z 3 and the waiting period of 6 months provided in 40-8-124 and 24 grant a final decree of adoption if satisfied that the 25 adoption is for in the best interests of the child."

Section 15. Repealer. Section 40-6-124, MCA, is
 repealed.

3 Section 16. Codification instruction. (1) Sections 1
4 through 3 are intended to be codified as an integral part of
5 Title 40. chapter 6. part 1. and the provisions of Title 40.
6 chapter 6. part 1. apply to sections 1 through 3.

7 (2) Sections 10 and 11 are intended to be codified us 8 an integral part of Title 40, chapter 8, part 1, and the 9 provisions of Title 40, chapter 8, part 1, apply to sections 10 and 11.

-End-

# March 31, 1981

## GOVERNOR'S PROPOSED AMENDMENTS TO SENATE BILL NO. 267; REFERENCE COPY, AS FOLLOWS:

1. Page 8, line 3
Following: "in"
Delete: "45-2-202"
Insert: "45-5-201"



State of Montana Office of the Governor Helena 59620

March 31, 1981

The Honorable Jean A. Turnage President of the Senate State Capitol Helena, Montana 59620

The Honorable Robert L. Marks Speaker of the House State Capitol Helena, Montana 59620

Dear Senator Turnage and Representative Marks:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return Senate Bill No. 267, "AN ACT TO GENERALLY RE-VISE THE LAWS RELATING TO ADOPTION AND TO AMEND THE LAWS RELATING TO RELINQUISHMENT AND PLACEMENT OF CHILDREN FOR ADOPTION BY THEIR PARENTS WITHOUT AGENCY INVOLVEMENT; AMEND-ING SECTIONS 40-6-125, 40-8-101, 40-8-103, 40-8-104, 40-8-111, 40-8-113, 40-8-121 THROUGH 40-8-123, MCA; AND REPEAL-ING SECTION 40-6-124, MCA," without my signature and recommend the attached amendment for the following reason.

The amendment I have proposed is strictly for the purpose of correcting an incorrect cross-citation.

I urge your concurrence in this amendment.

Sincerely,

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TED SCHWINDEN Governor