## HOUSE BILL NO. 3

## (First Special Session)

### INTRODUCED BY LORY, MAZUREK

# BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

## IN THE HOUSE

November 16, 1981

November 20, 1981

November 20, 1981

Introduced and referred to Committee on Judiciary.

Committee recommend bill do pass as amended. Report adopted.

On motion rules suspended and bill placed on second reading this day.

Second reading, do pass as amended. Ayes, 91; Noes, 1.

On motion rules suspended and bill placed on third reading this day.

Third reading, passed. Ayes, 93; Noes, 2. Transmitted to Senate.

### IN THE SENATE

November 21, 1981

Introduced and referred to Committee on Judiciary.

Committee recommend bill be concurred in. Report adopted.

On motion rules suspended. Bill referred to second reading for consideration this day.

# November 21, 1981

Second reading, concurred in.

On motion rules suspended. Bill placed on calendar for third reading this day.

Third reading, concurred in.

## IN THE HOUSE

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# November 21, 1981

Returned from Senate. Concurred in. Sent to enrolling.

Reported correctly enrolled.

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1	Hause BILL NO. 3 (SSI)
2	INTRODUCED BY MAZUREK
3	BY REQUEST OF THE DEPARTMENT OF
4	SOCIAL AND REHABILITATION SERVICES
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6	A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAWS
7	RELATING TO RELINQUISHMENT OF CHILDREN FOR ADOPTION;
8	AMENDING SECTIONS 40-6-125 AND 40-8-103, MCA; REPEALING
9	SECTIONS 40-6-132 THROUGH 40-6-134, MCA; AND PROVIDING AN
10	IMMEDIATE EFFECTIVE DATE."
11	
12	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13	NEW_SECTION Section 1. Relinquishment of parental
14	rights form, execution, and revocation. (1) Any parent or
15	guardian who proposes to relinquish custody of a child for
16	purposes of placing the child for adoption may do so by
17	executing a relinquishment by which all parental rights to
18	the child are voluntarily relinquished to an agency of the
19	state of Montana or a licensed adoption agency.
20	(2) Except as otherwise provided in this section, a
21	relinguishment shall be by a separate instrument executed
22	before a notary public.
23	(3) If the person from whom a relinquishment is
24	required is a member of any of the armed services or is in

prison, the relinquishment may be executed and acknowledged

1 before any person authorized by law to administer oaths.

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

8 the filing of a properly executed (5) Upon 9 relinguishment of a child by a parent or quardian, the court 10 immediately issue an order terminating the rights of shall 11 that parent or quardian to that child. If the rights of 12 both parents, the surviving parent, or the guardian have 13 been terminated, the court shall issue an order committing 14 the child to the agency of the state of Montana or the 15 licensed adoption agency to which the relinquishment was 16 given.

17 (6) Entry of an order terminating the rights of both 18 parents pursuant to subsection (5) terminates the 19 jurisdiction of the district court over the child in any 20 divorce or separate maintenance action.

21 (7) Upon petition of a person who executed а 22 relinguishment and of the agency of the state of Montana or 23 licensed adoption agency to which the child was 24 relinguished, the court with which the relinguishment was 25 filed may grant a hearing to consider whether the

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1 relinquishment should be revoked. A relinquishment may not
2 be revoked if the child has been placed for adoption. A
3 verbatim record of testimony related to the petition shall
4 be made.

Section 2. Section 40-6-125, MCA, is amended to read: 5 #40-6-125. Children born out of wedlock 6 7 relinguishment -- consent. (1) If the mother of a child born out of wedlock proposes to relinguish the child for adoption B and the relinguishment or consent of the birth father cannot 9 be obtained, the child may not be placed for adoption until 10 the parental rights of the father are terminated by the 11 12 court as provided in this part, by the court pursuant to 13 Title 41, chapter 3, or by a court of competent jurisdiction 14 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 deliver-physical-custody-of-her-child-to-the 18 department-or-a-licensed--child--placing--agency--by--filing 19 execute a relinguishment terminating her rights to the 20 child. If the mother reliaguishes the child. the agency of the state of Montana or the licensed adoption agency to whom 21 the child is relinquished may file a petition under this 22 part or a petition of dependancy or neglect pursuant to 23 40-6-132--- Upon <u>litle 41. chapter 3. Pending disposition of</u> 24 25 the 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 mother. her execution of a
3 relinquishment 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 3. Section 40-8-103, MCA, is amended to read:
 8 "40-8-103. Definitions. As used in this chapter,
 9 unless the context otherwise requires the following
 10 definitions apply:

11 (1) "Adoption" means the act of creating the legal 12 relationship between parent and child when it does not exist 13 genetically.

14 (2) "Adoptive parent" means an adult who has become 15 the mother or father of a child through the legal process of 16 adoption.

17 (3) "Agency" means a public or voluntary agency
18 licensed by any jurisdiction within the United States and
19 expressly empowered to place children as a preliminary to a
20 possible adoption.

21 (4) "Birth parent" means the mother or father of 22 genetic origin of a child but does not include a putative 23 father of a child.

24 (5) "Child" means any person under 18 years of age.
 25 (6) "Court" means a Montana district court or a tribal

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1 court of any Montana Indian reservation.

2 (7) "Department" means the department of social and
3 rehabilitation services, as established and provided for in
4 Title 2, chapter 15, part 22.

5 (8) "Extended family member" means an adult who is the
6 child's grandparent, aunt or uncle, brother or sister, niece
7 or nephew, or first cousin.

8 (9) "Parent" means the birth or adoptive mother or the 9 birth, adoptive, or legal father whose parental rights have 10 not been terminated.

(10) "Placement for adoption" means the transfer of physical custody of a child with respect to whom all parental rights have been terminated and who is otherwise legally free for adoption to a person who intends to adopt the child.

16 (11) "Relinquishment" means the informed and voluntary 17 release in writing of all parental rights with respect to a 18 child by a parent to an individual or agency pursuant to 19 40-6-132-through-40-6-134 [section\_1]."

20 Section 4. Repealer. Sections 40-6-132 through 21 40-6-134, MCA, are repealed.

Section 5. Codification instruction. Section 1 is 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 section 1.

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Section 6. Effective date. This act is effective on
 passage and approval.

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#### 47th Legislature

HB 0003/02

Approved by Committee on Judiciary

1	HOUSE BILL NO. 3 (1st SS)
2	INTRODUCED BY LORY, MAZUREK
3	BY REQUEST OF THE DEPARTMENT OF
4	SOCIAL AND REHABILITATION SERVICES
5	

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAWS 7 RELATING TO RELINQUISHMENT OF CHILDREN FOR ADOPTION; 8 AMENDING SECTIONS 40-6-125, AND 40-8-103, AND 40-8-100, AND 40-8-100, AND 40-8-100, AND 40-8-100, AND 40-8-100,

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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 13 NEW\_SECTION Section 1. Relinquishment of parental 14 rights -- form, execution, and revocation. (1) Any parent or 15 guardian who proposes to relinguish custody of a child for 16 purposes of placing the child for adoption may do so by 17 executing a relinquishment by which all parental rights to 18 the child are voluntarily relinquished to an agency of the 19 state of Montana or a licensed adoption agency.

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

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

1 before any person authorized by law to administer oaths.

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

(5) Upon the filing of a properly AND VOLUNTARILY 8 9 executed relinquishment of a child by a parent or guardian, 10 the court shall immediately issue an order terminating the 11 rights of that parent or guardian to that child. If the 12 rights of both parents, the surviving parent, or the 13 guardian have been terminated, the court shall issue an 14 order committing the child to the agency of the state of 15 Montana or the licensed adoption agency to which the 16 relinquishment was given.

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

(7) Upon petition of a person who executed a relinquishment and of the agency of the state of Montana or licensed adoption agency to which the child was relinquished, the court with which the relinquishment was filed may grant a hearing to consider whether the

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relinquishment should be revoked. A relinquishment may not
 be revoked if the child has been placed for adoption. A
 verbatim record of testimony related to the petition shall
 be made.

5 Section 2. Section 40-6-125, MCA, is amended to read: 6 #40-6-125. Children born out of wedlock --7 relinguishment -- consent. (1) If the mother of a child born 8 out of wedlock proposes to relinquish the child for adoption 9 and the relinquishment or consent of the birth father cannot 10 be obtained, the child may not be placed for adoption until 11 the parental rights of the father are terminated by the 12 court as provided in this part, by the court pursuant to 13 Title 41, chapter 3, or by a court of competent jurisdiction 14 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 deliver-physical-custody-of-her-child-to-the 18 department-or-a-licensed--child--placing--sganey--by--filing 19 execute\_a\_relinguishment\_terminating\_her\_rights\_to\_the 20 child\_\_If\_the\_mother\_relinguishes\_the\_child.\_the\_\_agency\_\_of 21 the state of Nontana or the licensed adoption agency to whom 22 the\_\_child\_\_is\_relinquished\_\_may\_file a petition under\_this 23 part or a petition of dependency or neolect pursuant to 24 40-6-132\*--Upon Title 41\* chapter 3\* Pending disposition of 25 the petition, the court may enter an order authorizing

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1 temporary care of the child.

2	131_At_the_request_of_the_mother.ber_execution_of_a
3	<u>relinguishment_shall_be_delayed_until_afterthecourtbas</u>
4	determined_the_identity_of_the_father_and_bas_awarded
5	<u>custody_of_the_child_to_the_father_or_terminated_bisrights</u>
6	under_this_part."
ד	Section 3. Section 40-8-103, MCA, is amended to read:
8	"40-8-103. Definitions. As used in this chapter,
9	unless the context otherwise requires the following
10	definitions apply:
11	(1) "Adoption" means the act of creating the legal
12	relationship between parent and child when it does not exist
13	genetically.
14	{2} *Adoptive parent* means an adult who has become
15	the mother or father of a child through the legal process of
16	adoption.
17	(3) "Agency" means a public or voluntary agency
18	licensed by any jurisdiction within the United States and
19	expressly empowered to place children as a preliminary to a
20	possible adoption.
21	(4) "Birth parent" means the mother or father of
22	genetic origin of a child but does not include a putative
23	father of a child.
24	{5} "Child" means any person under 18 years of age.
25	(6) "Court" means a Montana district court or a tribal

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1 court of any Montana Indian reservation.

2 (7) "Department" means the department of social and
3 rehabilitation services, as established and provided for in
4 Title 2, chapter 15, part 22.

5 (8) "Extended family member" means an adult who is the 6 child's grandparent, aunt or uncle, brother or sister, niece 7 or nephew, or first cousin.

8 (9) "Parent" means the birth or adoptive mother or the 9 birth, adoptive, or legal father whose parental rights have 10 not been terminated.

11 (10) "Placement for adoption" means the transfer of 12 physical custody of a child with respect to whom all 13 parental rights have been terminated and who is otherwise 14 legally free for adoption to a person who intends to adopt 15 the child.

16 (11) "Relinquishment" means the informed and voluntary
17 release in writing of all parental rights with respect to a
18 child by a parent to an +nd+v+dual-or agency DR\_INDIVIDUAL
19 pursuant to 40-6-132--through--40-6-134 [section\_1] DR
20 40-8-109+\_HHICHEVER\_IS\_APPLICABLE="

21 <u>SECTION 4. SECTION 40-8-109. HCA3. IS AMENDED TO READ:</u> 22 **\*40-8-109.** Placement for adoption by parents. (1) No 23 parent may make a placement of a child for adoption with a 24 person who is not a stepparent or a member of the child's 25 extended family unless the parent files **a-notice-of-parental**  procement with the district court for the county in which
 the prospective adoptive parent or the parent making the
 placement resides\*1

(a)\_\_a\_notice\_of\_parental\_placement: and

5 [b]\_a\_celinguisbment\_of\_parental\_rights\_to\_the
 6 prospective\_adoptive\_parents\_executed\_voluntarily\_and\_in
 7 accordance\_with\_[section\_1(2)\_through\_(4)]\_

8 (2) The notice of parental placement <u>and the</u> 9 <u>relinquishment</u> shall be filed prior to a parent's placement 10 of the child with a person who intends to adopt the child. 11 The notice of parental placement shall contain the following 12 information:

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

16 (b) the name and address of each prospective adoptive 17 parent;

18 (c) the name and address or expected date and place of 19 birth of the child: and

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

(3) Upon receipt of a notice of parental placement and
 <u>a\_relinquishment</u>, the court shall require that the
 department examine the child and conduct interviews with the

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birth parents and prospective adoptive parents and report to
 the court within 30 days but not earlier than 5 days after
 the birth of the child. The report must state whether the
 following requirements for placement have been met:

5 (a) that the decision to place was voluntarily made by6 the birth parents;

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

10 (c) that the birth parents, the prospective adoptive 11 parents, and their representatives have agreed in writing to 12 provide the court with sworn affidavits containing itemized 13 statements of all fees charged or to be charged, expenses 14 incurred or to be incurred, and payments received or to be 15 received in connection with the proposed adoptive placement; 16 (d) that the prospective adoptive parents have been 17 provided a medical and social history of the child and birth 18 parents; and

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

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

24 (5) (a) At least 5 days' notice of the time and place
25 of the hearing must be given to the birth parents; the

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prospective adoptive parents, any named guardian ad litem,
 and the agency or person who conducted the investigation
 under subsection (3).

4 (b) The hearing shall be closed to all persons except
5 those persons entitled to notice and their representatives
6 or counsel.

7 (6) If the court finds that all requirements for 8 placement have been met, the court may issue an order or 9 schedule a hearing for the purpose of terminating parental 10 rights and granting temporary custody to the prospective 11 adoptive parents. The prospective adoptive parents must file 12 their petition to adopt within 30 days of the order.

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

Section 5. Repealer. Sections 40-6-132 through
 40-6-134. MCA, are repealed.

18 Section 6. Codification instruction. Section 1 is 19 intended to be codified as an integral part of Title 40, 20 chapter 6, part 1, and the provisions of Title 40, chapter 21 6, part 1, apply to section 1.

22 Section 7. Effective date. This act is effective on 23 passage and approval.

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47th Legislature

HOUSE BILL NO. 3 (1st 55) INTRODUCED BY LORY, MAZUREK BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

A SILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAWS 6 RELATING TO RELINQUISHMENT OF CHILDREN FOR ADOPTION; 7 AMENDING SECTIONS 40-6-1251 AND 40-8-103, AND 40-8-1094 MCA; 8 REPEALING SECTIONS 40-6-132 THROUGH 40-6-134. MCA; AND 9 PROVIDING AN IMMEDIATE EFFECTIVE DATE." 10

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 12 NEW SECTION Section 1. Relinquishment of parental 13 rights -- form, execution, and revocation. (1) Any parent or 14 quardian who proposes to relinquish custody of a child for 15 purposes of placing the child for adoption may do so by 16 executing a relinquishment by which all parental rights to 17 the child are voluntarily relinquished to an agency of the 18 state of Montana or a licensed adoption agency. 19

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

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

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before any person authorized by law to administer oaths. (4) If the relinquishment is executed in another state Z or country, the court having jurisdiction over the adoption proceeding in this state shall determine whether the relinquishment was executed in accordance with the laws of that state or country and may not proceed unless it finds that the relinquishment was so executed.

(5) Upon the filing of a properly AND VOLUNTARILY 8 • executed relinquishment of a child by a parent or guardian, 10 the court shall immediately issue an order terminating the 11 rights of that parent or guardian to that child. If the 12 rights of both parents, the surviving parent, or the 13 guardian have been terminated, the court shall issue an 14 order committing the child to the agency of the state of Montana or the licensed adoption agency to which the 15 16 relinquishment was given.

17 (6) Entry of an order terminating the rights of both 18 parents pursuant to subsection (5) terminates the 19 jurisdiction of the district court over the child in any 20 divorce or separate maintenance action.

21 (7) Upon petition of a person who executed a 22 relinquishment and of the agency of the state of Montana or 23 licensed adoption agency to which the child was 24 relinguished, the court with which the relinguishment was 25 filed way grant a hearing to consider whether the

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HB 3 THIRD READING

relinquishment should be revoked. A relinquishment may not	1	temporary care of the child.
be revoked if the child has been placed for adoption. A	2	<pre>(3)Attherequest_of_the_mothers_her_execution_of_a</pre>
verbatim record of testimony related to the patition shall	3	<u>relinguisbment_shall_be_delayed_until_aftertbecourtbas</u>
be made.	4	<u>determined_the_identity_of_the_father_and_has_awarded</u>
Section 2. Section 40-6-125, MCA, is amended to read:	5	<u>custody of the child to the father or terminated bis rights</u>
#40-6-125. Children born out of wedlock	6	under_this_parte"
relinquishment consent. (1) If the mother of a child born	7	Section 3. Section 40-8-103, MCA, is amended to read:
out of wedlock proposes to relinquish the child for adoption	8	<pre>"40-8-103. Definitions. As used in this chapter.</pre>
and the relinquishment or consent of the birth father cannot	9	unless the context otherwise requires the following
be obtained, the child may not be placed for adoption until	10	definitions apply:
the parental rights of the father are terminated by the	11	(1) "Adoption" means the act of creating the legal
court as provided in this part, by the court pursuant to	12	relationship between parent and child when it does not exist
Title 41, chapter 3, or by a court of competent jurisdiction	13	genetically.
in another state or country.	14	(2) "Adoptive parent" means an adult who has become
(2) Pending the termination or other disposition of	15	the mother or father of a child through the legal process of
the rights of the father of the child born out of wedlocky	16	adoption.
the mother may defiver-physical-custody-of-her-child-to-the	17	(3) "Agency" means a public or voluntary agency
department-or-a-licensedchildplacingagencybyfiling	19	licensed by any jurisdiction within the United States and
executearelinquisbmentterminatingherrightsto_the	19	expressly empowered to place children as a preliminary to a
child. If the mother relinquishes the child, the agency of	20	possible adoption.
the state of Nontana or the licensed adoption agency to whom	21	(4) "Birth parent" means the mother or father of
the child is relianuished may file a petition under this	22	genetic origin of a child but does not include a putative
part or a setition of dependency or neglect pursuant to	23	father of a child.
40-6-132 Upon <u>Title 41. chapter 3. Pending disposition of</u>	24	(5) "Child" means any person under 18 years of age.
the petition, the court may enter an order authorizing	25	(6) "Court" means a Montana district court or a tribal

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[7] "Department" means the department of social and 2 rehabilitation services, as established and provided for in 3 Title 2, chapter 15, part 22. [8] "Extended family member" means an adult who is the child's grandparent, aunt or uncle, brother or sister, niece . or nephew, or first cousin. 7 (9) "Parent" means the birth or adoptive mother or the 8 birth, adoptive, or legal father whose parental rights have 9 not been terminated. 10 (10) "Placement for adoption" means the transfer of 11 physical custody of a child with respect to whom all 12 parental rights have been terminated and who is otherwise 13 legally free for adoption to a person who intends to adopt 14 the child. 15 (11) "Relinquishment" means the informed and voluntary 16 release in writing of all parental rights with respect to a 17 child by a parent to an individual or agency OR\_ INDIVIDUAL 18 pursuant to 40-6-132--through--40-6-134 [Section\_1] QB 19 40-8-109. WHICHEVER\_IS\_APPLICABLE." 20 SECTION S. SECTION SO-B-1091 MEAN IS AMENDED TO BEAD: 21 #40-8-109. Placement for adoption by parents. (1) No 22 parent may make a placement of a child for adoption with a 23 person AN\_INDIVIDUAL who is not a stepparent or a member of 24 the child's extended family unless the parent files a-notice 25

court of any Montana Indian reservation.

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#### HB 0003/03

of-porental-placement with the district court for the county 1 2 in which the prospective adoptive parent or the parent. 3 making the placement residesel (a)\_\_a\_notice\_of\_parental\_placement:\_and 5 (b)\_a\_\_\_relinguishment\_\_\_of\_parental\_rights\_to\_the 6 prospective adoptive parents executed voluntarily and in 7 accordance with [section 1(2) through (4)]. (2) The notice of parental placement and the relinguishment shall be filed prior to a parent's placement 9 10 of the child with a person AN INDIVIDUAL who intends to 11 adopt the child. The notice of parental placement shall 12 contain the following information: 13 (a) the name and address of each birth parent, if known, and if unknown, the steps taken to ascertain the 14 15 whereabouts of the parent or parents; 16 (b) the name and address of each prospective adoptive 17 parent; 18 (c) the name and address or expected date and place of 19 birth of the child; and 20 (d) the name and address of counsel, guardian ad 21 litem, or other representative, if any, for each of the 22 parties in (a) through (c) of subsection (2). 23 (3) Upon receipt of a notice of parental placement and 24 a relinguishment, the court shall require that the department examine the child and conduct interviews with the 25

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birth parents and prospective adoptive parents and report to
 the court within 30 days but not earlier than 5 days after
 the birth of the child. The report must state whether the
 following requirements for placement have been met:

5 (a) that the decision to place was voluntarily made by
6 the birth parents;

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

10 (c) that the birth parents, the prospective adoptive 11 parents, and their representatives have agreed in writing to 12 provide the court with sworn affidavits containing itemized 13 statements of all fees charged or to be charged, expenses 14 incurred or to be incurred, and payments received or to be 15 received in connection with the proposed adoptive placement; 16 (d) that the prospective adoptive parents have been 17 provided a medical and social history of the child and birth 18 parents: and

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

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

24 (5) (a) At least 5 days notice of the time and place
25 of the hearing must be given to the birth parents, the

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prospective adoptive parents, any named guardian ad litem. 1 and the agency or person who conducted the investigation 2 3 under subsection (3). (b) The hearing shall be closed to all persons except 4 those persons entitled to notice and their representatives 5 . 6 or counsel. (6) If the court finds that all requirements for 7 8 placement have been met, the court may issue an order or 9 schedule a hearing for the purpose of terminating parental rights and granting temporary custody to the prospective 10 11 adoptive parents. The prospective adoptive parents must file 12 their petition to adopt within 30 days of the order. 13 (7) If the court finds that all requirements for the 14 adoptive placement have not been met, the court may issue 15 any order appropriate to protect the child." Section 5. Repeater. Sections 16 40-6-132 through 17 40-6-134, MCA, are repealed. 18 Section 6. Codification instruction. Section 1 is 19 intended to be codified as an integral part of Title 40. 20 chapter 6, part 1, and the provisions of Title 40, chapter 21 6, part 1, apply to section 1. 22 Section 7. Effective date. This act is effective on 23 passage and approval.

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HB 0003/03

HOUSE BILL NO. 3 (1st SS) 1 INTRODUCED BY LORY, MAZUREK 2 BY REQUEST OF THE DEPARTMENT OF -3 SOCIAL AND REHABILITATION SERVICES 4 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAWS 6 RELATING TO RELINQUISHMENT OF CHILDREN FOR ADOPTION; 7 AMENDING SECTIONS 40-6-125. AND 40-8-103, AND 40-8-109. MCA; 8 REPEALING SECTIONS 40-6-132 THROUGH 40-6-134, MCA; AND 9 PROVIDING AN IMMEDIATE EFFECTIVE DATE.\* 10 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 12 NEW SECTION Section 1. Relinquishment of parental 13 rights -- form, execution, and revocation. (1) Any parent or 14 cuardian who proposes to relinquish custody of a child for 15 purposes of placing the child for adoption may do so by 16 executing a relinquishment by which all parental rights to 17 the child are voluntarily relinquished to an agency of the 18 state of Montana or a licensed adoption agency. 19 20 (2) Except as otherwise provided in this section, a relinguishment shall be by a separate instrument executed 21 before a notary public. 22 (3) If the person from whom a relinquishment is 23 required is a member of any of the armed services or is in 24

prison, the relinquishment may be executed and acknowledged

1 before any person authorized by law to administer oaths.

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

(5) Upon the filing of a properly AND YOLUNTARILY 8 9 executed relinquishment of a child by a parent or quardian, the court shall immediately issue an order terminating the 10 11 rights of that parent or quardian to that child. If the 12 rights of both parents, the surviving parent, or the 13 quardian have been terminated, the court shall issue an 14 order committing the child to the agency of the state of 15 Montana or the licensed adoption agency to which the relinquishment was given. 16

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

(7) Upon petition of a person who executed a relincuishment and of the agency of the state of Montana or licensed adoption agency to which the child was relinquished, the court with which the relinquishment was filed may grant a hearing to consider whether the

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relinguishment should be revoked. A relinguishment may not 1 2 be revoked if the child has been placed for adoption. A verbatim record of testimony related to the petition shall 3 4 be made.

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

(2) Pending the termination or other disposition of 15 16 the rights of the father of the child born out of wedlock, 17 the mother may defiver-physical-custody-of-her-child-to-the department-or-a-licensed-child-placing-agency--by--filing 18 19 execute a relinguishment terminating her rights to the 20 childs\_If\_the\_mother\_relinguishes\_the\_childs\_the\_agency\_of 21 the state of Montana or the licensed adoption agency to whom 22 the child is relinquished may file a petition under this 23 part or a petition of dependency or neglect pursuant to 40-6-132---- Upon Title 41. chapter 3. Pending\_disposition\_of 24 25 the petition, the court may enter an order authorizing

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(3) "Agency" means a public or voluntary agency 17 18 licensed by any jurisdiction within the United States and 19 expressly empowered to place children as a preliminary to a 20 possible adoption.

21 (4) "Birth parent" means the mother or father of 22 genetic origin of a child but does not include a putative 23 father of a child.

(5) "Child" means any person under 18 years of age. 24

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25 "Court" means a Montana district court or a tribal (6)

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temporary care of the child. (3) At the request of the mother, her execution of a relinguishment shall be delayed until after the court has

3 determined the identity of the father and has awarded 4 custody of the child to the father or terminated bis rights 5 under\_this part.\*\* 6 Section 3. Section 40-8-103, MCA, is amended to read: 7 #40-8-103. Definitions. As used in this chapter, я

unless the context otherwise requires the following 9 definitions apply: 10

(1) "Adoption" means the act of creating the legal 11 relationship between parent and child when it does not exist 12 13 genetically.

(2) "Adoptive parent" means an adult who has become 14 the mother or father of a child through the legal process of 15 16 adoption.

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1 court of any Montana Indian reservation.

2 (7) "Department" means the department of social and
3 rehabilitation services, as established and provided for in
4 Title 2, chapter 15, part 22.

5 (8) "Extended family member" means an adult who is the 6 child's grandparent, aunt or uncle, brother or sister, niece 7 or nephew, or first cousin.

8 (9) "Parent" means the birth or adoptive mother or the 9 birth, adoptive, or legal father whose parental rights have 10 not been terminated.

11 (10) "Placement for adoption" means the transfer of 12 physical custody of a child with respect to whom all 13 parental rights have been terminated and who is otherwise 14 legally free for adoption to a person who intends to adopt 15 the child.

(11) "Relinquishment" means the informed and voluntary
release in writing of all parental rights with respect to a
child by a parent to an individual-or agency OB\_\_\_INDIVIDUAL
pursuant to 40-6-i32--through--40-6-i34 [section\_\_1] OB
40-8-109: WHICHEVER\_IS\_APPLICABLE."

21 <u>SECTION 4. SECTION 40-B-109. HCA. IS AMENDED TO BEAD:</u> 22 "40-B-109. Placement for adoption by parents. (1) No 23 parent may make a placement of a child for adoption with a 24 person <u>AN INDIVIDUAL</u> who is not a stepparent or a member of 25 the child's extended family unless the parent files <del>a notice</del> of-parental-placement with the district court for the county
 In which the prospective adoptive parent or the parent
 making the placement resides

4 (a) a notice of parental placement: and

5 (bl\_a\_relinguishment\_of\_parental\_rights\_to\_the 6 prospective\_adoptive\_parents\_executed\_voluntarily\_and\_in 7 accordance\_with\_fsection\_1(2)\_through\_(4) la

8 (2) The notice of parental placement <u>and\_the</u>
9 <u>relinguishment</u> shall be filed prior to a parent's placement
10 of the child with <u>s-person AN\_INDIVIDUAL</u> who intends to
11 adopt the child. The notice of parental placement shall
12 contain the following information:

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

16 (b) the name and address of each prospective adoptive 17 parent;

18 (c) the name and address or expected date and place of 19 birth of the child; and

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

(3) Upon receipt of a notice of parental placement and
<u>a\_relinquishment</u>, the court shall require that the
department examine the child and conduct interviews with the

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prospective adoptive parents, any named guardian ad litem, birth parents and prospective adoptive parents and report to 1 and the agency or person who conducted the investigation 2 the court within 30 days but not earlier than 5 days after under subsection (3). the birth of the child. The report must state whether the 3 (b) The hearing shall be closed to all persons except following requirements for placement have been met: 4 those persons entitled to notice and their representatives (a) that the decision to place was voluntarily made by 5 the birth parents; 6 or counsel. (6) If the court finds that all requirements for 7 (b) that the department has no temporary authority to 8 placement have been met, the court may issue an order or investigate or provide protective services to the family schedule a hearing for the purpose of terminating parental under 41-3-402; 9 rights and granting temporary custody to the prospective 10 (c) that the birth parents, the prospective adoptive parents, and their representatives have agreed in writing to 11 adoptive parents. The prospective adoptive parents must file provide the court with sworn affidavits containing itemized 12 their petition to adopt within 30 days of the order. statements of all fees charged or to be charged, expenses (7) If the court finds that all requirements for the 13 incurred or to be incurred, and payments received or to be adoptive placement have not been met, the court may issue 14 received in connection with the proposed adoptive placement; any order appropriate to protect the child." 15 (d) that the prospective adoptive parents have been 16 Section 5. Repealer. Sections provided a medical and social history of the child and birth 17 40-6-134, MCA, are repealed. parents: and Section 6. Codification instruction. Section 1 is 18 (e) that the proposed placement is in the child's best intended to be codified as an integral part of Title 40. 19 interest. 20 chapter 6, part 1, and the provisions of Title 40, chapter (4) Within 45 days of filing of the notice of parental 21 6, part 1, apply to section 1. placement and the relinquishment, the court shall schedule a 22 Section 7. Effective date. This act is effective on hearing to consider the proposed placement. 23 passage and approval. (5) (a) At least 5 days' notice of the time and place -Endof the hearing must be given to the birth parents, the -7-HB 3 -8-

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through

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