

HOUSE BILL NO. 188

INTRODUCED BY BRADLEY, KITSELMAN, HAGER, MAZUREK

IN THE HOUSE

JANUARY 14, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

JANUARY 29, 1987 COMMITTEE RECOMMEND BILL
DO PASS. REPORT ADOPTED.

JANUARY 30, 1987 PRINTING REPORT.

JANUARY 31, 1987 ON MOTION, CONSIDERATION PASSED
FOR THE DAY.

FEBRUARY 2, 1987 SECOND READING, DO PASS.

FEBRUARY 3, 1987 ENGROSSING REPORT.

 THIRD READING, PASSED.
 AYES, 98; NOES, 0.

 TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 4, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

MARCH 14, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 18, 1987 ON MOTION, CONSIDERATION PASSED
FOR THE DAY.

MARCH 19, 1987 SECOND READING, CONCURRED IN.

MARCH 21, 1987 THIRD READING, CONCURRED IN.
AYES, 40; NOES, 0.

 RETURNED TO HOUSE.

IN THE HOUSE

MARCH 21, 1987

RECEIVED FROM SENATE.

SENT TO ENROLLING.

1 HB BILL NO. 188
 2 INTRODUCED BY Bradley, Kitchman, Hoyer, Marquez
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS
 5 RELATING TO THE ADOPTION OF CHILDREN TO CLARIFY THE
 6 PROCEDURE FOR ADOPTION; AND AMENDING SECTIONS 40-8-109 AND
 7 40-8-121 THROUGH 40-8-124, MCA."
 8

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

10 Section 1. Section 40-8-109, MCA, is amended to read:

11 "40-8-109. Placement for adoption by parents. (1) No
 12 parent may make a placement of a child for adoption with an
 13 individual who is not a stepparent or a member of the
 14 child's extended family unless the parent files with the
 15 district court for the county in which the prospective
 16 adoptive parent or the parent making the placement resides:

17 (a) a notice of parental placement; and
 18 (b) a relinquishment of parental rights to the
 19 prospective adoptive parents executed voluntarily and in
 20 accordance with 40-6-135(2) through (4).

21 (2) The notice of parental placement and the
 22 relinquishment shall be filed prior to a parent's placement
 23 of the child with an individual who intends to adopt the
 24 child. The notice of parental placement shall contain the
 25 following information:

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

4 (b) the name and address of each prospective adoptive
 5 parent;

6 (c) the name and address or expected date and place of
 7 birth of the child; and

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

11 (3) Upon receipt of a notice of parental placement and
 12 a relinquishment, the court shall require that the
 13 department examine the child and conduct interviews with the
 14 birth parents and prospective adoptive parents and report to
 15 the court within 30 days but not earlier than 5 days after
 16 the birth of the child. The report must state whether the
 17 following requirements for placement have been met:

18 (a) that the decision to place was voluntarily made by
 19 the birth parents;

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

23 (c) that the birth parents, the prospective adoptive
 24 parents, and their representatives have agreed in writing to
 25 provide the court with sworn affidavits containing itemized

1 statements of all fees charged or to be charged, expenses
2 incurred or to be incurred, and payments received or to be
3 received in connection with the proposed adoptive placement;

4 (d) that the prospective adoptive parents have been
5 provided a medical and social history of the child and birth
6 parents; and

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

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

12 (5) (a) At least 5 days' notice of the time and place
13 of the hearing must be given to the birth parents, the
14 prospective adoptive parents, any named guardian ad litem,
15 and the ~~agency or person who conducted the investigation~~
16 ~~under subsection (3) department.~~

17 (b) The hearing shall be closed to all persons except
18 those persons entitled to notice and their representatives
19 or counsel.

20 (6) If the court finds that all requirements for
21 placement have been met, the court may issue an order or
22 schedule a hearing for the purpose of terminating parental
23 rights and granting temporary custody to the prospective
24 adoptive parents. The prospective adoptive parents must file
25 their petition to adopt within 30 days of the order.

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

4 Section 2. Section 40-8-121, MCA, is amended to read:
5 "40-8-121. Petition for adoption. (1) A petition for
6 adoption shall be filed in duplicate, verified by the
7 petitioners, and shall specify:

8 (a) the full names, ages, and place of residence of
9 the petitioners and, if married, the place and date of the
10 marriage;

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

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

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

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

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

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

23 (2) One copy of the petition shall be retained by the
24 court. The other shall be sent to the ~~department of social~~
25 ~~and rehabilitation services. An additional copy shall be~~

1 sent--to-any or to the child placing agency participating in
2 the adoption proceeding.

3 (3) Any written consent required by this part may be
4 attached to the petition or may be filed after the filing of
5 the petition, with the consent of the court.

6 (4) Except as provided in 40-8-109, a petition for
7 adoption must be filed within 1 year of the time the child
8 was placed for adoption with the petitioner."

9 Section 3. Section 40-8-122, MCA, is amended to read:

10 "40-8-122. Investigation. (1) Upon the filing of a
11 petition for adoption, the court shall order an
12 investigation to be made by the department or by a licensed
13 child placing agency or other person named by the court,
14 unless an investigation has been made prior to the filing as
15 provided in subsection (4). The investigation may be waived
16 if the petitioner is a stepparent of the child or if one of
17 the petitioners is a member of the child's extended family.
18 The report of investigation shall be filed with the court by
19 the investigator at the time the petition is filed or within
20 30 days from the issuance of the order for investigation,
21 unless time therefor is extended by the court. The report of
22 the investigation shall state:

23 (a) whether the child is legally free for adoption;

24 (b) whether the proposed home is a suitable one for
25 the child;

1 (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 the investigation shall become a
11 part of the files in the case and shall contain a definite
12 recommendation stating the reasons for or against the
13 proposed adoption.

14 (4) (a) If an investigation has been made within the 6
15 months immediately preceding the filing of the petition, the
16 court does not have to order a new investigation to be made.

17 (b) The report of the earlier investigation must
18 contain the information and recommendation specified by
19 subsections (1) and (3) and be filed with the petition for
20 adoption."

21 Section 4. Section 40-8-123, MCA, is amended to read:

22 "40-8-123. Summary decree. (1) If the child is a
23 member of the extended family of one of the petitioners or
24 is a stepchild of the petitioner or the court finds that the
25 best interests of the child will be furthered thereby, the

1 court in its discretion, after examination of a report
 2 ordered or received pursuant to 40-8-122, may waive the
 3 entry of an interlocutory decree and the waiting period of 6
 4 months provided in 40-8-124 and grant a final decree of
 5 adoption if satisfied that the adoption is in the best
 6 interests of the child.

7 (2) The department or the child placing agency may
 8 recommend in the investigation report filed with the
 9 petition for adoption that the court issue a summary decree
 10 as provided for in subsection (1) if:

11 (a) a period of 6 months has elapsed since the
 12 department or licensed child placing agency placed the child
 13 for adoption; and

14 (b) the department or licensed child placing agency
 15 conducted an investigation during that period."

16 Section 5. Section 40-8-124, MCA, is amended to read:

17 "40-8-124. Interlocutory and final decree. (1) Upon
 18 examination of the report described in 40-8-122, if such
 19 report has been considered necessary by the court, and after
 20 hearing, the court may issue an interlocutory decree giving
 21 the care and custody to the petitioners pending the further
 22 order of the court.

23 (2) When a petition has been filed seeking the
 24 adoption of a child, the court must cause service of process
 25 to be made on the parent or parents of the child, except in

1 those cases hereinafter provided, in the following manner:

2 (a) The court shall order a citation to issue to the
 3 parent or parents in the name of the state of Montana and
 4 under the seal of the court directing such parent or parents
 5 to appear in court at a time to be fixed by the court and
 6 show cause why the petition should not be granted.

7 (b) Such citation, together with a copy of the
 8 petition for adoption, shall be personally served upon such
 9 parent or parents. If, however, any such parent or parents
 10 cannot be found within this state, service may be had by
 11 publication of a copy of the citation in the manner provided
 12 for the publication of summons by Rule 4, M.R.Civ.P.

13 (3) If, after completion of such service, any parent
 14 so served does not appear, the court may act upon the
 15 petition and the order of the court thereon shall be binding
 16 upon all persons so served; provided that any such person
 17 may appeal from the order in the manner and form provided
 18 for appeals from a judgment in civil actions.

19 (4) The petitioners and the child shall appear at the
 20 hearing, unless the presence of the child is waived by the
 21 court.

22 (5) Service of process, as aforesaid, need not be made
 23 on a parent who has consented in writing to an adoption or
 24 on any parent whose consent to adoption is not required
 25 under the provisions of 40-8-111, and service of process

1 shall not be made on any parent who has relinquished his
 2 child to the department of social and rehabilitation
 3 services or an adoption agency licensed by the department.

4 (6) After an interlocutory decree has been issued by
 5 the court or after the date of placement for adoption, the
 6 investigator, if any, shall observe the child in his
 7 adoptive home and report in writing to the court within 6
 8 months on any circumstances or conditions which may have a
 9 bearing on the adoption. After 6 months from the date of the
 10 interlocutory decree or the date of placement for adoption,
 11 the petitioners may apply to the court for a final decree of
 12 adoption. The court shall thereupon set a time and place for
 13 final hearing. Notice of the time and date of the hearing
 14 shall be served on the department ~~of---social---and~~
 15 ~~rehabilitation--services--and--the--investigator--if--any~~ or the
 16 licensed child placing agency or any other person named by
 17 the court. The investigator, if any, shall file with the
 18 court a written report of his findings and recommendations
 19 and certify that the described investigation, if any, has
 20 been made since the granting of the interlocutory decree or
 21 the date of placement for adoption. After hearing on said
 22 application, at which the petitioners and the child shall
 23 appear, unless the presence of the child is waived by the
 24 court, the court may enter a final decree of adoption if
 25 satisfied that the adoption is for the best interests of the

1 child. If the adoption is denied, an appropriate order shall
 2 be made as to the future custody of the child."

3 NEW SECTION. Section 6. Extension of authority. Any
 4 existing authority of the department of social and
 5 rehabilitation services to make rules on the subject of the
 6 provisions of this act is extended to the provisions of this
 7 act.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

1 HB BILL NO. 188
2 INTRODUCED BY Bradley, Kitchman Hoyer Maguire
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS
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13 individual who is not a stepparent or a member of the
14 child's extended family unless the parent files with the
15 district court for the county in which the prospective
16 adoptive parent or the parent making the placement resides:

- 17 (a) a notice of parental placement; and
- 18 (b) a relinquishment of parental rights to the
19 prospective adoptive parents executed voluntarily and in
20 accordance with 40-6-135(2) through (4).

21 (2) The notice of parental placement and the
22 relinquishment shall be filed prior to a parent's placement
23 of the child with an individual who intends to adopt the
24 child. The notice of parental placement shall contain the
25 following information:

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2 known, and if unknown, the steps taken to ascertain the
3 whereabouts of the parent or parents;

4 (b) the name and address of each prospective adoptive
5 parent;

6 (c) the name and address or expected date and place of
7 birth of the child; and

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

11 (3) Upon receipt of a notice of parental placement and
12 a relinquishment, the court shall require that the
13 department examine the child and conduct interviews with the
14 birth parents and prospective adoptive parents and report to
15 the court within 30 days but not earlier than 5 days after
16 the birth of the child. The report must state whether the
17 following requirements for placement have been met:

18 (a) that the decision to place was voluntarily made by
19 the birth parents;

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

23 (c) that the birth parents, the prospective adoptive
24 parents, and their representatives have agreed in writing to
25 provide the court with sworn affidavits containing itemized



1 statements of all fees charged or to be charged, expenses
2 incurred or to be incurred, and payments received or to be
3 received in connection with the proposed adoptive placement;

4 (d) that the prospective adoptive parents have been
5 provided a medical and social history of the child and birth
6 parents; and

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

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

12 (5) (a) At least 5 days' notice of the time and place
13 of the hearing must be given to the birth parents, the
14 prospective adoptive parents, any named guardian ad litem,
15 and the ~~agency or person who conducted the investigation~~
16 ~~under subsection (3) department.~~

17 (b) The hearing shall be closed to all persons except
18 those persons entitled to notice and their representatives
19 or counsel.

20 (6) If the court finds that all requirements for
21 placement have been met, the court may issue an order or
22 schedule a hearing for the purpose of terminating parental
23 rights and granting temporary custody to the prospective
24 adoptive parents. The prospective adoptive parents must file
25 their petition to adopt within 30 days of the order.

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

4 Section 2. Section 40-8-121, MCA, is amended to read:

5 "40-8-121. Petition for adoption. (1) A petition for
6 adoption shall be filed in duplicate, verified by the
7 petitioners, and shall specify:

8 (a) the full names, ages, and place of residence of
9 the petitioners and, if married, the place and date of the
10 marriage;

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

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

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

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

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

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

23 (2) One copy of the petition shall be retained by the
24 court. The other shall be sent to the department of ~~social~~
25 ~~and rehabilitation services. An additional copy shall be~~

1 ~~sent--to-any~~ or to the child placing agency participating in
2 the adoption proceeding.

3 (3) Any written consent required by this part may be
4 attached to the petition or may be filed after the filing of
5 the petition, with the consent of the court.

6 (4) Except as provided in 40-8-109, a petition for
7 adoption must be filed within 1 year of the time the child
8 was placed for adoption with the petitioner."

9 Section 3. Section 40-8-122, MCA, is amended to read:

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11 petition for adoption, the court shall order an
12 investigation to be made by the department or by a licensed
13 child placing agency or other person named by the court,
14 unless an investigation has been made prior to the filing as
15 provided in subsection (4). The investigation may be waived
16 if the petitioner is a stepparent of the child or if one of
17 the petitioners is a member of the child's extended family.
18 The report of investigation shall be filed with the court by
19 the investigator at the time the petition is filed or within
20 30 days from the issuance of the order for investigation,
21 unless time therefor is extended by the court. The report of
22 the investigation shall state:

23 (a) whether the child is legally free for adoption;

24 (b) whether the proposed home is a suitable one for
25 the child;

1 (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 the investigation shall become a
11 part of the files in the case and shall contain a definite
12 recommendation stating the reasons for or against the
13 proposed adoption.

14 (4) (a) If an investigation has been made within the 6
15 months immediately preceding the filing of the petition, the
16 court does not have to order a new investigation to be made.

17 (b) The report of the earlier investigation must
18 contain the information and recommendation specified by
19 subsections (1) and (3) and be filed with the petition for
20 adoption."

21 Section 4. Section 40-8-123, MCA, is amended to read:

22 "40-8-123. Summary decree. (1) If the child is a
23 member of the extended family of one of the petitioners or
24 is a stepchild of the petitioner or the court finds that the
25 best interests of the child will be furthered thereby, the

1 court in its discretion, after examination of a report
 2 ordered or received pursuant to 40-8-122, may waive the
 3 entry of an interlocutory decree and the waiting period of 6
 4 months provided in 40-8-124 and grant a final decree of
 5 adoption if satisfied that the adoption is in the best
 6 interests of the child.

7 (2) The department or the child placing agency may
 8 recommend in the investigation report filed with the
 9 petition for adoption that the court issue a summary decree
 10 as provided for in subsection (1) if:

11 (a) a period of 6 months has elapsed since the
 12 department or licensed child placing agency placed the child
 13 for adoption; and

14 (b) the department or licensed child placing agency
 15 conducted an investigation during that period."

16 Section 5. Section 40-8-124, MCA, is amended to read:

17 "40-8-124. Interlocutory and final decree. (1) Upon
 18 examination of the report described in 40-8-122, if such
 19 report has been considered necessary by the court, and after
 20 hearing, the court may issue an interlocutory decree giving
 21 the care and custody to the petitioners pending the further
 22 order of the court.

23 (2) When a petition has been filed seeking the
 24 adoption of a child, the court must cause service of process
 25 to be made on the parent or parents of the child, except in

1 those cases hereinafter provided, in the following manner:

2 (a) The court shall order a citation to issue to the
 3 parent or parents in the name of the state of Montana and
 4 under the seal of the court directing such parent or parents
 5 to appear in court at a time to be fixed by the court and
 6 show cause why the petition should not be granted.

7 (b) Such citation, together with a copy of the
 8 petition for adoption, shall be personally served upon such
 9 parent or parents. If, however, any such parent or parents
 10 cannot be found within this state, service may be had by
 11 publication of a copy of the citation in the manner provided
 12 for the publication of summons by Rule 4, M.R.Civ.P.

13 (3) If, after completion of such service, any parent
 14 so served does not appear, the court may act upon the
 15 petition and the order of the court thereon shall be binding
 16 upon all persons so served; provided that any such person
 17 may appeal from the order in the manner and form provided
 18 for appeals from a judgment in civil actions.

19 (4) The petitioners and the child shall appear at the
 20 hearing, unless the presence of the child is waived by the
 21 court.

22 (5) Service of process, as aforesaid, need not be made
 23 on a parent who has consented in writing to an adoption or
 24 on any parent whose consent to adoption is not required
 25 under the provisions of 40-8-111, and service of process

1 shall not be made on any parent who has relinquished his
 2 child to the department of social and rehabilitation
 3 services or an adoption agency licensed by the department.

4 (6) After an interlocutory decree has been issued by
 5 the court or after the date of placement for adoption, the
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 8 months on any circumstances or conditions which may have a
 9 bearing on the adoption. After 6 months from the date of the
 10 interlocutory decree or the date of placement for adoption,
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 17 the court. The investigator, if any, shall file with the
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 22 application, at which the petitioners and the child shall
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 24 court, the court may enter a final decree of adoption if
 25 satisfied that the adoption is for the best interests of the

1 child. If the adoption is denied, an appropriate order shall
 2 be made as to the future custody of the child."

3 NEW SECTION. Section 6. Extension of authority. Any
 4 existing authority of the department of social and
 5 rehabilitation services to make rules on the subject of the
 6 provisions of this act is extended to the provisions of this
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 2 INTRODUCED BY Bradley, Kitchman Hoyer Mazurek
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 7 birth of the child; and

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 9 litem, or other representative, if any, for each of the
 10 parties in (a) through (c) of subsection (2).

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 17 following requirements for placement have been met:

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 21 investigate or provide protective services to the family
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 24 parents, and their representatives have agreed in writing to
 25 provide the court with sworn affidavits containing itemized

1 statements of all fees charged or to be charged, expenses
2 incurred or to be incurred, and payments received or to be
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4 (d) that the prospective adoptive parents have been
5 provided a medical and social history of the child and birth
6 parents; and

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

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10 placement and the relinquishment, the court shall schedule a
11 hearing to consider the proposed placement.

12 (5) (a) At least 5 days' notice of the time and place
13 of the hearing must be given to the birth parents, the
14 prospective adoptive parents, any named guardian ad litem,
15 and the ~~agency or person who conducted the investigation~~
16 ~~under subsection (3) department.~~

17 (b) The hearing shall be closed to all persons except
18 those persons entitled to notice and their representatives
19 or counsel.

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21 placement have been met, the court may issue an order or
22 schedule a hearing for the purpose of terminating parental
23 rights and granting temporary custody to the prospective
24 adoptive parents. The prospective adoptive parents must file
25 their petition to adopt within 30 days of the order.

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

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6 adoption shall be filed in duplicate, verified by the
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11 (b) when the petitioners acquired or intend to acquire
12 custody of the child and from what person or agency;

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

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

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

23 (2) One copy of the petition shall be retained by the
24 court. The other shall be sent to the department of ~~social~~
25 ~~and rehabilitation services. An additional copy shall be~~

1 ~~sent--to-any or to the child placing~~ agency participating in
2 the adoption proceeding.

3 (3) Any written consent required by this part may be
4 attached to the petition or may be filed after the filing of
5 the petition, with the consent of the court.

6 (4) Except as provided in 40-8-109, a petition for
7 adoption must be filed within 1 year of the time the child
8 was placed for adoption with the petitioner."

9 Section 3. Section 40-8-122, MCA, is amended to read:

10 "40-8-122. Investigation. (1) Upon the filing of a
11 petition for adoption, the court shall order an
12 investigation to be made by the department or by a licensed
13 child placing agency or other person named by the court,
14 unless an investigation has been made prior to the filing as
15 provided in subsection (4). The investigation may be waived
16 if the petitioner is a stepparent of the child or if one of
17 the petitioners is a member of the child's extended family.
18 The report of investigation shall be filed with the court by
19 the investigator at the time the petition is filed or within
20 30 days from the issuance of the order for investigation,
21 unless time therefor is extended by the court. The report of
22 the investigation shall state:

23 (a) whether the child is legally free for adoption;

24 (b) whether the proposed home is a suitable one for
25 the child;

1 (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 the investigation shall become a
11 part of the files in the case and shall contain a definite
12 recommendation stating the reasons for or against the
13 proposed adoption.

14 (4) (a) If an investigation has been made within the 6
15 months immediately preceding the filing of the petition, the
16 court does not have to order a new investigation to be made.

17 (b) The report of the earlier investigation must
18 contain the information and recommendation specified by
19 subsections (1) and (3) and be filed with the petition for
20 adoption."

21 Section 4. Section 40-8-123, MCA, is amended to read:

22 "40-8-123. Summary decree. (1) If the child is a
23 member of the extended family of one of the petitioners or
24 is a stepchild of the petitioner or the court finds that the
25 best interests of the child will be furthered thereby, the

1 court in its discretion, after examination of a report
 2 ordered or received pursuant to 40-8-122, may waive the
 3 entry of an interlocutory decree and the waiting period of 6
 4 months provided in 40-8-124 and grant a final decree of
 5 adoption if satisfied that the adoption is in the best
 6 interests of the child.

7 (2) The department or the child placing agency may
 8 recommend in the investigation report filed with the
 9 petition for adoption that the court issue a summary decree
 10 as provided for in subsection (1) if:

11 (a) a period of 6 months has elapsed since the
 12 department or licensed child placing agency placed the child
 13 for adoption; and

14 (b) the department or licensed child placing agency
 15 conducted an investigation during that period."

16 Section 5. Section 40-8-124, MCA, is amended to read:
 17 "40-8-124. Interlocutory and final decree. (1) Upon
 18 examination of the report described in 40-8-122, if such
 19 report has been considered necessary by the court, and after
 20 hearing, the court may issue an interlocutory decree giving
 21 the care and custody to the petitioners pending the further
 22 order of the court.

23 (2) When a petition has been filed seeking the
 24 adoption of a child, the court must cause service of process
 25 to be made on the parent or parents of the child, except in

1 those cases hereinafter provided, in the following manner:

2 (a) The court shall order a citation to issue to the
 3 parent or parents in the name of the state of Montana and
 4 under the seal of the court directing such parent or parents
 5 to appear in court at a time to be fixed by the court and
 6 show cause why the petition should not be granted.

7 (b) Such citation, together with a copy of the
 8 petition for adoption, shall be personally served upon such
 9 parent or parents. If, however, any such parent or parents
 10 cannot be found within this state, service may be had by
 11 publication of a copy of the citation in the manner provided
 12 for the publication of summons by Rule 4, M.R.Civ.P.

13 (3) If, after completion of such service, any parent
 14 so served does not appear, the court may act upon the
 15 petition and the order of the court thereon shall be binding
 16 upon all persons so served; provided that any such person
 17 may appeal from the order in the manner and form provided
 18 for appeals from a judgment in civil actions.

19 (4) The petitioners and the child shall appear at the
 20 hearing, unless the presence of the child is waived by the
 21 court.

22 (5) Service of process, as aforesaid, need not be made
 23 on a parent who has consented in writing to an adoption or
 24 on any parent whose consent to adoption is not required
 25 under the provisions of 40-8-111, and service of process

1 shall not be made on any parent who has relinquished his
 2 child to the department of social and rehabilitation
 3 services or an adoption agency licensed by the department.

4 (6) After an interlocutory decree has been issued by
 5 the court or after the date of placement for adoption, the
 6 investigator, if any, shall observe the child in his
 7 adoptive home and report in writing to the court within 6
 8 months on any circumstances or conditions which may have a
 9 bearing on the adoption. After 6 months from the date of the
 10 interlocutory decree or the date of placement for adoption,
 11 the petitioners may apply to the court for a final decree of
 12 adoption. The court shall thereupon set a time and place for
 13 final hearing. Notice of the time and date of the hearing
 14 shall be served on the department ~~of---social---and~~
 15 ~~rehabilitation--services-and-the-investigator, if any~~ or the
 16 licensed child placing agency or any other person named by
 17 the court. The investigator, if any, shall file with the
 18 court a written report of his findings and recommendations
 19 and certify that the described investigation, if any, has
 20 been made since the granting of the interlocutory decree or
 21 the date of placement for adoption. After hearing on said
 22 application, at which the petitioners and the child shall
 23 appear, unless the presence of the child is waived by the
 24 court, the court may enter a final decree of adoption if
 25 satisfied that the adoption is for the best interests of the

1 child. If the adoption is denied, an appropriate order shall
 2 be made as to the future custody of the child."

3 NEW SECTION. Section 6. Extension of authority. Any
 4 existing authority of the department of social and
 5 rehabilitation services to make rules on the subject of the
 6 provisions of this act is extended to the provisions of this
 7 act.

-End-

1 HOUSE BILL NO. 188

2 INTRODUCED BY BRADLEY, KITSELMAN, HAGER, MAZUREK

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS
5 RELATING TO THE ADOPTION OF CHILDREN TO CLARIFY THE
6 PROCEDURE FOR ADOPTION; AND AMENDING SECTIONS 40-8-109 AND
7 40-8-121 THROUGH 40-8-124, MCA."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 40-8-109, MCA, is amended to read:

11 "40-8-109. Placement for adoption by parents. (1) No
12 parent may make a placement of a child for adoption with an
13 individual who is not a stepparent or a member of the
14 child's extended family unless the parent files with the
15 district court for the county in which the prospective
16 adoptive parent or the parent making the placement resides:

17 (a) a notice of parental placement; and

18 (b) a relinquishment of parental rights to the
19 prospective adoptive parents executed voluntarily and in
20 accordance with 40-6-135(2) through (4).

21 (2) The notice of parental placement and the
22 relinquishment shall be filed prior to a parent's placement
23 of the child with an individual who intends to adopt the
24 child. The notice of parental placement shall contain the
25 following information:

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

4 (b) the name and address of each prospective adoptive
5 parent;

6 (c) the name and address or expected date and place of
7 birth of the child; and

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

11 (3) Upon receipt of a notice of parental placement and
12 a relinquishment, the court shall require that the
13 department examine the child and conduct interviews with the
14 birth parents and prospective adoptive parents and report to
15 the court within 30 days but not earlier than 5 days after
16 the birth of the child. The report must state whether the
17 following requirements for placement have been met:

18 (a) that the decision to place was voluntarily made by
19 the birth parents;

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

23 (c) that the birth parents, the prospective adoptive
24 parents, and their representatives have agreed in writing to
25 provide the court with sworn affidavits containing itemized

1 statements of all fees charged or to be charged, expenses
 2 incurred or to be incurred, and payments received or to be
 3 received in connection with the proposed adoptive placement;

4 (d) that the prospective adoptive parents have been
 5 provided a medical and social history of the child and birth
 6 parents; and

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

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

12 (5) (a) At least 5 days' notice of the time and place
 13 of the hearing must be given to the birth parents, the
 14 prospective adoptive parents, any named guardian ad litem,
 15 and the ~~agency or person who conducted the investigation~~
 16 ~~under subsection (3) department.~~

17 (b) The hearing shall be closed to all persons except
 18 those persons entitled to notice and their representatives
 19 or counsel.

20 (6) If the court finds that all requirements for
 21 placement have been met, the court may issue an order or
 22 schedule a hearing for the purpose of terminating parental
 23 rights and granting temporary custody to the prospective
 24 adoptive parents. The prospective adoptive parents must file
 25 their petition to adopt within 30 days of the order.

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

4 Section 2. Section 40-8-121, MCA, is amended to read:

5 "40-8-121. Petition for adoption. (1) A petition for
 6 adoption shall be filed in duplicate, verified by the
 7 petitioners, and shall specify:

8 (a) the full names, ages, and place of residence of
 9 the petitioners and, if married, the place and date of the
 10 marriage;

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

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

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

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

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

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

23 (2) One copy of the petition shall be retained by the
 24 court. The other shall be sent to the department of ~~social~~
 25 ~~and rehabilitation services. An additional copy shall be~~

1 ~~sent--to-any or to the child placing~~ agency participating in
 2 the adoption proceeding.

3 (3) Any written consent required by this part may be
 4 attached to the petition or may be filed after the filing of
 5 the petition, with the consent of the court.

6 (4) Except as provided in 40-8-109, a petition for
 7 adoption must be filed within 1 year of the time the child
 8 was placed for adoption with the petitioner."

9 Section 3. Section 40-8-122, MCA, is amended to read:

10 "40-8-122. Investigation. (1) Upon the filing of a
 11 petition for adoption, the court shall order an
 12 investigation to be made by the department or by a licensed
 13 child placing agency or other person named by the court,
 14 unless an investigation has been made prior to the filing as
 15 provided in subsection (4). The investigation may be waived
 16 if the petitioner is a stepparent of the child or if one of
 17 the petitioners is a member of the child's extended family.
 18 The report of investigation shall be filed with the court by
 19 the investigator at the time the petition is filed or within
 20 30 days from the issuance of the order for investigation,
 21 unless time therefor is extended by the court. The report of
 22 the investigation shall state:

- 23 (a) whether the child is legally free for adoption;
- 24 (b) whether the proposed home is a suitable one for
- 25 the child;

1 (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 the investigation shall become a
 11 part of the files in the case and shall contain a definite
 12 recommendation stating the reasons for or against the
 13 proposed adoption.

14 (4) (a) If an investigation has been made within the 6
 15 months immediately preceding the filing of the petition, the
 16 court does not have to order a new investigation to be made.

17 (b) The report of the earlier investigation must
 18 contain the information and recommendation specified by
 19 subsections (1) and (3) and be filed with the petition for
 20 adoption."

21 Section 4. Section 40-8-123, MCA, is amended to read:

22 "40-8-123. Summary decree. (1) If the child is a
 23 member of the extended family of one of the petitioners or
 24 is a stepchild of the petitioner or the court finds that the
 25 best interests of the child will be furthered thereby, the

1 court in its discretion, after examination of a report
 2 ordered or received pursuant to 40-8-122, may waive the
 3 entry of an interlocutory decree and the waiting period of 6
 4 months provided in 40-8-124 and grant a final decree of
 5 adoption if satisfied that the adoption is in the best
 6 interests of the child.

7 (2) The department or the child placing agency may
 8 recommend in the investigation report filed with the
 9 petition for adoption that the court issue a summary decree
 10 as provided for in subsection (1) if:

11 (a) a period of 6 months has elapsed since the
 12 department or licensed child placing agency placed the child
 13 for adoption; and

14 (b) the department or licensed child placing agency
 15 conducted an investigation during that period."

16 Section 5. Section 40-8-124, MCA, is amended to read:

17 "40-8-124. Interlocutory and final decree. (1) Upon
 18 examination of the report described in 40-8-122, if such
 19 report has been considered necessary by the court, and after
 20 hearing, the court may issue an interlocutory decree giving
 21 the care and custody to the petitioners pending the further
 22 order of the court.

23 (2) When a petition has been filed seeking the
 24 adoption of a child, the court must cause service of process
 25 to be made on the parent or parents of the child, except in

1 those cases hereinafter provided, in the following manner:

2 (a) The court shall order a citation to issue to the
 3 parent or parents in the name of the state of Montana and
 4 under the seal of the court directing such parent or parents
 5 to appear in court at a time to be fixed by the court and
 6 show cause why the petition should not be granted.

7 (b) Such citation, together with a copy of the
 8 petition for adoption, shall be personally served upon such
 9 parent or parents. If, however, any such parent or parents
 10 cannot be found within this state, service may be had by
 11 publication of a copy of the citation in the manner provided
 12 for the publication of summons by Rule 4, M.R.Civ.P.

13 (3) If, after completion of such service, any parent
 14 so served does not appear, the court may act upon the
 15 petition and the order of the court thereon shall be binding
 16 upon all persons so served; provided that any such person
 17 may appeal from the order in the manner and form provided
 18 for appeals from a judgment in civil actions.

19 (4) The petitioners and the child shall appear at the
 20 hearing, unless the presence of the child is waived by the
 21 court.

22 (5) Service of process, as aforesaid, need not be made
 23 on a parent who has consented in writing to an adoption or
 24 on any parent whose consent to adoption is not required
 25 under the provisions of 40-8-111, and service of process

1 shall not be made on any parent who has relinquished his
 2 child to the department of social and rehabilitation
 3 services or an adoption agency licensed by the department.

4 (6) After an interlocutory decree has been issued by
 5 the court or after the date of placement for adoption, the
 6 investigator, if any, shall observe the child in his
 7 adoptive home and report in writing to the court within 6
 8 months on any circumstances or conditions which may have a
 9 bearing on the adoption. After 6 months from the date of the
 10 interlocutory decree or the date of placement for adoption,
 11 the petitioners may apply to the court for a final decree of
 12 adoption. The court shall thereupon set a time and place for
 13 final hearing. Notice of the time and date of the hearing
 14 shall be served on the department ~~of--social--and~~
 15 ~~rehabilitation--services--and--the--investigator,--if--any~~ or the
 16 licensed child placing agency or any other person named by
 17 the court. The investigator, if any, shall file with the
 18 court a written report of his findings and recommendations
 19 and certify that the described investigation, if any, has
 20 been made since the granting of the interlocutory decree or
 21 the date of placement for adoption. After hearing on said
 22 application, at which the petitioners and the child shall
 23 appear, unless the presence of the child is waived by the
 24 court, the court may enter a final decree of adoption if
 25 satisfied that the adoption is for the best interests of the

1 child. If the adoption is denied, an appropriate order shall
 2 be made as to the future custody of the child."

3 NEW SECTION. Section 6. Extension of authority. Any
 4 existing authority of the department of social and
 5 rehabilitation services to make rules on the subject of the
 6 provisions of this act is extended to the provisions of this
 7 act.

-End-