

SENATE BILL NO. 177  
INTRODUCED BY YELLOWTAIL

IN THE SENATE

JANUARY 18, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
JANUARY 26, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 27, 1989	PRINTING REPORT.
JANUARY 28, 1989	SECOND READING, DO PASS.
JANUARY 30, 1989	ENGROSSING REPORT.
JANUARY 31, 1989	THIRD READING, PASSED. AYES, 48; NOES, 2.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 31, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 20, 1989	FIRST READING.
MARCH 2, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 4, 1989	SECOND READING, CONCURRED IN.
MARCH 6, 1989	THIRD READING, CONCURRED IN. AYES, 71; NOES, 24.
	RETURNED TO SENATE.

IN THE SENATE

MARCH 7, 1989	RECEIVED FROM HOUSE.
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SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *177*  
 2 INTRODUCED BY *Yellowknife*  
 3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING AN  
 6 ADMINISTRATIVE PROCEDURE FOR DETERMINING PATERNITY OF  
 7 CHILDREN RECEIVING CHILD SUPPORT ENFORCEMENT SERVICES FROM  
 8 THE STATE; AUTHORIZING THE DEPARTMENT OF REVENUE TO  
 9 DETERMINE PATERNITY IN CONTESTED AND UNCONTESTED CASES;  
 10 COMPELLING PATERNITY BLOOD TESTS WHEN PATERNITY IS  
 11 CONTESTED; CREATING A REBUTTABLE PRESUMPTION OF PATERNITY  
 12 BASED ON PATERNITY BLOOD TEST RESULTS; EXPEDITING RESOLUTION  
 13 OF CONTESTED PATERNITY CASES IN DISTRICT COURT; AND AMENDING  
 14 SECTION 40-5-201, MCA."

15  
 16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 **Section 1.** Section 40-5-201, MCA, is amended to read:

18 "40-5-201. Definitions. As used in this part, the  
 19 following definitions apply:

20 (1) "Alleged father" means a man who is alleged to  
 21 have engaged in sexual intercourse with a child's mother  
 22 during a possible time of conception of the child or a man  
 23 who is presumed to be a child's father under the provisions  
 24 of 40-6-105.

25 (2) "Child" or "dependent child" means any person

1 under 18 years of age who is not otherwise emancipated,  
 2 self-supporting, married, or a member of the armed forces of  
 3 the United States and for whom:

4 (a) support rights are assigned under 53-2-613;

5 (b) a public assistance payment has been made;

6 (c) the department is providing support enforcement  
 7 services under 40-5-203; or

8 (d) the department has received a referral for  
 9 interstate services from an agency of another state under  
 10 the provisions of the Uniform Reciprocal Enforcement of  
 11 Support Act or under Title IV-D of the Social Security Act.

12 (3) "Department" means the department of revenue.

13 (4) "Director" means the director of the department  
 14 of revenue or his authorized representative.

15 (5) "Disposable earnings" means that part of the  
 16 earnings of any individual remaining after the deduction  
 17 from those earnings of any amount required by law to be  
 18 withheld.

19 (6) "District court order" means any judgment or  
 20 order of the district court of the state of Montana or an  
 21 order of a court of appropriate jurisdiction of another  
 22 state ordering payment of a set or determinable amount of  
 23 support money.

24 (7) "Earnings" means compensation paid or payable  
 25 for personal services, whether denominated as wages, salary,

commission, bonus, or otherwise, and specifically includes periodic payments under pension or retirement programs or insurance policies of any type. "Earnings" specifically includes all gain derived from capital, labor, or both combined, including profit gained through sale or conversion of capital assets.

{7}{8} "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a dependent child or children.

{9} "Paternity blood test" means a test that demonstrates through examination of genetic markers either that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the natural father of a child. Paternity blood tests may include but are not limited to the human leukocyte antigen test and DNA probe technology.

{8}{10} "Public assistance" means any type of monetary or other assistance, including medical and foster care benefits, furnished to a person by a state or county agency, regardless of the original source of the assistance.

{9}{11} "Responsible parent" means the natural or adoptive parent of a dependent child.

{10}{12} "Support debt" or "support obligation" means:

(a) the sum created by the failure to provide support to a dependent child under the laws of this state or the

decree of any court of appropriate jurisdiction ordering a sum to be paid as child support; or

(b) the sum created by a decree or order of any court of appropriate jurisdiction ordering a sum to be paid as spousal maintenance under chapter 4, part 2, of this title when the judgment or order requiring payment of maintenance also contains a judgment or order requiring payment of child support for a child of whom the person awarded maintenance is the custodial parent."

**Section 2. Jurisdiction and venue.** (1) For purposes of an administrative action brought under [sections 2 through 8], personal jurisdiction is established in the department over any person who has had sexual intercourse in this state that has resulted in the birth of a child who is the subject of such proceedings and over any person subject to the provisions of Rule 4B of the Montana Rules of Civil Procedure, including but not limited to the child, the child's parents, any person having custody of the child, and any alleged father.

(2) Personal jurisdiction over the persons described in subsection (1) may be acquired by personal service or by service of notice by certified mail.

(3) If the child or either parent resides in this state, a hearing under [sections 2 through 8] may be held in the county where:

- 1 (a) the child resides;
- 2 (b) either parent resides; or
- 3 (c) the department or any of its regional offices is
- 4 located.

5 **Section 3. Establishment of paternity -- notice of**  
 6 **paternity determination -- contents.** (1) When the paternity  
 7 of a child has not been legally established under the  
 8 provisions of Title 40, chapter 6, part 1, or otherwise, the  
 9 department may proceed to establish paternity under the  
 10 provisions of [sections 2 through 8]. An administrative  
 11 hearing held under the provisions of [sections 2 through 8]  
 12 is a contested case within the meaning of 2-4-102 and is  
 13 subject to the provisions of Title 2, chapter 4, except as  
 14 otherwise provided in [sections 2 through 8].

15 (2) It is presumed to be in the best interest of a  
 16 child to legally determine and establish his paternity. A  
 17 presumption under this subsection may be rebutted by a  
 18 preponderance of the evidence.

19 (3) In any proceeding under [sections 2 through 8], if  
 20 a man acknowledges his paternity of a child in writing and  
 21 such acknowledgment is filed with the department, the  
 22 department may enter an order establishing legal paternity.  
 23 An acknowledgment is binding on a parent who executes it,  
 24 whether or not he is a minor.

25 (4) The department shall commence proceedings to

1 establish paternity by serving on an alleged father a notice  
 2 of paternity determination. The department may not serve  
 3 such notice unless it has:

4 (a) a sworn statement from the child's mother claiming  
 5 that the alleged father is the child's natural father;

6 (b) evidence of the existence of a presumption of  
 7 paternity under 40-6-105; or

8 (c) any other reasonable cause to believe that the  
 9 alleged father is the child's natural father.

10 (5) Service on the alleged father of the notice of  
 11 paternity determination shall be made as provided in  
 12 [section 2(2)]. The notice must include:

13 (a) an allegation that the alleged father is the  
 14 natural father of the child involved;

15 (b) the child's name and place and date of birth;

16 (c) the name of the child's mother and the name of the  
 17 person or agency having custody of the child, if other than  
 18 the mother;

19 (d) the probable time or period of time during which  
 20 conception took place;

21 (e) a statement that if the alleged father fails to  
 22 timely deny the allegation of paternity, the question of  
 23 paternity may be resolved against him without further  
 24 notice;

25 (f) a statement that if the alleged father timely

1 denies the allegation of paternity:

2 (i) he is subject to compulsory blood testing;

3 (ii) a blood test may result in a presumption of  
4 paternity; and

5 (iii) he may request a trial in district court to  
6 determine paternity before the final administrative decision  
7 is made.

8 (6) The alleged father may file a written denial of  
9 paternity with the department within 20 days after service  
10 of the notice of paternity determination.

11 (7) When there is more than one alleged father of a  
12 child, the department may serve a notice of paternity  
13 determination on each alleged father in the same  
14 consolidated proceeding or in separate proceedings. Failure  
15 to serve notice on an alleged father does not prevent the  
16 department from serving notice on any other alleged father  
17 of the same child.

18 **Section 4. Establishment of paternity --**  
19 **administrative hearing -- subpoena -- compulsory blood**  
20 **testing.** (1) When the department receives a timely written  
21 denial of paternity, it may order the alleged father to  
22 appear for an administrative hearing. The hearing may be  
23 conducted by teleconferencing methods. If the testimony and  
24 other supplementary evidence demonstrate a reasonable  
25 probability that the alleged father had sexual intercourse

1 with the child's mother during the probable time of the  
2 child's conception or if the evidence shows a probable  
3 existence of a presumption under 40-6-105, the department  
4 may issue a subpoena ordering the alleged father to submit  
5 to paternity blood testing. A reasonable probability of  
6 sexual intercourse during the possible time of conception  
7 may be established by affidavit of the child's mother.

8 (2) If the department does not receive a timely  
9 written denial of paternity or if an alleged father fails to  
10 appear at a scheduled hearing or for a scheduled paternity  
11 blood test, the department may enter an order declaring the  
12 alleged father the legal father of the child. The order will  
13 take effect within 10 days after entry of the default unless  
14 the alleged father before the tenth day presents good cause  
15 for failure to make a timely denial or for failure to appear  
16 at the hearing or to undergo paternity blood testing. The  
17 department may not enter an order under this section if  
18 there is more than one alleged father unless the default  
19 applies to only one of them and all others have been  
20 excluded by the results of paternity blood testing. An order  
21 issued under the provisions of this section may be set aside  
22 as provided in [section 6(3)].

23 (3) If the rights of others and the interests of  
24 justice so require, the department may apply to any district  
25 court under the provisions of 2-4-104 for an order

1 compelling an alleged father to submit to paternity blood  
2 testing. The court shall hear the matter as expeditiously  
3 as possible. If the court finds reasonable cause to believe  
4 that the alleged father is the natural or presumed father of  
5 the child, the court shall enter an order compelling the  
6 alleged father to submit to a paternity blood test. As  
7 provided in subsection (1), reasonable cause may be  
8 established by affidavit of the child's mother.

9 **Section 5. Paternity blood tests -- use of expert's**  
10 **affidavit -- effect of test results.** (1) The department  
11 shall appoint an expert who is qualified in examining  
12 genetic markers to conduct any paternity blood test required  
13 by [section 4]. If the issue of paternity is referred to the  
14 district court under [section 7], the expert's completed and  
15 certified report of the results and conclusions of a  
16 paternity blood test is admissible as evidence without  
17 additional testimony by the expert if the laboratory in  
18 which the expert performed the test is accredited for  
19 parentage testing by the American association of blood  
20 banks. Accreditation may be established by verified  
21 statement or reference to published sources.

22 (2) An affidavit documenting the chain of custody of  
23 any blood specimen is admissible to establish such chain of  
24 custody.

25 (3) If the scientific evidence resulting from a blood

1 test:

2 (a) conclusively shows that the alleged father could  
3 not have been the natural father, the question of paternity  
4 shall be resolved accordingly. A finding under this  
5 subsection is sufficient to overcome a presumption created  
6 by 40-6-105.

7 (b) shows a 95% or higher statistical probability of  
8 paternity, the alleged father is presumed to be the natural  
9 father of the child. This presumption may be rebutted in an  
10 appropriate action in district court by a preponderance of  
11 the evidence.

12 (c) does not exclude the alleged father and shows less  
13 than a 95% statistical probability of paternity, the test  
14 results may be weighed in conjunction with other evidence to  
15 establish paternity.

16 **Section 6. Effect of order establishing paternity --**  
17 **birth records -- relief from order.** (1) An administrative  
18 order of the department declaring the paternity of a child,  
19 docketed as provided in 40-5-227, establishes the legal  
20 existence of the parent and child relationship for all  
21 purposes and confers or imposes all parental rights,  
22 privileges, duties, and obligations.

23 (2) Upon the request of the mother or father of the  
24 child, the department shall file a copy of its order with  
25 the department of health and environmental sciences, which

1 shall prepare a substitute certificate of birth, if  
2 necessary, consistent with the administrative order. The  
3 substitute certificate of birth is subject to the provisions  
4 of 40-6-123, with references to "court" taken to mean  
5 "department".

6 (3) Except for an order based on a voluntary  
7 acknowledgment of paternity, the department may set aside an  
8 administrative order establishing the paternity of a child  
9 upon the application of any affected party and upon a  
10 showing of any of the grounds and within the time frames  
11 provided in Rule 60(b) of the Montana Rules of Civil  
12 Procedure.

13 (4) An order of the department under [sections 3  
14 through 6] may be reviewed under the provisions of Title 2,  
15 chapter 4, part 7.

16 **Section 7. Referral of paternity issue to district**  
17 **court -- record -- parties -- exclusion of other matters --**  
18 **fees.** (1) If the scientific evidence resulting from a blood  
19 test does not exclude the alleged father and he continues to  
20 deny paternity, the department shall refer the matter to the  
21 district court for a determination based on the contents of  
22 the administrative hearing record and any further evidence  
23 that may be produced at trial. Except as otherwise provided  
24 in [sections 2 through 8], proceedings in the district court  
25 shall be conducted pursuant to Title 40, chapter 6, part 1.

1 (2) The administrative record must include:

2 (a) a copy of the notice of paternity determination  
3 and the return of service thereof;

4 (b) the alleged father's written denial of paternity,  
5 if any;

6 (c) the transcript of the administrative hearing;

7 (d) the paternity blood test results and any report of  
8 an expert based on the results; and

9 (e) any other relevant information.

10 (3) Upon filing of the record with the district court,  
11 the court acquires jurisdiction over the parties as if they  
12 had been served with a summons and complaint. The department  
13 shall serve written notice upon the alleged father as  
14 provided in [section 2 (2)] that the issue of paternity has  
15 been referred to the district court for determination.

16 (4) In a proceeding in the district court, the  
17 department shall appear on the issue of paternity only. The  
18 court may not appoint a guardian ad litem for the child  
19 unless the court in its discretion determines that such an  
20 appointment is necessary and in the best interest of the  
21 child. Neither the mother nor the child is a necessary  
22 party, but either may testify as a witness.

23 (5) No other matter may be joined with an action to  
24 determine the existence or nonexistence of the parent and  
25 child relationship under this section. The parties shall



1 institute an independent action to address other issues,  
2 including visitation and custody.

3 (6) Except as provided in 25-10-711, the department is  
4 not liable for attorney fees, including fees for attorneys  
5 appointed under 40-6-119, or fees of a guardian ad litem  
6 appointed under 40-6-110.

7 **Section 8. District court proceedings -- objection to**  
8 **tests -- additional tests.**

9 (1) If an alleged father objects to the procedures for  
10 or the results of a paternity blood test, he shall file a  
11 written objection with the court within 20 days after  
12 service of the notice required by [section 7(3)]. The court  
13 shall order an additional paternity blood test if a written  
14 objection is filed or at the request of the department. An  
15 additional test must be performed by the same or another  
16 expert who is qualified in paternity blood testing. Failure  
17 of the alleged father to make a timely challenge is  
18 considered a waiver of any defense to the test results or  
19 test procedures, including the chain of custody.

20 (2) In any hearing before the court or at trial,  
21 testimony relating to sexual intercourse of the mother with  
22 any person who has been excluded from consideration as a  
23 possible father of the child involved by the results of a  
24 paternity blood test is inadmissible in evidence.

25 (3) When a paternity blood test excludes an alleged

1 father from possible paternity, the test shall be conclusive  
2 evidence of nonpaternity of the alleged father for all  
3 purposes in the district court.

4 **Section 9. Extension of authority.** Any existing  
5 authority to make rules on the subject of the provisions of  
6 [this act] is extended to the provisions of [this act].

7 **Section 10. Codification instruction.** [Sections 2  
8 through 8] are intended to be codified as an integral part  
9 of Title 40, chapter 5, part 2, and the provisions of Title  
10 40, chapter 5, part 2, apply to [sections 2 through 8].

11 **Section 11. Severability.** If a part of [this act] is  
12 invalid, all valid parts that are severable from the invalid  
13 part remain in effect. If a part of [this act] is invalid  
14 in one or more of its applications, the part remains in  
15 effect in all valid applications that are severable from the  
16 invalid applications.

-End-

## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB177, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act creating an administrative procedure for determining paternity of children receiving child support enforcement services from the state; authorizing the Department of Revenue to determine paternity in contested and uncontested cases; compelling paternity blood tests when paternity is contested; creating a rebuttable presumption of paternity based on paternity blood test results; expediting resolution of contested paternity cases in district court.

ASSUMPTIONS:

1. The effective date for this proposal is October 1, 1989.
2. The active caseload will be 2,294 in FY 90 and 2,860 in FY 91.
3. At 500 cases per caseworker FTE, 9 new FTE will be required in FY 90; five at Grade 12, (caseworkers) and additional support staff of two at Grade 9, and two at Grade 15.
4. One additional FTE will be required in FY 91 leaving a total of 10 FTE for FY 91; six at Grade 12, (caseworkers) and additional support staff of two at Grade 9, and two at Grade 15.
5. Administrative expense for these positions is calculated at step 2; there will be no wage increase in the biennium; fringe benefits will be 21.94% the first year and 22.23% the second year.
6. The federal government covers 68% of administrative costs incurred prior to October 1, 1989; after that time the federal government will cover 66% of costs. (The additional administrative expense shown below reflects the state portion only.)
7. The federal government covers 90% of paternity blood test costs.
8. Approximately 350 cases in FY 90 and 400 cases in FY 91 go to hearing and need paternity blood tests.
9. Blood tests will cost \$285 per case (\$95 per person; mother, alleged father, and child.)
10. Hearings will cost \$80 per case.
11. Paternity will be established in 769 cases in FY 90 and 1044 cases in FY 91.
12. Department collections will be \$774,960 for AFDC cases and \$40,787 for NAFDC cases in FY 90 and \$966,031 for AFDC cases and \$50,844 for NAFDC cases in FY 91.
13. Federal government incentive payments (these are based on cost-effectiveness ratios) will be 7% of collections or \$54,247 for AFDC and \$2,855 for NAFDC in FY 90 and \$67,622 for AFDC and \$3,559 for NAFDC in FY 91.
14. The state's share of AFDC collections will be \$227,683 in FY 90 and \$283,820 in FY 91.
15. Failure to comply with the Family Support Act of 1988 could result in graduated sanctions from 1% to 5% of IV-A federal funding. A 1% sanction would represent a reduction of \$270,663 in federal AFDC funding. A 5% sanction would represent a reduction of \$1,353,314 in federal AFDC funding.

*Ray Shackelford* 1/25/89

RAY SHACKLEFORD, BUDGET DIRECTOR DATE  
Office of Budget and Program Planning

*Wm Yellowtail* 1/26/89

BILL YELLOWTAIL, PRIMARY SPONSOR DATE

Fiscal Note for SB177, Introduced

**SB 177**

Fiscal Note Request SB177, as introduced

Form BD-15

Page 2

FISCAL IMPACT:

Revenue Impact:

(General Fund)

	FY '90		
	Current Law	Proposed Law	Difference
State Share AFDC			
Collections	\$ 0	\$ 227,683	\$ 227,683
AFDC Incentives	0	54,247	54,247
NAFDC Incentives	0	2,855	2,855
Total	\$ 0	\$ 284,785	\$ 284,785

	FY '91		
	Current Law	Proposed Law	Difference
	\$ 0	\$ 283,820	\$ 283,820
	0	67,622	67,622
	0	3,559	3,559
	\$ 0	\$ 355,001	\$ 355,001

Expenditure Impact:

(General Fund)

	FY '90		
	Current Law	Proposed Law	Difference
Personal Services	\$ 0	\$ 67,854	\$ 67,854
Operating Expenses	0	44,526	44,526
Capital Outlay	0	6,413	6,413
Total	\$ 0	\$ 118,793	\$ 118,793

	FY '91		
	Current Law	Proposed Law	Difference
	\$ 0	\$ 76,559	\$ 76,559
	0	49,827	49,827
	0	723	723
	\$ 127,109	\$ 127,109	\$ 127,109

SB 177

APPROVED BY COMMITTEE  
ON JUDICIARY

## SENATE BILL NO. 177

## INTRODUCED BY YELLOWTAIL

~~BY-REQUEST-OF-THE-DEPARTMENT-OF-REVENUE~~

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING AN ADMINISTRATIVE PROCEDURE FOR DETERMINING PATERNITY OF CHILDREN RECEIVING CHILD SUPPORT ENFORCEMENT SERVICES FROM THE STATE; AUTHORIZING THE DEPARTMENT OF REVENUE TO DETERMINE PATERNITY IN CONTESTED AND UNCONTESTED CASES; COMPELLING PATERNITY BLOOD TESTS WHEN PATERNITY IS CONTESTED; CREATING A REBUTTABLE PRESUMPTION OF PATERNITY BASED ON PATERNITY BLOOD TEST RESULTS; EXPEDITING RESOLUTION OF CONTESTED PATERNITY CASES IN DISTRICT COURT; AND AMENDING SECTION 40-5-201, MCA."

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

**Section 1.** Section 40-5-201, MCA, is amended to read:

"40-5-201. Definitions. As used in this part, the following definitions apply:

(1) "Alleged father" means a man who is alleged to have engaged in sexual intercourse with a child's mother during a possible time of conception of the child or a man who is presumed to be a child's father under the provisions of 40-6-105.

(2) "Child" or "dependent child" means any person

under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States and for whom:

(a) support rights are assigned under 53-2-613;

(b) a public assistance payment has been made;

(c) the department is providing support enforcement services under 40-5-203; or

(d) the department has received a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act or under Title IV-D of the Social Security Act.

(3) "Department" means the department of revenue.

(4) "Director" means the director of the department of revenue or his authorized representative.

(5) "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld.

(6) "District court order" means any judgment or order of the district court of the state of Montana or an order of a court of appropriate jurisdiction of another state ordering payment of a set or determinable amount of support money.

(7) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary,

1 commission, bonus, or otherwise, and specifically includes  
 2 periodic payments under pension or retirement programs or  
 3 insurance policies of any type. "Earnings" specifically  
 4 includes all gain derived from capital, labor, or both  
 5 combined, including profit gained through sale or conversion  
 6 of capital assets.

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 8 clothing, shelter, and medical care for the support of a  
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 11 demonstrates through examination of genetic markers either  
 12 that an alleged father is not the natural father of a child  
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 14 natural father of a child. Paternity blood tests may include  
 15 but are not limited to the human leukocyte antigen test and  
 16 DNA probe technology.

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 18 or other assistance, including medical and foster care  
 19 benefits, furnished to a person by a state or county agency,  
 20 regardless of the original source of the assistance.

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 22 adoptive parent of a dependent child.

23 ~~†10†~~(12) "Support debt" or "support obligation" means:

24 (a) the sum created by the failure to provide support  
 25 to a dependent child under the laws of this state or the

1 decree of any court of appropriate jurisdiction ordering a  
 2 sum to be paid as child support; or

3 (b) the sum created by a decree or order of any court  
 4 of appropriate jurisdiction ordering a sum to be paid as  
 5 spousal maintenance under chapter 4, part 2, of this title  
 6 when the judgment or order requiring payment of maintenance  
 7 also contains a judgment or order requiring payment of child  
 8 support for a child of whom the person awarded maintenance  
 9 is the custodial parent."

10 NEW SECTION. Section 2. Jurisdiction and venue. (1)  
 11 For purposes of an administrative action brought under  
 12 [sections 2 through 8], personal jurisdiction is established  
 13 in the department over any person who has had sexual  
 14 intercourse in this state that has resulted in the birth of  
 15 a child who is the subject of such proceedings and over any  
 16 person subject to the provisions of Rule 4B of the Montana  
 17 Rules of Civil Procedure, including but not limited to the  
 18 child, the child's parents, any person having custody of the  
 19 child, and any alleged father.

20 (2) Personal jurisdiction over the persons described  
 21 in subsection (1) may be acquired by personal service or by  
 22 service of notice by certified mail.

23 (3) If the child or either parent resides in this  
 24 state, a hearing under [sections 2 through 8] may be held in  
 25 the county where:

- 1 (a) the child resides;
- 2 (b) either parent resides; or
- 3 (c) the department or any of its regional offices is
- 4 located.

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 7 paternity of a child has not been legally established under  
 8 the provisions of Title 40, chapter 6, part 1, or otherwise,  
 9 the department may proceed to establish paternity under the  
 10 provisions of [sections 2 through 8]. An administrative  
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15 (2) It is presumed to be in the best interest of a  
 16 child to legally determine and establish his paternity. A  
 17 presumption under this subsection may be rebutted by a  
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 3 such notice unless it has:

4 (a) a sworn statement from the child's mother claiming  
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 7 paternity under 40-6-105; or

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10 (5) Service on the alleged father of the notice of  
 11 paternity determination shall be made as provided in  
 12 [section 2(2)]. The notice must include:

13 (a) an allegation that the alleged father is the  
 14 natural father of the child involved;

15 (b) the child's name and place and date of birth;

16 (c) the name of the child's mother and the name of the  
 17 person or agency having custody of the child, if other than  
 18 the mother;

19 (d) the probable time or period of time during which  
 20 conception took place;

21 (e) a statement that if the alleged father fails to  
 22 timely deny the allegation of paternity, the question of  
 23 paternity may be resolved against him without further  
 24 notice;

25 (f) a statement that if the alleged father timely

1 denies the allegation of paternity:

2 (i) he is subject to compulsory blood testing;

3 (ii) a blood test may result in a presumption of  
4 paternity; and

5 (iii) he may request a trial in district court to  
6 determine paternity before the final administrative decision  
7 is made.

8 (6) The alleged father may file a written denial of  
9 paternity with the department within 20 days after service  
10 of the notice of paternity determination.

11 (7) When there is more than one alleged father of a  
12 child, the department may serve a notice of paternity  
13 determination on each alleged father in the same  
14 consolidated proceeding or in separate proceedings. Failure  
15 to serve notice on an alleged father does not prevent the  
16 department from serving notice on any other alleged father  
17 of the same child.

18 NEW SECTION. **Section 4. Establishment of paternity --**  
19 **administrative hearing -- subpoena -- compulsory blood**  
20 **testing.** (1) When the department receives a timely written  
21 denial of paternity, it may order the alleged father to  
22 appear for an administrative hearing. The hearing may be  
23 conducted by teleconferencing methods. If the testimony and  
24 other supplementary evidence demonstrate a reasonable  
25 probability that the alleged father had sexual intercourse

1 with the child's mother during the probable time of the  
2 child's conception or if the evidence shows a probable  
3 existence of a presumption under 40-6-105, the department  
4 may issue a subpoena ordering the alleged father to submit  
5 to paternity blood testing. A reasonable probability of  
6 sexual intercourse during the possible time of conception  
7 may be established by affidavit of the child's mother.

8 (2) If the department does not receive a timely  
9 written denial of paternity or if an alleged father fails to  
10 appear at a scheduled hearing or for a scheduled paternity  
11 blood test, the department may enter an order declaring the  
12 alleged father the legal father of the child. The order will  
13 take effect within 10 days after entry of the default unless  
14 the alleged father before the tenth day presents good cause  
15 for failure to make a timely denial or for failure to appear  
16 at the hearing or to undergo paternity blood testing. The  
17 department may not enter an order under this section if  
18 there is more than one alleged father unless the default  
19 applies to only one of them and all others have been  
20 excluded by the results of paternity blood testing. An order  
21 issued under the provisions of this section may be set aside  
22 as provided in [section 6(3)].

23 (3) If the rights of others and the interests of  
24 justice so require, the department may apply to any district  
25 court under the provisions of 2-4-104 for an order

1 compelling an alleged father to submit to paternity blood  
 2 testing. The court shall hear the matter as expeditiously  
 3 as possible. If the court finds reasonable cause to believe  
 4 that the alleged father is the natural or presumed father of  
 5 the child, the court shall enter an order compelling the  
 6 alleged father to submit to a paternity blood test. As  
 7 provided in subsection (1), reasonable cause may be  
 8 established by affidavit of the child's mother.

9 NEW SECTION. Section 5. Paternity blood tests -- use  
 10 of expert's affidavit -- effect of test results. (1) The  
 11 department shall appoint an expert who is qualified in  
 12 examining genetic markers to conduct any paternity blood  
 13 test required by [section 4]. If the issue of paternity is  
 14 referred to the district court under [section 7], the  
 15 expert's completed and certified report of the results and  
 16 conclusions of a paternity blood test is admissible as  
 17 evidence without additional testimony by the expert if the  
 18 laboratory in which the expert performed the test is  
 19 accredited for parentage testing by the American association  
 20 of blood banks. Accreditation may be established by verified  
 21 statement or reference to published sources.

22 (2) An affidavit documenting the chain of custody of  
 23 any blood specimen is admissible to establish such chain of  
 24 custody.

25 (3) If the scientific evidence resulting from a blood

1 test:

2 (a) conclusively shows that the alleged father could  
 3 not have been the natural father, the question of paternity  
 4 shall be resolved accordingly. A finding under this  
 5 subsection is sufficient to overcome a presumption created  
 6 by 40-6-105.

7 (b) shows a 95% or higher statistical probability of  
 8 paternity, the alleged father is presumed to be the natural  
 9 father of the child. This presumption may be rebutted in an  
 10 appropriate action in district court by a preponderance of  
 11 the evidence.

12 (c) does not exclude the alleged father and shows less  
 13 than a 95% statistical probability of paternity, the test  
 14 results may be weighed in conjunction with other evidence to  
 15 establish paternity.

16 NEW SECTION. Section 6. Effect of order establishing  
 17 paternity -- birth records -- relief from order. (1) An  
 18 administrative order of the department declaring the  
 19 paternity of a child, docketed as provided in 40-5-227,  
 20 establishes the legal existence of the parent and child  
 21 relationship for all purposes and confers or imposes all  
 22 parental rights, privileges, duties, and obligations.

23 (2) Upon the request of the mother or father of the  
 24 child, the department shall file a copy of its order with  
 25 the department of health and environmental sciences, which



shall prepare a substitute certificate of birth, if necessary, consistent with the administrative order. The substitute certificate of birth is subject to the provisions of 40-6-123, with references to "court" taken to mean "department".

(3) Except for an order based on a voluntary acknowledgment of paternity, the department may set aside an administrative order establishing the paternity of a child upon the application of any affected party and upon a showing of any of the grounds and within the time frames provided in Rule 60(b) of the Montana Rules of Civil Procedure.

(4) An order of the department under [sections 3 through 6] may be reviewed under the provisions of Title 2, chapter 4, part 7.

NEW SECTION. Section 7. Referral of paternity issue to district court -- record -- parties -- exclusion of other matters -- fees. (1) If the scientific evidence resulting from a blood test does not exclude the alleged father and he continues to deny paternity, the department shall refer the matter to the district court for a determination based on the contents of the administrative hearing record and any further evidence that may be produced at trial. Except as otherwise provided in [sections 2 through 8], proceedings in the district court shall be conducted pursuant to Title 40,

chapter 6, part 1.

(2) The administrative record must include:

(a) a copy of the notice of paternity determination and the return of service thereof;

(b) the alleged father's written denial of paternity, if any;

(c) the transcript of the administrative hearing;

(d) the paternity blood test results and any report of an expert based on the results; and

(e) any other relevant information.

(3) Upon filing of the record with the district court, the court acquires jurisdiction over the parties as if they had been served with a summons and complaint. The department shall serve written notice upon the alleged father as provided in [section 2 (2)] that the issue of paternity has been referred to the district court for determination.

(4) In a proceeding in the district court, the department shall appear on the issue of paternity only. The court may not appoint a guardian ad litem for the child unless the court in its discretion determines that such an appointment is necessary and in the best interest of the child. Neither the mother nor the child is a necessary party, but either may testify as a witness.

(5) No other matter may be joined with an action to determine the existence or nonexistence of the parent and

1 child relationship under this section. The parties shall  
2 institute an independent action to address other issues,  
3 including visitation and custody.

4 (6) Except as provided in 25-10-711, the department is  
5 not liable for attorney fees, including fees for attorneys  
6 appointed under 40-6-119, or fees of a guardian ad litem  
7 appointed under 40-6-110.

8 NEW SECTION. Section 8. District court proceedings --  
9 objection to tests -- additional tests.

10 (1) If an alleged father objects to the procedures for  
11 or the results of a paternity blood test, he shall file a  
12 written objection with the court within 20 days after  
13 service of the notice required by [section 7(3)]. The court  
14 shall order an additional paternity blood test if a written  
15 objection is filed or at the request of the department. An  
16 additional test must be performed by the same or another  
17 expert who is qualified in paternity blood testing. Failure  
18 of the alleged father to make a timely challenge is  
19 considered a waiver of any defense to the test results or  
20 test procedures, including the chain of custody.

21 (2) In any hearing before the court or at trial,  
22 testimony relating to sexual intercourse of the mother with  
23 any person who has been excluded from consideration as a  
24 possible father of the child involved by the results of a  
25 paternity blood test is inadmissible in evidence.

1 (3) When a paternity blood test excludes an alleged  
2 father from possible paternity, the test shall be conclusive  
3 evidence of nonpaternity of the alleged father for all  
4 purposes in the district court.

5 NEW SECTION. Section 9. Extension of authority. Any  
6 existing authority to make rules on the subject of the  
7 provisions of [this act] is extended to the provisions of  
8 [this act].

9 NEW SECTION. Section 10. Codification instruction.  
10 [Sections 2 through 8] are intended to be codified as an  
11 integral part of Title 40, chapter 5, part 2, and the  
12 provisions of Title 40, chapter 5, part 2, apply to  
13 [sections 2 through 8].

14 NEW SECTION. Section 11. Severability. If a part of  
15 [this act] is invalid, all valid parts that are severable  
16 from the invalid part remain in effect. If a part of [this  
17 act] is invalid in one or more of its applications, the part  
18 remains in effect in all valid applications that are  
19 severable from the invalid applications.

-End-

## SENATE BILL NO. 177

INTRODUCED BY YELLOWTAIL

~~BY-REQUEST-OF-THE-DEPARTMENT-OF-REVENUE~~

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING AN ADMINISTRATIVE PROCEDURE FOR DETERMINING PATERNITY OF CHILDREN RECEIVING CHILD SUPPORT ENFORCEMENT SERVICES FROM THE STATE; AUTHORIZING THE DEPARTMENT OF REVENUE TO DETERMINE PATERNITY IN CONTESTED AND UNCONTESTED CASES; COMPELLING PATERNITY BLOOD TESTS WHEN PATERNITY IS CONTESTED; CREATING A REBUTTABLE PRESUMPTION OF PATERNITY BASED ON PATERNITY BLOOD TEST RESULTS; EXPEDITING RESOLUTION OF CONTESTED PATERNITY CASES IN DISTRICT COURT; AND AMENDING SECTION 40-5-201, MCA."

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

**Section 1.** Section 40-5-201, MCA, is amended to read:

"40-5-201. Definitions. As used in this part, the following definitions apply:

(1) "Alleged father" means a man who is alleged to have engaged in sexual intercourse with a child's mother during a possible time of conception of the child or a man who is presumed to be a child's father under the provisions of 40-6-105.

(2) "Child" or "dependent child" means any person

under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States and for whom:

(a) support rights are assigned under 53-2-613;

(b) a public assistance payment has been made;

(c) the department is providing support enforcement services under 40-5-203; or

(d) the department has received a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act or under Title IV-D of the Social Security Act.

(3) "Department" means the department of revenue.

(4) "Director" means the director of the department of revenue or his authorized representative.

(5) "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld.

(6) "District court order" means any judgment or order of the district court of the state of Montana or an order of a court of appropriate jurisdiction of another state ordering payment of a set or determinable amount of support money.

(7) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary,

1 commission, bonus, or otherwise, and specifically includes  
 2 periodic payments under pension or retirement programs or  
 3 insurance policies of any type. "Earnings" specifically  
 4 includes all gain derived from capital, labor, or both  
 5 combined, including profit gained through sale or conversion  
 6 of capital assets.

7 ~~{7}~~{8} "Need" means the necessary costs of food,  
 8 clothing, shelter, and medical care for the support of a  
 9 dependent child or children.

10 {9} "Paternity blood test" means a test that  
 11 demonstrates through examination of genetic markers either  
 12 that an alleged father is not the natural father of a child  
 13 or that there is a probability that an alleged father is the  
 14 natural father of a child. Paternity blood tests may include  
 15 but are not limited to the human leukocyte antigen test and  
 16 DNA probe technology.

17 ~~{8}~~{10} "Public assistance" means any type of monetary  
 18 or other assistance, including medical and foster care  
 19 benefits, furnished to a person by a state or county agency,  
 20 regardless of the original source of the assistance.

21 ~~{9}~~{11} "Responsible parent" means the natural or  
 22 adoptive parent of a dependent child.

23 ~~{10}~~{12} "Support debt" or "support obligation" means:

24 (a) the sum created by the failure to provide support  
 25 to a dependent child under the laws of this state or the

1 decree of any court of appropriate jurisdiction ordering a  
 2 sum to be paid as child support; or

3 (b) the sum created by a decree or order of any court  
 4 of appropriate jurisdiction ordering a sum to be paid as  
 5 spousal maintenance under chapter 4, part 2, of this title  
 6 when the judgment or order requiring payment of maintenance  
 7 also contains a judgment or order requiring payment of child  
 8 support for a child of whom the person awarded maintenance  
 9 is the custodial parent."

#### 10 NEW SECTION. Section 2. Jurisdiction and venue. (1)

11 For purposes of an administrative action brought under  
 12 {sections 2 through 8}, personal jurisdiction is established  
 13 in the department over any person who has had sexual  
 14 intercourse in this state that has resulted in the birth of  
 15 a child who is the subject of such proceedings and over any  
 16 person subject to the provisions of Rule 4B of the Montana  
 17 Rules of Civil Procedure, including but not limited to the  
 18 child, the child's parents, any person having custody of the  
 19 child, and any alleged father.

20 (2) Personal jurisdiction over the persons described  
 21 in subsection (1) may be acquired by personal service or by  
 22 service of notice by certified mail.

23 (3) If the child or either parent resides in this  
 24 state, a hearing under {sections 2 through 8} may be held in  
 25 the county where:

- 1 (a) the child resides;
- 2 (b) either parent resides; or
- 3 (c) the department or any of its regional offices is
- 4 located.

5 NEW SECTION. Section 3. Establishment of paternity --  
 6 notice of paternity determination -- contents. (1) When the  
 7 paternity of a child has not been legally established under  
 8 the provisions of Title 40, chapter 6, part 1, or otherwise,  
 9 the department may proceed to establish paternity under the  
 10 provisions of [sections 2 through 8]. An administrative  
 11 hearing held under the provisions of [sections 2 through 8]  
 12 is a contested case within the meaning of 2-4-102 and is  
 13 subject to the provisions of Title 2, chapter 4, except as  
 14 otherwise provided in [sections 2 through 8].

15 (2) It is presumed to be in the best interest of a  
 16 child to legally determine and establish his paternity. A  
 17 presumption under this subsection may be rebutted by a  
 18 preponderance of the evidence.

19 (3) In any proceeding under [sections 2 through 8], if  
 20 a man acknowledges his paternity of a child in writing and  
 21 such acknowledgment is filed with the department, the  
 22 department may enter an order establishing legal paternity.  
 23 An acknowledgment is binding on a parent who executes it,  
 24 whether or not he is a minor.

25 (4) The department shall commence proceedings to

1 establish paternity by serving on an alleged father a notice  
 2 of paternity determination. The department may not serve  
 3 such notice unless it has:

- 4 (a) a sworn statement from the child's mother claiming
- 5 that the alleged father is the child's natural father;
- 6 (b) evidence of the existence of a presumption of
- 7 paternity under 40-6-105; or
- 8 (c) any other reasonable cause to believe that the
- 9 alleged father is the child's natural father.

10 (5) Service on the alleged father of the notice of  
 11 paternity determination shall be made as provided in  
 12 [section 2(2)]. The notice must include:

- 13 (a) an allegation that the alleged father is the
- 14 natural father of the child involved;
- 15 (b) the child's name and place and date of birth;
- 16 (c) the name of the child's mother and the name of the
- 17 person or agency having custody of the child, if other than
- 18 the mother;
- 19 (d) the probable time or period of time during which
- 20 conception took place;
- 21 (e) a statement that if the alleged father fails to
- 22 timely deny the allegation of paternity, the question of
- 23 paternity may be resolved against him without further
- 24 notice;
- 25 (f) a statement that if the alleged father timely

1 denies the allegation of paternity:

2 (i) he is subject to compulsory blood testing;

3 (ii) a blood test may result in a presumption of  
4 paternity; and

5 (iii) he may request a trial in district court to  
6 determine paternity before the final administrative decision  
7 is made.

8 (6) The alleged father may file a written denial of  
9 paternity with the department within 20 days after service  
10 of the notice of paternity determination.

11 (7) When there is more than one alleged father of a  
12 child, the department may serve a notice of paternity  
13 determination on each alleged father in the same  
14 consolidated proceeding or in separate proceedings. Failure  
15 to serve notice on an alleged father does not prevent the  
16 department from serving notice on any other alleged father  
17 of the same child.

18 NEW SECTION. Section 4. Establishment of paternity --  
19 administrative hearing -- subpoena -- compulsory blood  
20 testing. (1) When the department receives a timely written  
21 denial of paternity, it may order the alleged father to  
22 appear for an administrative hearing. The hearing may be  
23 conducted by teleconferencing methods. If the testimony and  
24 other supplementary evidence demonstrate a reasonable  
25 probability that the alleged father had sexual intercourse

1 with the child's mother during the probable time of the  
2 child's conception or if the evidence shows a probable  
3 existence of a presumption under 40-6-105, the department  
4 may issue a subpoena ordering the alleged father to submit  
5 to paternity blood testing. A reasonable probability of  
6 sexual intercourse during the possible time of conception  
7 may be established by affidavit of the child's mother.

8 (2) If the department does not receive a timely  
9 written denial of paternity or if an alleged father fails to  
10 appear at a scheduled hearing or for a scheduled paternity  
11 blood test, the department may enter an order declaring the  
12 alleged father the legal father of the child. The order will  
13 take effect within 10 days after entry of the default unless  
14 the alleged father before the tenth day presents good cause  
15 for failure to make a timely denial or for failure to appear  
16 at the hearing or to undergo paternity blood testing. The  
17 department may not enter an order under this section if  
18 there is more than one alleged father unless the default  
19 applies to only one of them and all others have been  
20 excluded by the results of paternity blood testing. An order  
21 issued under the provisions of this section may be set aside  
22 as provided in [section 6(3)].

23 (3) If the rights of others and the interests of  
24 justice so require, the department may apply to any district  
25 court under the provisions of 2-4-104 for an order

1 compelling an alleged father to submit to paternity blood  
2 testing. The court shall hear the matter as expeditiously  
3 as possible. If the court finds reasonable cause to believe  
4 that the alleged father is the natural or presumed father of  
5 the child, the court shall enter an order compelling the  
6 alleged father to submit to a paternity blood test. As  
7 provided in subsection (1), reasonable cause may be  
8 established by affidavit of the child's mother.

9 NEW SECTION. Section 5. Paternity blood tests -- use  
10 of expert's affidavit -- effect of test results. (1) The  
11 department shall appoint an expert who is qualified in  
12 examining genetic markers to conduct any paternity blood  
13 test required by [section 4]. If the issue of paternity is  
14 referred to the district court under [section 7], the  
15 expert's completed and certified report of the results and  
16 conclusions of a paternity blood test is admissible as  
17 evidence without additional testimony by the expert if the  
18 laboratory in which the expert performed the test is  
19 accredited for parentage testing by the American association  
20 of blood banks. Accreditation may be established by verified  
21 statement or reference to published sources.

22 (2) An affidavit documenting the chain of custody of  
23 any blood specimen is admissible to establish such chain of  
24 custody.

25 (3) If the scientific evidence resulting from a blood

1 test:

2 (a) conclusively shows that the alleged father could  
3 not have been the natural father, the question of paternity  
4 shall be resolved accordingly. A finding under this  
5 subsection is sufficient to overcome a presumption created  
6 by 40-6-105.

7 (b) shows a 95% or higher statistical probability of  
8 paternity, the alleged father is presumed to be the natural  
9 father of the child. This presumption may be rebutted in an  
10 appropriate action in district court by a preponderance of  
11 the evidence.

12 (c) does not exclude the alleged father and shows less  
13 than a 95% statistical probability of paternity, the test  
14 results may be weighed in conjunction with other evidence to  
15 establish paternity.

16 NEW SECTION. Section 6. Effect of order establishing  
17 paternity -- birth records -- relief from order. (1) An  
18 administrative order of the department declaring the  
19 paternity of a child, docketed as provided in 40-5-227,  
20 establishes the legal existence of the parent and child  
21 relationship for all purposes and confers or imposes all  
22 parental rights, privileges, duties, and obligations.

23 (2) Upon the request of the mother or father of the  
24 child, the department shall file a copy of its order with  
25 the department of health and environmental sciences, which

1 shall prepare a substitute certificate of birth, if  
2 necessary, consistent with the administrative order. The  
3 substitute certificate of birth is subject to the provisions  
4 of 40-6-123, with references to "court" taken to mean  
5 "department".

6 (3) Except for an order based on a voluntary  
7 acknowledgment of paternity, the department may set aside an  
8 administrative order establishing the paternity of a child  
9 upon the application of any affected party and upon a  
10 showing of any of the grounds and within the time frames  
11 provided in Rule 60(b) of the Montana Rules of Civil  
12 Procedure.

13 (4) An order of the department under [sections 3  
14 through 6] may be reviewed under the provisions of Title 2,  
15 chapter 4, part 7.

16 **NEW SECTION. Section 7. Referral of paternity issue**  
17 **to district court -- record -- parties -- exclusion of other**  
18 **matters -- fees.** (1) If the scientific evidence resulting  
19 from a blood test does not exclude the alleged father and he  
20 continues to deny paternity, the department shall refer the  
21 matter to the district court for a determination based on  
22 the contents of the administrative hearing record and any  
23 further evidence that may be produced at trial. Except as  
24 otherwise provided in [sections 2 through 8], proceedings in  
25 the district court shall be conducted pursuant to Title 40,

1 chapter 6, part 1.

2 (2) The administrative record must include:

3 (a) a copy of the notice of paternity determination  
4 and the return of service thereof;

5 (b) the alleged father's written denial of paternity,  
6 if any;

7 (c) the transcript of the administrative hearing;

8 (d) the paternity blood test results and any report of  
9 an expert based on the results; and

10 (e) any other relevant information.

11 (3) Upon filing of the record with the district court,  
12 the court acquires jurisdiction over the parties as if they  
13 had been served with a summons and complaint. The department  
14 shall serve written notice upon the alleged father as  
15 provided in [section 2 (2)] that the issue of paternity has  
16 been referred to the district court for determination.

17 (4) In a proceeding in the district court, the  
18 department shall appear on the issue of paternity only. The  
19 court may not appoint a guardian ad litem for the child  
20 unless the court in its discretion determines that such an  
21 appointment is necessary and in the best interest of the  
22 child. Neither the mother nor the child is a necessary  
23 party, but either may testify as a witness.

24 (5) No other matter may be joined with an action to  
25 determine the existence or nonexistence of the parent and



child relationship under this section. The parties shall institute an independent action to address other issues, including visitation and custody.

(6) Except as provided in 25-10-711, the department is not liable for attorney fees, including fees for attorneys appointed under 40-6-119, or fees of a guardian ad litem appointed under 40-6-110.

**NEW SECTION. Section 8.** District court proceedings -- objection to tests -- additional tests.

(1) If an alleged father objects to the procedures for or the results of a paternity blood test, he shall file a written objection with the court within 20 days after service of the notice required by [section 7(3)]. The court shall order an additional paternity blood test if a written objection is filed or at the request of the department. An additional test must be performed by the same or another expert who is qualified in paternity blood testing. Failure of the alleged father to make a timely challenge is considered a waiver of any defense to the test results or test procedures, including the chain of custody.

(2) In any hearing before the court or at trial, testimony relating to sexual intercourse of the mother with any person who has been excluded from consideration as a possible father of the child involved by the results of a paternity blood test is inadmissible in evidence.

(3) When a paternity blood test excludes an alleged father from possible paternity, the test shall be conclusive evidence of nonpaternity of the alleged father for all purposes in the district court.

**NEW SECTION. Section 9.** Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

**NEW SECTION. Section 10.** Codification instruction. [Sections 2 through 8] are intended to be codified as an integral part of Title 40, chapter 5, part 2, and the provisions of Title 40, chapter 5, part 2, apply to [sections 2 through 8].

**NEW SECTION. Section 11.** Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-

## SENATE BILL NO. 177

INTRODUCED BY YELLOWTAIL

~~BY REQUEST OF THE DEPARTMENT OF REVENUE~~

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING AN ADMINISTRATIVE PROCEDURE FOR DETERMINING PATERNITY OF CHILDREN RECEIVING CHILD SUPPORT ENFORCEMENT SERVICES FROM THE STATE; AUTHORIZING THE DEPARTMENT OF REVENUE TO DETERMINE PATERNITY IN CONTESTED AND UNCONTESTED CASES; COMPELLING PATERNITY BLOOD TESTS WHEN PATERNITY IS CONTESTED; CREATING A REBUTTABLE PRESUMPTION OF PATERNITY BASED ON PATERNITY BLOOD TEST RESULTS; EXPEDITING RESOLUTION OF CONTESTED PATERNITY CASES IN DISTRICT COURT; AND AMENDING SECTION 40-5-201, MCA."

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

**Section 1.** Section 40-5-201, MCA, is amended to read:

"40-5-201. Definitions. As used in this part, the following definitions apply:

(1) "Alleged father" means a man who is alleged to have engaged in sexual intercourse with a child's mother during a possible time of conception of the child or a man who is presumed to be a child's father under the provisions of 40-6-105.

(2) "Child" or "dependent child" means any person

under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States and for whom:

(a) support rights are assigned under 53-2-613;

(b) a public assistance payment has been made;

(c) the department is providing support enforcement services under 40-5-203; or

(d) the department has received a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act or under Title IV-D of the Social Security Act.

(3) "Department" means the department of revenue.

(4) "Director" means the director of the department of revenue or his authorized representative.

(5) "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld.

(6) "District court order" means any judgment or order of the district court of the state of Montana or an order of a court of appropriate jurisdiction of another state ordering payment of a set or determinable amount of support money.

(7) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary,

commission, bonus, or otherwise, and specifically includes periodic payments under pension or retirement programs or insurance policies of any type. "Earnings" specifically includes all gain derived from capital, labor, or both combined, including profit gained through sale or conversion of capital assets.

~~(7)~~(8) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a dependent child or children.

(9) "Paternity blood test" means a test that demonstrates through examination of genetic markers either that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the natural father of a child. Paternity blood tests may include but are not limited to the human leukocyte antigen test and DNA probe technology.

~~(8)~~(10) "Public assistance" means any type of monetary or other assistance, including medical and foster care benefits, furnished to a person by a state or county agency, regardless of the original source of the assistance.

~~(9)~~(11) "Responsible parent" means the natural or adoptive parent of a dependent child.

~~(10)~~(12) "Support debt" or "support obligation" means:

(a) the sum created by the failure to provide support to a dependent child under the laws of this state or the

decree of any court of appropriate jurisdiction ordering a sum to be paid as child support; or

(b) the sum created by a decree or order of any court of appropriate jurisdiction ordering a sum to be paid as spousal maintenance under chapter 4, part 2, of this title when the judgment or order requiring payment of maintenance also contains a judgment or order requiring payment of child support for a child of whom the person awarded maintenance is the custodial parent."

#### NEW SECTION. Section 2. Jurisdiction and venue. (1)

For purposes of an administrative action brought under [sections 2 through 8], personal jurisdiction is established in the department over any person who has had sexual intercourse in this state that has resulted in the birth of a child who is the subject of such proceedings and over any person subject to the provisions of Rule 4B of the Montana Rules of Civil Procedure, including but not limited to the child, the child's parents, any person having custody of the child, and any alleged father.

(2) Personal jurisdiction over the persons described in subsection (1) may be acquired by personal service or by service of notice by certified mail.

(3) If the child or either parent resides in this state, a hearing under [sections 2 through 8] may be held in the county where:

- 1 (a) the child resides;
- 2 (b) either parent resides; or
- 3 (c) the department or any of its regional offices is
- 4 located.

5 NEW SECTION. Section 3. Establishment of paternity --  
 6 notice of paternity determination -- contents. (1) When the  
 7 paternity of a child has not been legally established under  
 8 the provisions of Title 40, chapter 6, part 1, or otherwise,  
 9 the department may proceed to establish paternity under the  
 10 provisions of [sections 2 through 8]. An administrative  
 11 hearing held under the provisions of [sections 2 through 8]  
 12 is a contested case within the meaning of 2-4-102 and is  
 13 subject to the provisions of Title 2, chapter 4, except as  
 14 otherwise provided in [sections 2 through 8].

15 (2) It is presumed to be in the best interest of a  
 16 child to legally determine and establish his paternity. A  
 17 presumption under this subsection may be rebutted by a  
 18 preponderance of the evidence.

19 (3) In any proceeding under [sections 2 through 8], if  
 20 a man acknowledges his paternity of a child in writing and  
 21 such acknowledgment is filed with the department, the  
 22 department may enter an order establishing legal paternity.  
 23 An acknowledgment is binding on a parent who executes it,  
 24 whether or not he is a minor.

25 (4) The department shall commence proceedings to

1 establish paternity by serving on an alleged father a notice  
 2 of paternity determination. The department may not serve  
 3 such notice unless it has:

4 (a) a sworn statement from the child's mother claiming  
 5 that the alleged father is the child's natural father;

6 (b) evidence of the existence of a presumption of  
 7 paternity under 40-6-105; or

8 (c) any other reasonable cause to believe that the  
 9 alleged father is the child's natural father.

10 (5) Service on the alleged father of the notice of  
 11 paternity determination shall be made as provided in  
 12 [section 2(2)]. The notice must include:

13 (a) an allegation that the alleged father is the  
 14 natural father of the child involved;

15 (b) the child's name and place and date of birth;

16 (c) the name of the child's mother and the name of the  
 17 person or agency having custody of the child, if other than  
 18 the mother;

19 (d) the probable time or period of time during which  
 20 conception took place;

21 (e) a statement that if the alleged father fails to  
 22 timely deny the allegation of paternity, the question of  
 23 paternity may be resolved against him without further  
 24 notice;

25 (f) a statement that if the alleged father timely

1 denies the allegation of paternity:

2 (i) he is subject to compulsory blood testing;

3 (ii) a blood test may result in a presumption of  
4 paternity; and

5 (iii) he may request a trial in district court to  
6 determine paternity before the final administrative decision  
7 is made.

8 (6) The alleged father may file a written denial of  
9 paternity with the department within 20 days after service  
10 of the notice of paternity determination.

11 (7) When there is more than one alleged father of a  
12 child, the department may serve a notice of paternity  
13 determination on each alleged father in the same  
14 consolidated proceeding or in separate proceedings. Failure  
15 to serve notice on an alleged father does not prevent the  
16 department from serving notice on any other alleged father  
17 of the same child.

18 **NEW SECTION. Section 4. Establishment of paternity --**  
19 **administrative hearing -- subpoena -- compulsory blood**  
20 **testing.** (1) When the department receives a timely written  
21 denial of paternity, it may order the alleged father to  
22 appear for an administrative hearing. The hearing may be  
23 conducted by teleconferencing methods. If the testimony and  
24 other supplementary evidence demonstrate a reasonable  
25 probability that the alleged father had sexual intercourse

1 with the child's mother during the probable time of the  
2 child's conception or if the evidence shows a probable  
3 existence of a presumption under 40-6-105, the department  
4 may issue a subpoena ordering the alleged father to submit  
5 to paternity blood testing. A reasonable probability of  
6 sexual intercourse during the possible time of conception  
7 may be established by affidavit of the child's mother.

8 (2) If the department does not receive a timely  
9 written denial of paternity or if an alleged father fails to  
10 appear at a scheduled hearing or for a scheduled paternity  
11 blood test, the department may enter an order declaring the  
12 alleged father the legal father of the child. The order will  
13 take effect within 10 days after entry of the default unless  
14 the alleged father before the tenth day presents good cause  
15 for failure to make a timely denial or for failure to appear  
16 at the hearing or to undergo paternity blood testing. The  
17 department may not enter an order under this section if  
18 there is more than one alleged father unless the default  
19 applies to only one of them and all others have been  
20 excluded by the results of paternity blood testing. An order  
21 issued under the provisions of this section may be set aside  
22 as provided in [section 6(3)].

23 (3) If the rights of others and the interests of  
24 justice so require, the department may apply to any district  
25 court under the provisions of 2-4-104 for an order

1 compelling an alleged father to submit to paternity blood  
 2 testing. The court shall hear the matter as expeditiously  
 3 as possible. If the court finds reasonable cause to believe  
 4 that the alleged father is the natural or presumed father of  
 5 the child, the court shall enter an order compelling the  
 6 alleged father to submit to a paternity blood test. As  
 7 provided in subsection (1), reasonable cause may be  
 8 established by affidavit of the child's mother.

9 NEW SECTION. Section 5. Paternity blood tests -- use  
 10 of expert's affidavit -- effect of test results. (1) The  
 11 department shall appoint an expert who is qualified in  
 12 examining genetic markers to conduct any paternity blood  
 13 test required by [section 4]. If the issue of paternity is  
 14 referred to the district court under [section 7], the  
 15 expert's completed and certified report of the results and  
 16 conclusions of a paternity blood test is admissible as  
 17 evidence without additional testimony by the expert if the  
 18 laboratory in which the expert performed the test is  
 19 accredited for parentage testing by the American association  
 20 of blood banks. Accreditation may be established by verified  
 21 statement or reference to published sources.

22 (2) An affidavit documenting the chain of custody of  
 23 any blood specimen is admissible to establish such chain of  
 24 custody.

25 (3) If the scientific evidence resulting from a blood

1 test:

2 (a) conclusively shows that the alleged father could  
 3 not have been the natural father, the question of paternity  
 4 shall be resolved accordingly. A finding under this  
 5 subsection is sufficient to overcome a presumption created  
 6 by 40-6-105.

7 (b) shows a 95% or higher statistical probability of  
 8 paternity, the alleged father is presumed to be the natural  
 9 father of the child. This presumption may be rebutted in an  
 10 appropriate action in district court by a preponderance of  
 11 the evidence.

12 (c) does not exclude the alleged father and shows less  
 13 than a 95% statistical probability of paternity, the test  
 14 results may be weighed in conjunction with other evidence to  
 15 establish paternity.

16 NEW SECTION. Section 6. Effect of order establishing  
 17 paternity -- birth records -- relief from order. (1) An  
 18 administrative order of the department declaring the  
 19 paternity of a child, docketed as provided in 40-5-227,  
 20 establishes the legal existence of the parent and child  
 21 relationship for all purposes and confers or imposes all  
 22 parental rights, privileges, duties, and obligations.

23 (2) Upon the request of the mother or father of the  
 24 child, the department shall file a copy of its order with  
 25 the department of health and environmental sciences, which

1 shall prepare a substitute certificate of birth, if  
 2 necessary, consistent with the administrative order. The  
 3 substitute certificate of birth is subject to the provisions  
 4 of 40-6-123, with references to "court" taken to mean  
 5 "department".

6 (3) Except for an order based on a voluntary  
 7 acknowledgment of paternity, the department may set aside an  
 8 administrative order establishing the paternity of a child  
 9 upon the application of any affected party and upon a  
 10 showing of any of the grounds and within the time frames  
 11 provided in Rule 60(b) of the Montana Rules of Civil  
 12 Procedure.

13 (4) An order of the department under [sections 3  
 14 through 6] may be reviewed under the provisions of Title 2,  
 15 chapter 4, part 7.

16 NEW SECTION. Section 7. Referral of paternity issue  
 17 to district court -- record -- parties -- exclusion of other  
 18 matters -- fees. (1) If the scientific evidence resulting  
 19 from a blood test does not exclude the alleged father and he  
 20 continues to deny paternity, the department shall refer the  
 21 matter to the district court for a determination based on  
 22 the contents of the administrative hearing record and any  
 23 further evidence that may be produced at trial. Except as  
 24 otherwise provided in [sections 2 through 8], proceedings in  
 25 the district court shall be conducted pursuant to Title 40,

1 chapter 6, part 1.

2 (2) The administrative record must include:

3 (a) a copy of the notice of paternity determination  
 4 and the return of service thereof;

5 (b) the alleged father's written denial of paternity,  
 6 if any;

7 (c) the transcript of the administrative hearing;

8 (d) the paternity blood test results and any report of  
 9 an expert based on the results; and

10 (e) any other relevant information.

11 (3) Upon filing of the record with the district court,  
 12 the court acquires jurisdiction over the parties as if they  
 13 had been served with a summons and complaint. The department  
 14 shall serve written notice upon the alleged father as  
 15 provided in [section 2 (2)] that the issue of paternity has  
 16 been referred to the district court for determination.

17 (4) In a proceeding in the district court, the  
 18 department shall appear on the issue of paternity only. The  
 19 court may not appoint a guardian ad litem for the child  
 20 unless the court in its discretion determines that such an  
 21 appointment is necessary and in the best interest of the  
 22 child. Neither the mother nor the child is a necessary  
 23 party, but either may testify as a witness.

24 (5) No other matter may be joined with an action to  
 25 determine the existence or nonexistence of the parent and

1 child relationship under this section. The parties shall  
2 institute an independent action to address other issues,  
3 including visitation and custody.

4 (6) Except as provided in 25-10-711, the department is  
5 not liable for attorney fees, including fees for attorneys  
6 appointed under 40-6-119, or fees of a guardian ad litem  
7 appointed under 40-6-110.

8 NEW SECTION. Section 8. District court proceedings --  
9 objection to tests -- additional tests.

10 (1) If an alleged father objects to the procedures for  
11 or the results of a paternity blood test, he shall file a  
12 written objection with the court within 20 days after  
13 service of the notice required by [section 7(3)]. The court  
14 shall order an additional paternity blood test if a written  
15 objection is filed or at the request of the department. An  
16 additional test must be performed by the same or another  
17 expert who is qualified in paternity blood testing. Failure  
18 of the alleged father to make a timely challenge is  
19 considered a waiver of any defense to the test results or  
20 test procedures, including the chain of custody.

21 (2) In any hearing before the court or at trial,  
22 testimony relating to sexual intercourse of the mother with  
23 any person who has been excluded from consideration as a  
24 possible father of the child involved by the results of a  
25 paternity blood test is inadmissible in evidence.

1 (3) When a paternity blood test excludes an alleged  
2 father from possible paternity, the test shall be conclusive  
3 evidence of nonpaternity of the alleged father for all  
4 purposes in the district court.

5 NEW SECTION. Section 9. Extension of authority. Any  
6 existing authority to make rules on the subject of the  
7 provisions of [this act] is extended to the provisions of  
8 [this act].

9 NEW SECTION. Section 10. Codification instruction.  
10 [Sections 2 through 8] are intended to be codified as an  
11 integral part of Title 40, chapter 5, part 2, and the  
12 provisions of Title 40, chapter 5, part 2, apply to  
13 [sections 2 through 8].

14 NEW SECTION. Section 11. Severability. If a part of  
15 [this act] is invalid, all valid parts that are severable  
16 from the invalid part remain in effect. If a part of [this  
17 act] is invalid in one or more of its applications, the part  
18 remains in effect in all valid applications that are  
19 severable from the invalid applications.

-End-