

1
2 INTRODUCED BY

House BILL NO. 340

Tom Nelson *Mark Spang*

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ADDING SEXUAL ASSAULT ON THE CHILD TO THE LIST OF
5 OFFENSES THAT DEPRIVE A PARENT OF THE RIGHT TO BAR THE CHILD'S ADOPTION BY NOT
6 CONSENTING IN WRITING TO ADOPTION OF THE CHILD; AND AMENDING SECTION 40-8-111, MCA."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9
10 **Section 1.** Section 40-8-111, MCA, is amended to read:

11 **"40-8-111. Consent required for adoption.** (1) An adoption of a child may be decreed when there
12 have been filed written consents to adoption executed by:

13 (a) both parents, if living, or the surviving parent of a child, provided that consent is not required
14 from a father or mother:

15 (i) adjudged guilty by a court of competent jurisdiction of assault on the child, as provided in
16 45-5-201; sexual assault on the child, as provided in 45-5-502; endangering the welfare of children,
17 concerning the child, as provided in 45-5-622; or sexual abuse of children, toward the child, as provided
18 in 45-5-625;

19 (ii) who has been judicially deprived of the custody of the child on account of cruelty or neglect
20 toward the child;

21 (iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned
22 the child, as defined in 41-3-102(8)(d);

23 (iv) who has caused the child to be maintained by any public or private children's institution, any
24 charitable agency, or any licensed adoption agency or the department of family services of the state of
25 Montana for a period of 1 year without contributing to the support of the child during ~~said~~ that period, if
26 able;

27 (v) if it is ~~proven~~ proved to the satisfaction of the court that the father or mother, if able, has not
28 contributed to the support of the child during a period of 1 year before the filing of a petition for adoption;
29 or

30 (vi) whose parental rights have been judicially terminated;

1 (b) the legal guardian of the child if both parents are dead or if the rights of the parents have been
2 terminated by judicial proceedings and ~~such the~~ guardian has authority by order of the court appointing ~~him~~
3 the guardian to consent to the adoption;

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

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

11 (2) The consents required by subsections (1)(a) and (1)(b) ~~shall must~~ be acknowledged before an
12 officer authorized to take acknowledgments or witnessed by a representative of the department ~~of family~~
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14 -END-

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17

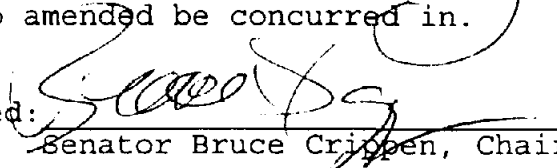
-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
March 21, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 340 (third reading copy -- blue), respectfully report that HB 340 be amended as follows and as so amended be concurred in.

Signed: 
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 4.

Following: "CHILD"

Insert: ", SEXUAL INTERCOURSE WITHOUT CONSENT INVOLVING A CHILD, INCEST INVOLVING A CHILD, AND RITUAL ABUSE OF A MINOR"

2. Title, line 9.

Strike: "AND"

Insert: "PROVIDING FOR TERMINATION OF PARENTAL RIGHTS IN CERTAIN INSTANCES;"

Following: "MCA"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 1, line 19.

Following: "45-5-502;"

Insert: "sexual intercourse without consent, as provided in 45-5-503, if the victim was a child; incest, as provided in 45-5-507, if the victim was a child;"

4. Page 1, line 20.

Strike: "or"

5. Page 1, line 21.

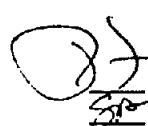
Following: "45-5-625"

Insert: "; or ritual abuse of a minor, as provided in 45-5-627"

6. Page 2, line 17.

Insert: "

NEW SECTION. Section 2. Termination of parental rights -- felony involving sexual intercourse. If a person is convicted of a felony in which sexual intercourse occurred or if a minor is adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, a child is born, the court may terminate the offender's parental rights to the child at any time after the conviction or adjudication.

 Amd. Coord.
Sec. of Senate

Sm. BARTLETT
Senator Carrying Bill

HB340
SENATE
651059SC.SRF

NEW SECTION. **Section 3. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 41, chapter 3, part 6, and the provisions of Title 41, chapter 3, part 6, apply to [section 2].

NEW SECTION. **Section 4. 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.

NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval."

-END-

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 7 CHILD'S ADOPTION BY NOT CONSENTING IN WRITING TO ADOPTION OF THE CHILD; REVISING THE
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 9 CRIMES AGAINST THE CHILD TO EXCUSE CONSENT FROM A PARENT WHO HAS COMMITTED CERTAIN
 10 CRIMES AGAINST ANY CHILD; AND PROVIDING FOR TERMINATION OF PARENTAL RIGHTS IN CERTAIN
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22 **NEW SECTION. SECTION 2. TERMINATION OF PARENTAL RIGHTS -- FELONY INVOLVING**
 23 **SEXUAL INTERCOURSE. IF A PERSON IS CONVICTED OF A FELONY IN WHICH SEXUAL INTERCOURSE**
 24 **OCCURRED OR IF A MINOR IS ADJUDICATED A DELINQUENT YOUTH BECAUSE OF AN ACT THAT, IF**
 25 **COMMITTED BY AN ADULT, WOULD BE A FELONY IN WHICH SEXUAL INTERCOURSE OCCURRED AND,**
 26 **AS A RESULT OF THE SEXUAL INTERCOURSE, A CHILD IS BORN, THE COURT MAY TERMINATE THE**
 27 **OFFENDER'S PARENTAL RIGHTS TO THE CHILD AT ANY TIME AFTER THE CONVICTION OR**
 28 **ADJUDICATION.**

29

30 **NEW SECTION. SECTION 3. CODIFICATION INSTRUCTION. [SECTION 2] IS INTENDED TO BE**

1 CODIFIED AS AN INTEGRAL PART OF TITLE 41, CHAPTER 3, PART 6, AND THE PROVISIONS OF TITLE
2 41, CHAPTER 3, PART 6, APPLY TO [SECTION 2].

3
4 NEW SECTION. SECTION 4. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID
5 PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT]
6 IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID
7 APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

8
9 NEW SECTION. SECTION 5. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND
10 APPROVAL.

11 -END-