

1 HOUSE BILL NO. 163

2 INTRODUCED BY MENAHAN

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE LAWS
6 GOVERNING ADOPTION; PROVIDING PROCEDURES FOR VARIOUS TYPES OF ADOPTIONS; PROVIDING
7 FOR A PUTATIVE FATHER REGISTRY; PROVIDING FOR THE RELINQUISHMENT AND TERMINATION OF
8 PARENTAL RIGHTS; PROVIDING FOR DEGREES OF ACCESS TO RECORDS; PRESCRIBING A FEE FOR
9 FILING A PETITION FOR ADOPTION; STATUTORILY APPROPRIATING FEES; AMENDING SECTIONS
10 2-6-104, 2-18-606, 17-7-502, 25-1-201, 33-22-130, 33-30-1016, 33-31-114, 37-60-301, 40-6-108,
11 41-3-609, 41-5-603, 41-5-604, 50-15-223, AND 52-2-505, MCA; REPEALING SECTIONS 40-6-125,
12 40-6-126, 40-6-127, 40-6-128, 40-6-129, 40-6-130, 40-6-135, 40-8-101, 40-8-102, 40-8-103, 40-8-104,
13 40-8-105, 40-8-106, 40-8-107, 40-8-108, 40-8-109, 40-8-110, 40-8-111, 40-8-112, 40-8-113, 40-8-114,
14 40-8-115, 40-8-116, 40-8-117, 40-8-121, 40-8-122, 40-8-123, 40-8-124, 40-8-125, 40-8-126, 40-8-127,
15 40-8-128, 40-8-135, 40-8-136, 40-8-201, AND 40-8-202, MCA; AND PROVIDING EFFECTIVE DATES,
16 APPLICABILITY DATES, AND A TERMINATION DATE."

17
18 STATEMENT OF INTENT

19 A statement of intent is required for this bill because the bill gives the department of public health
20 and human services authority to adopt administrative rules. The rules must provide procedures for the
21 putative father registry, including methods of notification, filing, and accessing information. The
22 department shall adopt rules for licensing child-placing agencies. To the extent feasible, the rules should
23 incorporate existing procedures. The needs of the child in the adoption proceeding must be the primary
24 focus of the rules.

25
26 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:27
28 **NEW SECTION. Section 1. Short title.** [Sections 1 through 156] may be cited as the "Montana
29 Adoption Act".
30

1 **NEW SECTION. Section 2. Adoption policy.** (1) It is the policy of the state of Montana to ensure
2 that the best interests of the child are met by adoption proceedings.

3 (2) The primary purpose of adoption is to help a child become a permanent member of a nurturing
4 family that can give the child the care, protection, and opportunities essential for healthy personal growth
5 and development.

6 (3) The well-being of the adopted child is the main objective in the placement of a child for
7 adoption. The needs of the child must be the primary focus of adoption proceedings, with full recognition
8 of the interdependent needs and interests of birth parents and adoptive parents.

9 (4) It is the policy of the state of Montana to support relationships between adoptees and their birth
10 families when desired by the affected parties.

11

12 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 156], unless the context
13 requires otherwise, the following definitions apply:

14 (1) "Adoptee" means an adopted person or a person who is the subject of adoption proceedings
15 that are intended to result in the adoptee becoming the legal child of another person.

16 (2) "Adoption" means the act of creating the legal relationship between parent and child when it
17 does not exist genetically.

18 (3) "Adoptive parent" means an adult who has become the mother or father of a child through the
19 legal process of adoption.

20 (4) "Agency" means a public or nonprofit entity that is licensed by any jurisdiction of the United
21 States and that is expressly empowered to place children preliminary to a possible adoption.

22 (5) "Birth parent" means the woman who gave birth to the child or the father of genetic origin of
23 the child.

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

25 (7) "Confidential intermediary" means a person certified by the department and under contract with
26 or employed by a nonprofit entity with expertise in adoption.

27 (8) "Court" means a court of record in a competent jurisdiction and in Montana means a district
28 court or a tribal court.

29 (9) "Department" means the department of public health and human services, provided for in
30 2-15-2201.

1 (10) "Direct parental placement adoption" means an adoption in which the parent of the child
2 places the child with a prospective adoptive parent personally known and selected by the parent
3 independent of an agency.

4 (11) "Extended family member" means a person who is or was the adoptee's parent, grandparent,
5 aunt or uncle, brother or sister, or child.

6 (12) "Identifying information" means information that directly reveals or indirectly indicates the
7 identity of a person and includes the person's name or address.

8 (13) "Nonidentifying information" means information that does not directly reveal or indirectly
9 indicate the identity of a person, including:

10 (a) medical information and information related to general physical characteristics;

11 (b) family information, including marital status and the existence of siblings;

12 (c) religious affiliation;

13 (d) educational background information that does not reveal specific programs or institutions
14 attended;

15 (e) general occupation;

16 (f) hobbies; and

17 (g) photographs provided by any of the parties involved that were specifically intended to be
18 provided to another party.

19 (14) "Parent" means the birth or adoptive mother or the birth, adoptive, or legal father whose
20 parental rights have not been terminated.

21 (15) "Placing parent" means a parent who is voluntarily making a child available for adoption.

22 (16) "Preplacement evaluation" means the home study process conducted by the department or
23 a licensed child-placing agency that:

24 (a) assists a prospective adoptive parent or family to assess its own readiness to adopt; and

25 (b) assesses whether the prospective adoptive parent or family and home meet applicable standards.

26 (17) "Records" means all documents, exhibits, and data pertaining to an adoption.

27 (18) "Relinquishment" means the informed and voluntary release in writing of all parental rights
28 with respect to a child by a parent to an agency or individual.

29

30 **NEW SECTION. Section 4. Venue.** (1) Proceedings for adoption must be brought in the district

1 court of the county where the petitioners reside.

2 (2) Petitions for appointment of a confidential intermediary may be filed:

3 (a) in the county where the decree of adoption was issued;

4 (b) in the county of residence of the petitioner; or

5 (c) if the petitioner resides out of state, in any county.

6
7 **NEW SECTION. Section 5. Who may be adopted.** (1) A child is legally free for adoption if:

8 (a) the child does not have a living parent;

9 (b) the parental rights of the living parents of the child have been terminated according to the laws
10 of this state or of another jurisdiction; or

11 (c) the living parents, guardian authorized by the court, or department or agency with custody of
12 the child consent to the adoption.

13 (2) An adult may be adopted as provided in [sections 121 through 125].

14 (3) A stepchild may be adopted as provided in [sections 112 through 120].

15
16 **NEW SECTION. Section 6. Who may adopt.** The following individuals who otherwise meet the
17 requirements of [sections 1 through 156] are eligible to adopt a child:

18 (1) a husband and wife jointly or either the husband or wife if the other spouse is a parent of the
19 child;

20 (2) an unmarried individual who is at least 18 years of age; or

21 (3) a married individual at least 18 years of age who is legally separated from the other spouse or
22 whose spouse has judicially been declared incompetent.

23
24 **NEW SECTION. Section 7. Adoption prohibited if child not legally free.** (1) An adoption decree
25 may not be entered if the child who is the subject of an adoption proceeding is not legally free for adoption.

26 (2) A child may be placed for adoption only by:

27 (a) the department or another agency to which the child has been relinquished for purposes of
28 adoption;

29 (b) the department or another agency expressly authorized to place the child for adoption by a
30 court order terminating the relationship between the child and the child's parent or guardian;

- 1 (c) the child's parents; or
2 (d) a guardian expressly authorized by the court to place the child for adoption.

3

4 **NEW SECTION. Section 8. Rights and responsibilities of parties in adoption proceedings.** (1) The
5 legislature finds that the rights and interests of all parties affected by an adoption proceeding must be
6 considered and balanced in determining the necessary constitutional protection and appropriate processes.

7 (2) The legislature finds that:

8 (a) every child deserves to be raised by a family in which support and care are promptly provided
9 by one or more parents in a nurturing environment on a regular and ongoing basis;

10 (b) the state has a compelling interest in providing stable and permanent homes for adoptive
11 children in a prompt manner, in preventing the disruption of adoptive placements, and in holding parents
12 accountable for meeting the needs of children;

13 (c) an unmarried mother, faced with the responsibility of making crucial decisions about the future
14 of a newborn child, is entitled to privacy, has the right to make timely and appropriate decisions regarding
15 the mother's future and the future of the child, and is entitled to assurance regarding the permanence of
16 an adoptive placement;

17 (d) adoptive children have a right to permanence and stability in adoptive placements;

18 (e) adoptive parents have a constitutionally protected liberty and privacy interest in retaining
19 custody of an adopted child; and

20 (f) a birth father who is not married to the child's mother has the primary responsibility to protect
21 the father's rights. The father's inchoate interest in the child requires constitutional protection only when
22 the father has demonstrated a timely and full commitment to the responsibilities of parenthood, both during
23 pregnancy and upon the child's birth. The state has a compelling interest in requiring a birth father to
24 demonstrate that commitment by:

25 (i) timely and consistently providing financial support;

26 (ii) complying with the requirements of the putative father registry; and

27 (iii) demonstrating the establishment of a substantial relationship with the child as described in
28 [section 73].

29 (3) If a birth father who is not married to the child's mother fails to grasp the opportunities that
30 are available to the father to establish a relationship with the child, the father's parental rights will be lost

1 entirely by the failure to timely exercise it or by the failure to strictly comply with the available legal steps
2 to substantiate the parental interest.

3
4 **NEW SECTION. Section 9. Need for finality -- balancing of interests.** Finality is necessary in order
5 to facilitate the state's compelling interest. The legislature finds that the interests of the state, the mother,
6 the child, and the adoptive parents outweigh the interest of a birth father who is not married to the child's
7 mother and who does not timely grasp the opportunities available to establish and demonstrate a
8 relationship with the father's child in accordance with the requirements of the putative father registry.

9
10 **NEW SECTION. Section 10. Presumed knowledge that child may be adopted without notice.** A
11 birth father who is not married to the mother of the child is presumed to know that the child may be
12 adopted without the father's consent and without notice to the father unless the father strictly complies
13 with the provisions of [sections 1 through 156] and manifests a prompt and full commitment to the father's
14 parental responsibilities.

15
16 **NEW SECTION. Section 11. Unmarried birth mother's right of privacy.** An unmarried birth mother
17 has a right of privacy with regard to the mother's pregnancy and adoption plan and therefore has no legal
18 obligation to disclose the identity of the birth father of the child prior to or during an adoption proceeding.
19 The mother does not have an obligation to volunteer information to the court with respect to a potential
20 birth father who is not married to the mother.

21
22 **NEW SECTION. Section 12. Recognition of adoption in another jurisdiction.** (1) A decree or order
23 of adoption has the same effect as a decree or order of adoption issued by a court of this state if the decree
24 or order is:

- 25 (a) issued by a court of any other state that is entitled to full faith and credit in this state; or
26 (b) entered by a court or administrative entity in another country acting pursuant to:
27 (i) that country's law; or
28 (ii) to any convention or treaty on intercountry adoption that the United States has ratified.

29 (2) The rights and obligations of the parties as to matters within the jurisdiction of this state must
30 be determined as though the decree or order were issued by a court of this state.

1 **NEW SECTION. Section 13. Proceedings subject to Indian Child Welfare Act.** A proceeding under
2 [sections 1 through 156] that pertains to an Indian child, as defined in the Indian Child Welfare Act of
3 1978, 25 U.S.C. 1901, et seq., is subject to that act.

4
5 **NEW SECTION. Section 14. Interstate placement.** The Interstate Compact on the Placement of
6 Children, Title 41, chapter 4, governs:

7 (1) an adoption in this state of a child brought into this state from another state by a prospective
8 adoptive parent;

9 (2) a person residing in or an agency doing business from another state who places the child for
10 adoption in this state; and

11 (3) the placement of a Montana child in another state.

12
13 **NEW SECTION. Section 15. International placement.** An adoption in this state of a child brought
14 into this state from another country by a prospective adoptive parent or by a person who places the child
15 for adoption in this state is governed by [sections 1 through 156] and is subject to any convention or treaty
16 governing adoption that the United States has ratified and to any relevant federal law.

17
18 **NEW SECTION. Section 16. Fees for services -- special revenue account -- statutory appropriation.**

19 (1) The department shall establish fees that it may charge and that are reasonably related to the cost
20 incurred by the department in completing or contracting for adoption services.

21 (2) The department may contract with licensed social workers or licensed child-placing agencies
22 for the purposes of completing the preplacement or postplacement evaluation or for providing
23 postplacement supervision.

24 (3) An agency contracting to perform the services may set and charge a reasonable fee
25 commensurate with the services provided.

26 (4) There is an adoption services account in the state special revenue fund. The fees collected by
27 the department under [sections 1 through 156] must be deposited into this account and may be used by
28 the department for adoption services. The money in the account is statutorily appropriated, as provided
29 in 17-7-502, to the department.

30

1 **NEW SECTION. Section 17. Rulemaking authority.** The department may adopt rules to implement
2 the administration and purposes of [sections 1 through 156].

3
4 **NEW SECTION. Section 18. Definitions.** As used in [sections 18 through 38], unless the context
5 requires otherwise, the following definitions apply:

6 (1) "Child" includes an unborn child.

7 (2) (a) "Putative father" means an individual who may be a child's birth father but who:

8 (i) is not married to the child's mother on or before the date that the child is born; or

9 (ii) has not established paternity of the child in a court proceeding prior to the filing of a petition for
10 termination of parental rights to the child for purposes of adoption.

11 (b) The term includes an individual who is:

12 (i) less than 18 years of age; and

13 (ii) not married to the child's mother even though the individual is a presumed father within the
14 meaning of 40-6-105.

15 (3) "Registry" means the putative father registry established under [section 19].

16
17 **NEW SECTION. Section 19. Putative father registry.** The putative father registry is established
18 within the vital statistics bureau of the department. The department shall adopt rules to administer the
19 registry.

20
21 **NEW SECTION. Section 20. Purpose of registry.** (1) The purpose of the putative father registry
22 is to provide notice of adoption proceedings to a putative father who asserts a parental interest in a child
23 so that the putative father may appear in an adoption proceeding and have an opportunity to establish that
24 the putative father's inchoate rights in the child have vested because a substantial relationship with the
25 child has been established as provided in [section 73].

26 (2) A putative father of a child who complies with the requirements of the putative father registry
27 is entitled to notice of any adoption proceedings involving the child.

28
29 **NEW SECTION. Section 21. Presumed knowledge of pregnancy -- duty to register to be afforded**
30 **notice -- putative and presumed fathers.** (1) A person who engages in sexual relations with a member of

1 the opposite sex is presumed to know that a pregnancy could result.

2 (2) A putative father is not entitled to notice of termination of parental rights proceedings for the
3 purposes of adoption unless the putative father has strictly complied with the requirements of the putative
4 father registry.

5 (3) An individual who is not married to the mother but who is presumed to be a father under
6 40-6-105 is not relieved from the obligation of registering in accordance with [sections 18 through 38] in
7 order to receive notice of a termination of parental rights proceeding for a child for whom the individual may
8 be the presumed father.

9

10 **NEW SECTION. Section 22. Registration.** (1) A putative father is entitled to notice of any
11 adoption proceedings involving a child whom the putative father might have fathered if the putative father
12 timely files the following information with the department:

13 (a) the putative father's:

14 (i) full name;

15 (ii) address at which the putative father may be served by certified mail, return receipt requested,
16 with notice of a proceeding to terminate parental rights;

17 (iii) social security number;

18 (iv) date of birth; and

19 (v) tribal affiliation if applicable;

20 (b) the mother's:

21 (i) name, including all other names known to the putative father that the mother uses; and

22 (ii) address, social security number, and date of birth, if known;

23 (c) the child's:

24 (i) name and place of birth, if known; or

25 (ii) the approximate date and location of conception and the approximate expected date of delivery.

26 (2) If a putative father does not have an address where the putative father can receive notice of
27 a termination of parental rights proceeding, the putative father may designate another person as an agent
28 for the purpose of receiving notice. The putative father shall provide the department with the agent's name
29 and the address at which the agent may be served. Service of notice by certified mail, return receipt
30 requested, constitutes service of notice upon the putative father.

1 (3) A putative father shall register under this section on a registration form prescribed by the
 2 department or with a legibly typed or handwritten statement that provides the required information and that
 3 is submitted to the department pursuant to [section 24]. The registration must be signed by the putative
 4 father and notarized.

5 (4) A putative father who registers under this section is responsible for providing written updates
 6 regarding any change of the putative father's name or address.

7
 8 **NEW SECTION. Section 23. When putative father to register -- actual knowledge of pregnancy**
 9 **not required.** (1) In order to be entitled to receive notice of a termination of parental rights proceeding, a
 10 putative father's registration form complying with the requirements of [section 22] must be received by the
 11 department not later than close of business on the date of the child's birth.

12 (2) A putative father may file all information required by [section 22] before a child's birth even
 13 though the putative father has no actual knowledge that a pregnancy has occurred or that a pregnancy has
 14 continued through gestation.

15
 16 **NEW SECTION. Section 24. How registration submitted.** A putative father shall submit a
 17 registration form:

18 (1) in person; or

19 (2) by facsimile transmission, mail, private courier, or express delivery service.

20
 21 **NEW SECTION. Section 25. Burden of putative father to preserve rights upon receipt of notice.**
 22 When a putative father receives notice that a child in whom the putative father claims a parental interest
 23 is the subject of a termination of parental rights proceeding, the putative father must appear at the hearing
 24 held on the petition to terminate parental rights and demonstrate, at a minimum, that the criteria set out
 25 in [section 73] for determining whether the putative father has made reasonable efforts to establish a
 26 substantial relationship with the child who is the subject of the proceedings have been met.

27
 28 **NEW SECTION. Section 26. Presumption created -- admissibility in other proceedings.** A person
 29 filing a registration form is presumed to be the father of the child for purposes of adoption unless the
 30 mother denies that the registrant is the father. The registration or any revocation that is filed is admissible

1 in a paternity proceeding under 40-6-107 and creates a rebuttable presumption as to the paternity of the
2 child for purposes of 40-6-107. The registration creates a rebuttable presumption as to paternity of the
3 child for purposes of an abuse or neglect proceeding under Title 41, chapter 3, or a child support
4 enforcement action under Title 40, chapter 5.

5

6 **NEW SECTION. Section 27. Duties of department.** (1) The department shall:

7 (a) prescribe a registration form for the information that a putative father submits under [section
8 22]; and

9 (b) make the registration forms available through:

10 (i) the department;

11 (ii) each clerk of a district court;

12 (iii) each local health department; and

13 (iv) each county clerk and recorder.

14 (2) A notice provided by the department that informs the public about the purpose and operation
15 of the registry must be posted in a conspicuous place by each:

16 (a) clerk of a district court;

17 (b) driver's examination station of the motor vehicle division of the department of justice;

18 (c) local health department; and

19 (d) county clerk and recorder.

20 (3) The title and registration bureau of the motor vehicle division of the department of justice and
21 the county treasurer of each county shall deliver a copy of the notice described in subsection (4) with the
22 registration tags for every vehicle registered in Montana between July 1, 1997, and October 1, 1998. The
23 department shall provide the copies of the notices to the title and registration bureau and the county
24 treasurers.

25 (4) The notice under subsection (2) must include information regarding:

26 (a) where to obtain a registration form;

27 (b) where to register;

28 (c) the circumstances under which a putative father is required to register;

29 (d) the period under [section 23] during which a putative father is required to register in order to
30 entitle the putative father to receive notice of a proceeding to terminate parental rights;

1 (e) the information that must be provided for the registry and what other actions the putative father
2 is required to take to preserve a right to notice;

3 (f) the consequences of not submitting a timely registration; and

4 (g) the penalties for filing a false claim with the putative father registry.
5

6 **NEW SECTION. Section 28. Duties of department.** (1) The department shall:

7 (a) prescribe a registration form for the information that a putative father submits under [section
8 22]; and

9 (b) make the registration forms available through:

10 (i) the department;

11 (ii) each clerk of a district court; and

12 (iii) each local health department.

13 (2) A notice provided by the department that informs the public about the purpose and operation
14 of the registry must be posted in a conspicuous place by each:

15 (a) clerk of a district court;

16 (b) driver's examination station of the motor vehicle division of the department of justice;

17 (c) local health department; and

18 (d) county clerk and recorder.

19 (3) The notice under subsection (2) must include information regarding:

20 (a) where to obtain a registration form;

21 (b) where to register;

22 (c) the circumstances under which a putative father is required to register;

23 (d) the period under [section 23] during which a putative father is required to register in order to
24 entitle the putative father to receive notice of an adoption;

25 (e) the information that must be provided for the registry and what other actions the putative father
26 is required to take to preserve a right to notice;

27 (f) the consequences of not submitting a timely registration; and

28 (g) the penalties for filing a false claim with the putative father registry.
29

30 **NEW SECTION. Section 29. Information maintained in registry.** The department shall maintain the

1 following information in the registry:

- 2 (1) the registration information provided by the putative father under [section 22];
- 3 (2) the date that the department receives a putative father's registration;
- 4 (3) the name and affiliation of any person who requests that the department search the registry
- 5 to determine whether a putative father is registered in relation to a mother whose child is or may be the
- 6 subject of a termination proceeding and the date the request is submitted; and
- 7 (4) any other information that the department determines is necessary to access the information
- 8 in the registry.

9

10 **NEW SECTION. Section 30. Storage of data.** The department shall store the registry's data in a

11 manner so that the data is accessible through:

- 12 (1) the putative father's name;
- 13 (2) the mother's name;
- 14 (3) the date of birth of the putative father, the mother, and the child, if known;
- 15 (4) the child's name, if known; and
- 16 (5) the social security number for the putative father, the mother, and the child, if known.

17

18 **NEW SECTION. Section 31. Registry search -- request -- affidavit.** (1) The following persons may

19 at any time request that the department search the registry to determine whether a putative father is

20 registered in relation to a child who is or may be the subject of a proceeding to terminate parental rights:

- 21 (a) a representative of the department;
- 22 (b) a representative of an agency when the agency is or may be arranging an adoption;
- 23 (c) a prospective adoptive parent or an attorney representing a prospective adoptive parent in a
- 24 direct parental placement adoption who has the notarized consent of the birth mother; or
- 25 (d) any woman who is the subject of a registration.

26 (2) When a petition to terminate parental rights for purposes of an adoption is filed, the petitioner

27 shall:

- 28 (a) request that the department search the registry at least 1 day after the expiration of the period
- 29 specified under [section 23]; and
- 30 (b) file an affidavit prepared by the department in response to a request under subsection (2)(a)

1 with the court presiding over the termination of parental rights proceeding under [section 63]. The affidavit
2 must meet the requirements of subsections (4) and (5).

3 (3) A request for information about a registration from the department must be in writing.

4 (4) Not later than 5 days after receiving a request under subsection (2)(a), the department shall
5 submit an affidavit to the requestor verifying whether a putative father has registered within the period
6 allowed under [section 23] in relation to a mother whose child or expected child is the subject of the
7 termination proceeding.

8 (5) Whenever the department finds that one or more putative fathers are registered, the department
9 shall:

10 (a) submit a copy of each registration form with the department's affidavit; and

11 (b) include in the affidavit the date that the department representative, agency, or attorney
12 submitted the request for the search.

13 (6) A court may not issue an order terminating parental rights unless the department's affidavit
14 under subsection (5) is filed with the court.

15

16 **NEW SECTION. Section 32. Duties of department upon receipt of request.** (1) Whenever the
17 department receives a request, the department shall:

18 (a) search its records of putative father registrations and search its records for any
19 acknowledgement of paternity filed pursuant to 40-6-105; and

20 (b) notify the requestor as to whether a paternity action has been filed and a paternity order issued
21 to the department pursuant to 40-6-116 requiring the issuance of a new birth certificate concerning a child
22 who is or may be the subject of an adoption that the attorney or agency is arranging.

23 (2) The department may charge a reasonable fee for responding to a request under this section.
24

25 **NEW SECTION. Section 33. Failure to register -- irrevocable implied consent -- fraud.** (1) A
26 putative father who fails to register within the period specified under [section 23] waives notice of a
27 termination proceeding.

28 (2) The putative father's waiver under subsection (1) constitutes an irrevocable implied consent
29 to the child's adoption.

30 (3) Failure of an agency to post a proper notice under [section 27] does not relieve a putative father

1 of the obligation to register with the department in accordance with the putative father registry in order to
2 entitle the putative father to notice of proceedings involving a child who may have been fathered by the
3 putative father.

4
5 **NEW SECTION. Section 34. Revocation of registration.** A putative father may revoke a
6 registration at any time by submitting to the department a signed, notarized statement revoking the
7 registration.

8
9 **NEW SECTION. Section 35. Certified copy of registration form to be furnished upon request.** The
10 department shall furnish a certified copy of the putative father's registration form upon written request by:

- 11 (1) a putative father whose name appears on the registration form being requested;
12 (2) a mother whose name appears on the registration form being requested;
13 (3) upon reaching majority, a person who was the subject of a registration;
14 (4) a prospective adoptive parent or an attorney representing a prospective adoptive parent in a
15 direct parental placement adoption who has the notarized consent of the birth mother;
16 (5) a licensed child-placing agency;
17 (6) a court that presides over a pending adoption;
18 (7) the child support enforcement division of the department; or
19 (8) a representative of the department involved in an adoption or a neglect and dependency
20 proceeding under Title 41, chapter 3.

21
22 **NEW SECTION. Section 36. Information confidential.** Except as otherwise provided in [sections
23 18 through 38], information contained within the registry is confidential.

24
25 **NEW SECTION. Section 37. Registration of false information -- criminal and civil penalties.** A
26 person who purposely or knowingly registers false information or requests confidential information in
27 violation of a putative father registry commits a misdemeanor and may be civilly liable for damages.

28
29 **NEW SECTION. Section 38. Responsibility of each party to protect interests -- putative fathers --**
30 **fraud no defense.** (1) The legislature finds no practical way to remove all risk of fraud or misrepresentation

1 in adoption proceedings and has provided a method for absolute protection of a putative father's rights by
 2 compliance with the provisions of the putative father registry. In balancing the rights and interests of the
 3 state and of all parties affected by fraud, specifically the child, the adoptive parents, and the putative
 4 father, the legislature determines that the putative father is in the best position to prevent or ameliorate the
 5 effects of fraud and that, therefore, the burden of establishing fraud by clear and convincing evidence must
 6 be born by the putative father.

7 (2) Each parent of a child conceived or born outside of marriage to the other parent is responsible
 8 for that parent's own actions and assertion of their parental rights notwithstanding any action, statement,
 9 or omission of the other parent or third parties.

10 (3) A person injured by fraudulent representations or actions in connection with an adoption is
 11 entitled to pursue civil or criminal penalties. A fraudulent representation is not a defense for failure to
 12 strictly comply with the requirements of the putative father registry and is not a basis for dismissal of a
 13 petition for adoption, vacation of an adoption decree, or an automatic grant of custody to the injured party.

14 (4) A putative father who resides in another state may contest an adoption prior to issuance of a
 15 decree of adoption and may assert the putative father's interest in the child. If the adoption is contested,
 16 the court shall hold an evidentiary hearing to determine if:

17 (a) the putative father resides and has resided in another state where the unmarried mother lived
 18 or resided either at the time of conception or through a portion of the pregnancy;

19 (b) the mother left that state, concealing the location from the putative father regarding where the
 20 mother could be contacted or located;

21 (c) the father has, through every reasonable means, attempted to locate the mother but has been
 22 unable to do so; and

23 (d) the putative father has complied with the most stringent and complete requirements of the state
 24 where the mother previously resided or was located in order to protect and preserve the putative father's
 25 parental interest and rights concerning the child in cases of adoption.

26

27 **NEW SECTION. Section 39. Consent required.** An adoption of a child may be decreed when
 28 written consents to adoption have been executed by:

29 (1) the birth mother;

30 (2) the husband of the birth mother if the husband is the presumed father of the child under

1 40-6-105;

2 (3) any other person whose parental rights have been established by a court;

3 (4) the department or an agency that has custody of the child and the authority to place the child
4 for adoption;

5 (5) the legal guardian of the child if both parents are dead or their rights have been judicially
6 terminated and the guardian has authority by order of the court appointing the guardian to consent to the
7 adoption;

8 (6) the child, either in writing or in court, if the child is 12 years of age or older unless the child
9 does not have the mental capacity to consent.

10

11 **NEW SECTION. Section 40. Persons whose consent not required.** Consent to adoption of a child
12 is not required from:

13 (1) an individual whose parental relationship to the child has been judicially terminated for unfitness
14 or has been determined not to exist or who has waived parental rights;

15 (2) a parent who has been judicially declared incompetent;

16 (3) an individual who has not been married to the mother of the child and who, after the
17 conception of the child, executes a notarized statement denying paternity or a notarized statement
18 acknowledging paternity and denying any interest in the child; or

19 (4) the personal representative of a deceased parent's estate.

20

21 **NEW SECTION. Section 41. Form of consent.** The consents required by [section 39] must be
22 acknowledged before an officer authorized to take acknowledgments or witnessed by a representative of
23 the department, an agency, or the court.

24

25 **NEW SECTION. Section 42. Child available for adoption -- voluntary acts of parents.** A parent may
26 voluntarily make a child available for adoption by:

27 (1) executing a voluntary relinquishment and consent to adoption;

28 (2) executing a denial of paternity; or

29 (3) submitting a notarized acknowledgment of paternity and a denial of any interest in custody of
30 the child.

1 **NEW SECTION. Section 43. Voluntary relinquishment -- validity.** (1) A voluntary relinquishment
2 is not valid unless the parent specifically relinquishes custody of the child to the department, a licensed
3 child-placing agency, or a specifically identified prospective adoptive parent and:

4 (a) the department or agency to whom the child is being relinquished has agreed in writing to
5 accept custody of the child until the child is adopted; or

6 (b) the identified prospective adoptive parent has agreed in writing to accept temporary custody
7 and to provide support and care to the child until that person's adoption petition is granted or denied.

8 (2) A voluntary relinquishment of a parent's rights solely to the child's other parent does not relieve
9 the parent executing the relinquishment of any duty owed to the child.

10
11 **NEW SECTION. Section 44. Arrearages of child support -- responsibility to child.** (1) A voluntary
12 relinquishment of a parent's rights and responsibilities toward a child do not cancel any responsibility to
13 pay arrearages of child support unless the party to whom the arrearages are owed agrees in writing to
14 waive the payment of the arrearages.

15 (2) A parent who executes a voluntary relinquishment of rights and responsibilities toward a child
16 remains financially responsible for the child until a court actually terminates parental rights to the child.

17
18 **NEW SECTION. Section 45. Who may relinquish -- to whom.** (1) A parent or guardian whose
19 consent to the adoption of a child is required may relinquish to the department or an agency all rights with
20 respect to the child, including legal and physical custody and the right to consent to the child's adoption.

21 (2) A parent or guardian whose consent to the adoption of a child is required and who has filed
22 a notice of parental placement under [section 95] for a direct parental placement adoption may:

23 (a) relinquish to the prospective adoptive parent all rights with respect to the child, including legal
24 and physical custody; and

25 (b) consent to the child's adoption by the prospective adoptive parents.

26
27 **NEW SECTION. Section 46. Relinquishment by minor parent -- separate legal counsel in direct**
28 **parental placement adoption.** (1) A parent who is a minor has the right to relinquish all rights to that minor
29 parent's child and to consent to the child's adoption. The relinquishment is not subject to revocation by
30 reason of minority.

1 (2) In a direct parental placement adoption, a relinquishment and consent to adopt executed by a
2 parent who is a minor is not valid unless the minor parent has been advised by an attorney who does not
3 represent the prospective adoptive parent. Legal fees charged by the minor parent's attorney are an
4 allowable expense that may be paid by prospective adoptive parents under [section 147], subject to the
5 limitations in [section 148].

6
7 **NEW SECTION. Section 47. Time and prerequisites for execution of relinquishment and consent**
8 **to adoption -- copy of preplacement evaluation -- notarization.** (1) A parent whose consent to the adoption
9 of a child is required may execute a relinquishment and consent to adoption only after the following criteria
10 have been met:

11 (a) the child has been born;

12 (b) not less than 72 hours have elapsed since the birth of the child if the person relinquishing
13 parental rights is the child's birth mother;

14 (c) the parent has received counseling in accordance with [section 48]; and

15 (d) in a direct parental placement adoption:

16 (i) the parent has been informed that fees for any required counseling and legal fees are allowable
17 expenses that may be paid by a prospective adoptive parent under [section 147], subject to the limitations
18 set in [section 148];

19 (ii) if the parent is a minor, the parent has been represented by separate legal counsel; and

20 (iii) prior to the execution of the relinquishment, the parent has been provided a copy of the
21 preplacement evaluation prepared pursuant to [section 86] pertaining to the prospective adoptive parent.

22 (2) A guardian may execute a relinquishment and consent to adopt at any time after being
23 authorized by a court.

24 (3) The department or a licensed child-placing agency may execute a consent for the adoption at
25 any time before or during the hearing on the petition for adoption.

26 (4) A child whose consent is required may execute a consent at any time before or during the
27 hearing on the petition to adopt.

28 (5) Except as provided in this section, a relinquishment and consent to adopt must be a separate
29 instrument executed before a notary public.

30 (6) If the person from whom a relinquishment and consent to adopt is required is a member of the

1 armed services or is in prison, the relinquishment may be executed and acknowledged before any person
2 authorized by law to administer oaths.

3
4 **NEW SECTION. Section 48. Counseling requirements.** (1) Counseling of the birth mother is
5 required in department, agency, and direct parental placement adoptions. If any other parent is involved
6 in an adoptive placement, counseling of that parent is encouraged.

7 (2) Counseling must be performed by a person employed by the department or by a staff person
8 of a licensed child-placing agency designated to provide this type of counseling. Unless the counseling
9 requirement is waived for good cause by a court, a minimum of 3 hours of counseling must be completed
10 prior to execution of a relinquishment of parental rights and consent to adopt. A relinquishment and
11 consent to adopt executed prior to completion of required counseling is void.

12 (3) During counseling, the counselor shall offer an explanation of:

13 (a) adoption procedures and options that are available to a parent through the department or
14 licensed child-placing agencies;

15 (b) adoption procedures and options that are available to a parent through direct parental placement
16 adoptions, including the right to an attorney and that legal expenses are an allowable expense that may be
17 paid by a prospective adoptive parent as provided in [sections 147 and 148];

18 (c) the alternative of parenting rather than relinquishing the child for adoption;

19 (d) the resources that are available to provide assistance or support for the parent and the child
20 if the parent chooses not to relinquish the child;

21 (e) the legal and personal effect and impact of terminating parental rights and of adoption;

22 (f) the options for contact and communication between the birth family and the adoptive family;

23 (g) postadoptive issues, including grief and loss;

24 (h) the reasons for and importance of providing accurate medical and social history information
25 under [section 81];

26 (i) the operation of the confidential intermediary program; and

27 (j) the fact that the adoptee may be provided with a copy of the original birth certificate upon
28 request after reaching 18 years of age, unless the birth parent has specifically requested in writing that the
29 vital statistics bureau withhold release of the original birth certificate.

30 (4) The counselor shall prepare a written report containing a description of the topics covered and

1 the number of hours of counseling. The report must specifically include the counselor's opinion of whether
2 or not the parent understood all of the issues and was capable of informed consent. The report may be
3 released to the person counseled, to the department, to an agency, or with the consent of the person
4 counseled, to an attorney for the prospective adoptive parents.

5
6 **NEW SECTION. Section 49. Revocation of relinquishment and consent.** (1) The parent who
7 executed the relinquishment and consent to adopt and the department, agency, or prospective adoptive
8 parent named or described in the relinquishment and consent to adopt may mutually agree to its revocation
9 prior to the issuance of an order terminating parental rights.

10 (2) A relinquishment may not be revoked if an order has been issued terminating parental rights.

11
12 **NEW SECTION. Section 50. Conditional relinquishment and consent.** (1) A relinquishment and
13 consent to adopt may provide that it not take effect only if:

14 (a) the other parent does not execute a relinquishment and consent to adopt within a specified
15 period; or

16 (b) a court decides to not terminate another individual's parental relationship to the child.

17 (2) A relinquishment and consent to adopt may not be conditioned on whether or not existing
18 agreements for matters, including but not limited to visitation and ongoing communication with the child,
19 are later performed.

20
21 **NEW SECTION. Section 51. Content of relinquishment and consent to adopt.** (1) A
22 relinquishment and consent to adopt must be in writing and must contain:

23 (a) the date, place, and time of the execution of relinquishment and consent to adopt;

24 (b) the name, date of birth, and current mailing address of the individual executing the
25 relinquishment and consent to adopt;

26 (c) the date of birth and the name of the child to be adopted; and

27 (d) the name, address, and telephone numbers of the department or agency to which the child is
28 being relinquished or the name, address, and telephone numbers of the prospective adoptive parent or the
29 lawyer representing the prospective adoptive parent with whom the individual executing the relinquishment
30 and consent has placed or intends to place the child for adoption.

1 (2) A relinquishment and consent to adopt executed by a parent or guardian must state that the
2 parent or guardian executing the document is voluntarily and unequivocally consenting to the:

3 (a) permanent transfer of legal and physical custody of the child to the department or agency for
4 the purposes of adoption; or

5 (b) transfer of permanent legal and physical custody to, and the adoption of the child by, a specific
6 identified adoptive parent whom the parent or guardian has selected.

7 (3) A relinquishment and consent to adopt must state:

8 (a) that after the document is signed or confirmed in substantial compliance with this section, it
9 is final and, except under a circumstance stated in [section 50], may not be revoked or set aside for any
10 reason, including the failure of an adoptive parent to permit the individual executing the relinquishment and
11 consent to adopt to visit or communicate with the child;

12 (b) that the adoption will extinguish all parental rights and obligations that the individual executing
13 the relinquishment and consent to adopt has with respect to the child, except for arrearages of child
14 support unless the arrearages are waived by the person to whom they are owed, and that the
15 relinquishment will remain valid whether or not any agreement for visitation or communication with the child
16 is later performed;

17 (c) that the individual executing the relinquishment and consent to adoption has:

18 (i) received a copy of the relinquishment and consent to adoption;

19 (ii) received a copy of a written agreement by the department, agency, or prospective adoptive
20 parent to accept temporary custody and to provide support and care to the child until an adoption petition
21 is granted or denied;

22 (iii) if required, received counseling services and information about adoption pursuant to [section
23 48] explaining the meaning and consequences of an adoption;

24 (d) in direct parental placement adoptions, that the individual has:

25 (i) been advised if the individual is:

26 (A) a minor parent, by a lawyer who is not representing an adoptive parent or the agency to which
27 the child is being relinquished; or

28 (B) an adult, of the right to have a lawyer who is not representing an adoptive parent or the agency
29 and whose fees are allowable expenses that can be paid by the prospective adoptive parents;

30 (ii) been provided with a copy of the prospective adoptive parent's preplacement evaluation;

1 (e) in agency and direct parental placement adoptions, that the individual has:

2 (i) been advised of the obligation to provide the medical and social history information required
3 under [section 81] pertaining to disclosures; and

4 (ii) not received or been promised any money or anything of value for execution of the
5 relinquishment and consent to adopt, except for payments authorized by [sections 147 and 148].

6 (4) A relinquishment and consent to adopt must provide that the individual who is relinquishing
7 waives notice of any proceeding for adoption.

8
9 **NEW SECTION. Section 52. Consequences of relinquishment and consent to adopt.** Except under
10 a circumstance stated in [section 50] a relinquishment and consent to the adoption of a child that is
11 executed by a parent or guardian in substantial compliance with [section 51] is final and irrevocable. The
12 relinquishment and consent to adopt:

13 (1) unless a court orders otherwise to protect the welfare of the child, entitles the department,
14 agency, or prospective adoptive parent named or described to the legal and physical custody of the child
15 and imposes on that department, agency, or prospective adoptive parent responsibility for the support and
16 medical and other care of the child;

17 (2) terminates any duty of the parent who executed the document with respect to the child except
18 for arrearages of child support; and

19 (3) terminates any right of the parent or guardian who executed the document to:

20 (a) object to the placement of the child for adoption by the department or agency;

21 (b) object to the child's adoption by the prospective adoptive parent; and

22 (c) notice of the proceeding for adoption.

23
24 **NEW SECTION. Section 53. Grounds for court to set aside relinquishment and consent.** (1) The
25 court shall set aside a relinquishment and consent to adopt if the individual who executed the
26 relinquishment and consent establishes:

27 (a) by clear and convincing evidence, before a decree of adoption is issued, that the consent was
28 obtained by fraud or duress; or

29 (b) by a preponderance of the evidence, that a condition permitting revocation has occurred, as
30 expressly provided for in [section 50].

1 (2) A verbatim record of testimony must be made.

2
3 **NEW SECTION. Section 54. Remedy when relinquishment and consent to adopt revoked or set**
4 **aside -- expediency.** (1) If a relinquishment and consent to adopt that was executed by an individual is
5 revoked or set aside, the department, agency, or prospective adoptive parent shall immediately return the
6 child to the individual's custody and move to dismiss a proceeding for adoption or termination of the
7 individual's parental rights to the child unless:

8 (a) the department has legal custody pursuant to a court order;

9 (b) there are grounds for the department to seek a court order under the provisions of Title 41,
10 chapter 3; or

11 (c) the individual did not have legal custody of the child at the time the relinquishment and consent
12 to adopt was executed.

13 (2) In the circumstances described in subsections (1)(a) through (1)(c) and when there is no
14 existing court order providing for care and custody, the court shall issue an order providing for the care and
15 custody of the child according to the best interests of the child under any law applicable to the
16 circumstances of the case.

17 (3) Except as provided in subsection (1), if after revocation or the setting aside of a relinquishment
18 or consent a child is not returned immediately by the department, agency, or prospective adoptive parent,
19 the individual may petition the court for appropriate relief. The action must take precedence over other
20 cases and matters in the court. The court shall examine the petition, hear the case, and render a decision
21 as soon as possible.

22
23 **NEW SECTION. Section 55. Notarized denial of paternity -- no entitlement to notice.** (1) Execution
24 of a notarized denial of paternity of a child is a voluntary act that constitutes a waiver of all parental rights
25 to the child.

26 (2) A notarized denial of paternity is irrevocable when executed. An individual who has executed
27 a denial of paternity toward a child who is the subject of adoption proceedings is not entitled to notice of
28 either the hearing to terminate parental rights or the hearing on an adoption petition.

29
30 **NEW SECTION. Section 56. Notarized acknowledgment of paternity and denial of interest in**

1 **custody -- no entitlement to notice.** (1) Submission of a notarized acknowledgment of paternity and a
2 denial of any interest in the custody of the child is a voluntary act that constitutes a waiver of all parental
3 rights to the child.

4 (2) An individual who has executed an acknowledgment of paternity and denial of interest in the
5 custody in a child who is the subject of adoption proceedings is not entitled to notice of either the hearing
6 to terminate parental rights or the hearing on an adoption petition unless, subsequent to execution of the
7 acknowledgment of paternity and denial of interest in custody, the individual has strictly complied with all
8 of the requirements of [section 22] and has done so within the time limits established in [section 23].

9
10 **NEW SECTION. Section 57. Timing of proceedings to terminate.** (1) In order to provide notice
11 to a putative father at the earliest possible time of an expectant mother's intent to release an expected child
12 for adoption and in order to facilitate early placement of a child for adoption, an expectant mother may
13 initiate proceedings to terminate paternal rights by filing a petition of intent to place a child for adoption
14 prior to the birth of the child.

15 (2) A petition to terminate parental rights may also be filed after a child is born.

16
17 **NEW SECTION. Section 58. Expected child -- filing of petition indicating intent to release or**
18 **consent to adoption.** (1) A pregnant individual may file a petition with the court indicating the intention to
19 place an expected child for adoption.

20 (2) The petition must include the following information:

21 (a) the individual's intent to release the expected child for adoption;

22 (b) the approximate date and location of conception;

23 (c) the expected date of delivery;

24 (d) any information concerning the identity and whereabouts of any putative or presumed father
25 of the expected child unless the birth mother relies on the right to privacy; and

26 (e) in a situation in which there is a presumed father, the grounds upon which the individual relies
27 in contending that the nonexistence of the father and child relationship can be established in an action
28 brought under 40-6-107.

29 (3) The petition may allege more than one putative or presumed father.

30 (4) The petition must be signed by the petitioner and notarized.

1 **NEW SECTION. Section 59. Notice to any named father of intent to release child for adoption.**

2 (1) Upon the filing of the petition under [section 58], the court shall issue a notice of intent to release a
3 child for adoption.

4 (2) The notice must be served by the petitioner, in the manner provided by the Montana Rules of
5 Civil Procedure, upon each putative or presumed father at least 20 days prior to the expected date of birth
6 of the child. Proof of service must be filed with the court.

7 (3) A notice of intent to release directed to a putative father must indicate the approximate date
8 and location of conception of the child and the expected date of birth and must inform the putative father
9 that:

10 (a) in order to protect the putative father's rights to the child, the putative father is required to file
11 notice of intent to claim paternity before the expected date of birth;

12 (b) the putative father is required to appear at the hearing at the time and date set by the court;

13 (c) the failure to file notice of intent to claim paternity before the expected date of birth:

14 (i) constitutes a waiver of the right to receive the notice provided for in [section 22];

15 (ii) constitutes an irrevocable denial of the putative father's interest in the custody of the child; and

16 (iii) will result in the court's termination of the putative father's rights to the child.

17 (4) In addition to the information contained in subsection (3), a notice of intent to release directed
18 to an individual presumed to be the father under 40-6-105 must also indicate the intention of the mother
19 to ask for a declaration establishing the nonexistence of the father and child relationship and the grounds
20 for seeking the declaration.

21
22 **NEW SECTION. Section 60. Notice to any named father of intent to release child for adoption.**

23 (1) Upon the filing of the petition under [section 58], the court shall issue a notice of intent to release a
24 child for adoption.

25 (2) The notice must be served by the petitioner, in the manner provided by the Montana Rules of
26 Civil Procedure, upon each putative or presumed father at least 20 days prior to the expected date of birth
27 of the child. Proof of service must be filed with the court.

28 (3) A notice of intent to release directed to a putative father must indicate the approximate date
29 and location of conception of the child and the expected date of birth and must inform the putative father:

30 (a) that in order to protect the putative father's rights to the child, the putative father is required

1 to register with the putative father registry as of the close of business on the expected date of birth of the
2 child;

3 (b) that the putative father is required to appear at the hearing at the time and date set by the court;

4 (c) of the rights and responsibilities to which the putative father will be entitled upon registering
5 with the putative father registry; and

6 (d) that the failure to comply with all requirements of filing with the putative father registry before
7 the expected date of birth:

8 (i) constitutes a waiver of the right to receive the notice provided for in [section 22];

9 (ii) constitutes an irrevocable denial of the putative father's interest in the custody of the child; and

10 (iii) will result in the court's termination of the putative father's rights to the child.

11 (4) In addition to the information contained in subsection (3), a notice of intent to release directed
12 to an individual presumed to be the father under 40-6-105 must also indicate the intention of the mother
13 to ask for a declaration establishing the nonexistence of the father and child relationship and the grounds
14 for seeking the declaration.

15

16 **NEW SECTION. Section 61. Venue.** Proceedings to terminate parental rights may be filed in the
17 court in the county in which a petitioner resides, the child resides, or an office of the agency that is placing
18 the child is located.

19

20 **NEW SECTION. Section 62. Necessity for parental rights to be terminated.** A child is not legally
21 free for adoption until the parental rights of the birth parent or parents have been terminated by a court:

22 (1) as provided in [sections 1 through 156];

23 (2) pursuant to Title 41, chapter 3; or

24 (3) of competent jurisdiction in another state or country.

25

26 **NEW SECTION. Section 63. Petition for termination of parental rights.** (1) Pending the termination
27 or other disposition of the rights of the father of the child, the birth mother may execute a relinquishment
28 and consent to adoption.

29 (2) The department, a licensed child-placing agency, the prospective adoptive parent to whom the
30 relinquishment is issued, or a guardian with custody of the child shall file with the court a signed and

1 notarized petition for termination of parental rights pursuant to [sections 1 through 156] or pursuant to Title
2 41, chapter 3.

3 (3) At the request of the relinquishing parent, the execution of a relinquishment may be conditioned
4 as set forth in [section 50].

5 (4) Pending disposition of the petition, the court may enter an order authorizing temporary care of
6 the child.

7
8 **NEW SECTION. Section 64. Contents of petition for termination of parental rights.** (1) The
9 petition for termination of parental rights must state:

10 (a) the identity of the petitioner;

11 (b) the date and location of the birth of the child;

12 (c) the date of the relinquishment by the birth mother or relinquishing parent;

13 (d) the current location of the child;

14 (e) the names and locations, if known, of any putative or presumed father of the child;

15 (f) efforts and inquiries made to locate any parent whose identity is known but whose whereabouts
16 are unknown;

17 (g) the grounds on which the parental rights of any putative or presumed father to the child should
18 be terminated;

19 (h) whether a putative or presumed father is one from whom consent is not required;

20 (i) whether court orders from any other proceeding have been issued terminating parental rights
21 to the child who is the subject of the petition;

22 (j) any other evidence supporting termination of the legal rights that a person has with regard to
23 the child; and

24 (k) a request for custody of the child prior to the adoption.

25 (2) The petitioner shall file with the petition for termination of parental rights the following
26 documents received in support of the petition:

27 (a) any relinquishments and consents to adoption;

28 (b) any denials of paternity;

29 (c) any acknowledgments of paternity and denial of parental rights;

30 (d) any response from the department to a request of whether any notice of intent to claim

- 1 paternity has been filed;
- 2 (e) a counseling report required under [section 48]; and
- 3 (f) proof of service of any notice or acknowledgement of service or waiver of service received.

4

5 **NEW SECTION. Section 65. Contents of petition for termination of parental rights.** (1) The
6 petition for termination of parental rights must state:

- 7 (a) the identity of the petitioner;
- 8 (b) the date and location of the birth of the child;
- 9 (c) the date of the relinquishment by the birth mother or relinquishing parent;
- 10 (d) the current location of the child;
- 11 (e) the names and locations, if known, of any putative or presumed father of the child;
- 12 (f) whether a parent is one from whom consent is not required;
- 13 (g) whether court orders from any other proceeding have been issued terminating parental rights
14 to the child that is the subject of the petition;
- 15 (h) any other evidence supporting termination of the legal rights that a person has with regard to
16 the child; and
- 17 (i) a request for temporary custody of the child prior to the adoption.

18 (2) The petitioner shall file with the petition for termination of parental rights the following
19 documents received in support of the petition:

- 20 (a) any relinquishments and consents to adoption;
- 21 (b) any denials of paternity;
- 22 (c) any acknowledgments of paternity and denial of parental rights;
- 23 (d) any affidavits from the putative father registry that have been executed by the department;
- 24 (e) a counseling report required under [section 48]; and
- 25 (f) proof of service of any notice or acknowledgement of service or waiver of service received.

26

27 **NEW SECTION. Section 66. Notice of hearing -- service.** (1) Notice of a hearing to be held on
28 the petition for termination of parental rights must be served in any manner appropriate under the Montana
29 Rules of Civil Procedure or in any manner that the court may direct on:

- 30 (a) a putative or presumed father;

1 (b) a putative father who was not served with a notice of intent to release at least 20 days before
2 the expected date of birth as specified in the notice of intent to release;

3 (c) a spouse, if the parent relinquishing the child for adoption was married to that person at the
4 time of conception of the child or at any time after conception but prior to birth;

5 (d) a parent or legal guardian of the child in question who has not waived notice; or

6 (e) any other person who is reasonably believed to be the father.

7 (2) The notice of hearing must inform the putative or presumed father that failure to appear at the
8 hearing constitutes a denial of the individual's interest in custody of the child and will result in the court's
9 termination of the individual's rights to the child.

10 (3) Proof of service of the notice of hearing must be filed with the court. A notarized
11 acknowledgement of service by the party to be served is proof of personal service. Proof of service is not
12 required if the putative father is present at the hearing. A waiver of notice of the hearing by an individual
13 entitled to receive notice is sufficient.

14 (4) If a person has not been identified as the father or putative father of the child, the court, on
15 the basis of all information available, shall determine whether publication of notice of the proceeding is
16 likely to lead to identification. If so, the court shall order publication in the manner that it considers
17 appropriate. The name of the birth mother may be included in the publication only with the mother's
18 written consent.

19 (5) If the court finds that the father of the child is a person who did not receive either a timely
20 notice of intent to release pursuant to [section 22] or a notice required pursuant to this section and who
21 has not waived the right to notice of hearing and that person is not present at the hearing, the court shall
22 adjourn further proceedings until that person is served with a notice of hearing.

23
24 **NEW SECTION. Section 67. Notice of hearing -- service.** (1) Notice of a hearing to be held on
25 the petition for termination of parental rights must be served in any manner appropriate under the Montana
26 Rules of Civil Procedure or in any manner that the court may direct on:

27 (a) a putative or presumed father who has timely and properly complied with the putative father
28 registry;

29 (b) a putative father who was not served with a notice of intent to release at least 20 days before
30 the expected date of birth as specified in the notice of intent to release;

1 (c) a spouse, if the parent relinquishing the child for adoption was married to that person at the
2 time of conception of the child or at any time after conception but prior to birth; or

3 (d) a parent or legal guardian of the child in question who has not waived notice.

4 (2) The notice of hearing must inform the putative or presumed father or other parent that failure
5 to appear at the hearing constitutes a denial of the individual's interest in custody of the child and will result
6 in the court's termination of the individual's rights to the child.

7 (3) Proof of service of the notice of hearing must be filed with the court. A notarized
8 acknowledgement of service by the party to be served is proof of personal service. Proof of service is not
9 required if the putative father is present at the hearing. A waiver of notice of the hearing by an individual
10 entitled to receive notice is sufficient.

11 (4) If the court finds that the father of the child is a person who did not receive either a timely
12 notice of intent to release pursuant to [section 22] or a notice required pursuant to this section and who
13 has not waived the right to notice of hearing and that person is not present at the hearing, the court shall
14 adjourn further proceedings until that person is served with a notice of hearing.

15
16 **NEW SECTION. Section 68. Hearing on petition to terminate parental rights.** (1) The court shall
17 hold a hearing as soon as practical to determine the identity of and terminate the parental rights of the
18 father of the child.

19 (2) If the mother has failed to name a putative father and no one has filed notice of intent to claim
20 paternity, the court shall cause inquiry to be made in an effort to identify the father. The inquiry must
21 include whether the mother was married at the time of conception of the child or at any time after
22 conception.

23 (3) Based on the evidence received and the court's inquiry, the court shall enter a finding
24 identifying the father or declaring that the identity of the father could not be determined.

25 (4) Based on the grounds set forth in [section 70] and the evidence received at the hearing, the
26 court shall enter an order concerning the parental rights to the child.

27 (5) If the court terminates the parental rights to the child and the department, agency, or
28 prospective adoptive parent has agreed to accept custody of the child until the child is adopted, the court
29 shall issue an order awarding custody of the child to the petitioner.

30

1 **NEW SECTION. Section 69. Hearing on petition to terminate parental rights.** (1) The court shall
2 hold a hearing as soon as practical to determine the identity of and terminate the parental rights of the
3 father of the child.

4 (2) If the mother has failed to name a putative father and no one has registered with the putative
5 father registry, the court shall cause inquiry to be made in an effort to identify the father. The inquiry must
6 include:

7 (a) whether the mother:

8 (i) was married at the time of conception of the child or at any time after conception;

9 (ii) was cohabiting with an individual of the opposite sex at the time of conception or birth of the
10 child; and

11 (iii) has received support payments or promises of support payments for the child or in connection
12 with the pregnancy; and

13 (b) whether any person formally or informally acknowledged possible paternity to the child.

14 (3) Based on the evidence received and the court's inquiry, the court shall enter a finding
15 identifying the father or declaring that the identity of the father could not be determined.

16 (4) Based on the grounds set forth in [section 70] and the evidence received at the hearing, the
17 court shall enter an order concerning the parental rights to the child.

18 (5) If the court terminates the parental rights to the child and the department, agency, or
19 prospective adoptive parent has agreed to accept custody of the child until the child is adopted, the court
20 shall issue an order awarding custody of the child to the petitioner.

21
22 **NEW SECTION. Section 70. Grounds for termination of parental rights.** The court may terminate
23 a parent's rights to a child who is the subject of an adoption proceeding based upon:

24 (1) the voluntary acts of the parent in:

25 (a) executing a voluntary relinquishment and consent to adopt;

26 (b) submitting a notarized denial of paternity executed pursuant to [section 55]; or

27 (c) submitting a notarized acknowledgment of paternity and denial of interest in custody of the
28 child executed pursuant to [section 56];

29 (2) a determination under [section 71] that the parent is unfit;

30 (3) a determination under [section 72] that the relationship of parent and child does not exist; or

1 (4) a determination that the parent has irrevocably waived parental rights by failing to timely act
2 to protect the rights.

3
4 **NEW SECTION. Section 71. Finding of unfitness.** (1) The court may terminate parental rights for
5 purposes of making a child available for adoption on the grounds of unfitness if:

6 (a) the court makes a determination that the parent has been judicially deprived of custody of the
7 child on account of abuse or neglect toward the child;

8 (b) the parent has in the state of Montana or in any other jurisdiction of the United States willfully
9 abandoned the child, as defined in 41-3-102(7)(e), in Montana or in any other jurisdiction of the United
10 States;

11 (c) it is proven, to the satisfaction of the court, that the parent, if able, has not contributed to the
12 support of the child for an aggregate period of 1 year before the filing of a petition for adoption;

13 (d) it is proven, to the satisfaction of the court, that the parent is in violation of a court order to
14 support either the child that is the subject of the adoption proceedings or other children with the same birth
15 mother;

16 (e) the parent has been found guilty by a court of competent jurisdiction of:

17 (i) aggravated assault on the adoptee, as provided in 45-5-202;

18 (ii) sexual assault on a child, as provided in 45-5-502;

19 (iii) sexual intercourse without consent, as provided in 45-5-503, if the victim was a child;

20 (iv) incest, as provided in 45-5-507, if the victim was a child;

21 (v) homicide of a child, as provided in 45-5-102 or 45-5-103;

22 (vi) sexual abuse of a child, as provided in 45-5-625; or

23 (vii) ritual abuse of a minor, as provided in 45-5-627;

24 (f) the child has been maintained by a public or private children's institution, a charitable agency,
25 a licensed child-placing agency, or the department for a period of 1 year without the parent contributing
26 to the support of the child during that period, if able;

27 (g) a finding is made for a parent who is given proper notice of hearing:

28 (i) that the parent has been convicted of a crime of violence or of violating a restraining or
29 protective order; and

30 (ii) the facts of the crime or violation and the parent's behavior indicate that the parent is unfit to

1 maintain a relationship of parent and child with the child;

2 (h) a finding is made for a parent who is given proper notice of hearing and is a respondent to the
3 petition to terminate parental rights and:

4 (i) by a preponderance of the evidence, it is found that termination is in the best interests of the
5 child; and

6 (ii) upon clear and convincing evidence, it is found that one of the following grounds exists:

7 (A) if the child is not in the legal and physical custody of the other parent, that the respondent is
8 not able or willing to promptly assume legal and physical custody of the child and to pay for the child's
9 support in accordance with the respondent's financial means;

10 (B) if the child is in the legal and physical custody of the other parent and a stepparent who is the
11 prospective adoptive parent, that the respondent is not able or willing to promptly establish and maintain
12 contact with the child and to pay for the child's support in accordance with the respondent's financial
13 means;

14 (C) placing the child in the respondent's legal and physical custody would pose a risk of substantial
15 harm to the physical or psychological well-being of the child because the circumstances of the child's
16 conception, the respondent's behavior during the mother's pregnancy or since the child's birth, or the
17 respondent's behavior with respect to other children indicates that the respondent is unfit to maintain a
18 relationship of parent and child with the child; or

19 (D) failure to terminate the relationship of parent and child would be detrimental to the child.

20 (2) In making a determination under subsection (1)(h)(ii)(D), the court shall consider any relevant
21 factor, including the respondent's efforts to obtain or maintain legal and physical custody of the child, the
22 role of other persons in thwarting the respondent's efforts to assert parental rights, the respondent's ability
23 to care for the child, the age of the child, the quality of any previous relationship between the respondent
24 and the child and between the respondent and any other children, the duration and suitability of the child's
25 present custodial environment, and the effect of a change of physical custody on the child.

26

27 **NEW SECTION. Section 72. Determination that no parent and child relationship exists.** For
28 purposes of making a child available for adoption, the court may terminate the parental rights of a putative
29 father on the grounds that the parent and child relationship does not exist if:

30 (1) a judicial determination is made under 40-6-107 that the parent and child relationship does not

1 exist. This includes the termination of the parental rights of the husband of the mother who is placing the
2 child for adoption or the parental rights of an individual who is a presumed father of the child.

3 (2) a determination is made that:

4 (a) an individual has not timely registered with the putative father registry; and

5 (b) the child's mother was not married at the probable time of the child's conception or at the time
6 the child was born; or

7 (3) a putative father who timely registered with the putative father registry appears at the hearing
8 but is unable to establish by a preponderance of the evidence the minimum requirements provided in
9 [section 73] for demonstrating the establishment of a substantial relationship with the child.

10
11 **NEW SECTION. Section 73. Putative father -- termination based upon failure to establish**
12 **substantial relationship.** (1) The parental rights of a putative father may be terminated by the court if the
13 putative father has failed to timely establish and maintain a substantial relationship with the child.

14 (2) A putative father who is not married to the child's mother but who has openly lived with the
15 child for a period of 6 months immediately preceding placement of the child with adoptive parents and has
16 openly claimed to be the father of the child during that period is considered to have developed a substantial
17 relationship with the child and to have otherwise met the requirements of this section.

18 (3) In order to meet the minimal showing of having established a substantial relationship with
19 regard to a child who is the subject of an adoption proceeding occurring more than 6 months after the
20 child's birth, a putative father has the burden of showing that the putative father has:

21 (a) demonstrated a full commitment to the responsibilities of parenthood, when not prevented from
22 doing so by the person or authorized agency having lawful custody of the child, by providing financial
23 support for the child in a fair and reasonable sum and in accordance with the putative father's ability and
24 either:

25 (i) visiting the child at least monthly when physically and financially able to do so; or

26 (ii) having regular contact with the child or with the person or agency having the care and custody
27 of the child when physically and financially unable to do so; and

28 (b) manifested an ability and willingness to assume legal and physical custody of the child if the
29 child was not in the physical custody of the other parent.

30 (4) In order to meet the minimal showing of having established a substantial relationship with

1 regard to a child who is the subject of an adoption proceeding involving a child who is under 6 months of
2 age at the time the child becomes the subject of adoption proceedings, a putative father has the burden
3 to show that:

4 (a) the putative father has manifested a full commitment to parental responsibilities by performing
5 all of the acts described in this subsection (4) prior to the time the mother executed a relinquishment and
6 consent for adoption, including registering with the putative father registry; and

7 (b) if the putative father had actual knowledge of the pregnancy, paying a fair and reasonable
8 amount of the expenses incurred in connection with the pregnancy and the child's birth in accordance with
9 the putative father's means when not prevented from doing so by the person or authorized agency having
10 lawful custody of the child;

11 (c) making reasonable and consistent payments, in accordance with the putative father's means,
12 for the support of the child since birth;

13 (d) visiting regularly with the child; and

14 (e) manifesting an ability and willingness to assume legal and physical custody of the child if,
15 during this time, the child was not in the physical custody of the mother.

16 (5) The subjective intent of a putative father, whether expressed or otherwise, unsupported by
17 evidence of acts specified in this section does not preclude a determination that the father failed to meet
18 the requirements of this section.

19
20 **NEW SECTION. Section 74. Irrevocable waiver of parental rights.** (1) The court may find an
21 irrevocable waiver of parental rights of:

22 (a) a putative father who was timely served with notice of intent to release if the court is provided
23 with proof of service and proof that the putative father failed to timely file a notice of intent to claim
24 paternity;

25 (b) a parent or putative father who is served with notice of proceedings and fails to appear at the
26 hearing; or

27 (c) a parent or putative father who is served with notice of proceedings and appears and denies
28 any interest in custody of the child.

29 (2) The court may terminate parental rights under this section upon a finding of irrevocable waiver
30 of all rights to the child.

1 **NEW SECTION. Section 75. Irrevocable waiver of parental rights.** (1) The court may find an
2 irrevocable waiver of parental rights of:

3 (a) a putative father who was timely served with notice of intent to release if the court is provided
4 with proof of service and proof that the putative father failed to timely comply with the requirements of the
5 putative father registry;

6 (b) a parent or putative father who is served with notice of proceedings and fails to appear at the
7 hearing; or

8 (c) a parent or putative father who is served with notice of proceedings and appears and denies
9 any interest in custody of the child.

10 (2) The court may terminate parental rights under this section upon a finding of irrevocable waiver
11 of all rights to the child.

12
13 **NEW SECTION. Section 76. Appearance of parent at hearing -- determination of custody.** (1) If
14 a parent appears at the hearing on the petition to terminate parental rights, objects to the termination of
15 rights, and requests custody of the child, the court shall set deadlines that allow the parties to complete
16 discovery and shall set a hearing on the determination of the parent's rights to the child.

17 (2) At the hearing, the court shall consider whether there is a basis for terminating parental rights
18 and whether the best interests of the child will be served by granting custody to the respondent parent,
19 the department, a licensed child-placing agency, or a prospective adoptive parent in a direct parental
20 placement adoption.

21 (3) If the petitioner has established that there are grounds for terminating parental rights and it is
22 in the best interests of the child for termination to occur, those rights must be terminated.

23
24 **NEW SECTION. Section 77. Effect of order terminating parental rights.** An order granting the
25 petition for termination of parental rights:

26 (1) terminates the parent and child relationship except for an obligation for arrearages of child
27 support;

28 (2) terminates the jurisdiction of the court over the child in any dissolution or separate maintenance
29 action;

30 (3) extinguishes any right the parent had to withhold consent to a proposed adoption of the child

1 or to further notice of a proceeding for adoption; and

2 (4) awards custody of the child to the department, agency, or prospective adoptive parent to whom
3 the relinquishment was given if the department, agency, or prospective adoptive parent has agreed in
4 writing to accept custody of the child until the adoption is finalized.

5
6 **NEW SECTION. Section 78. Appeal.** An order terminating parental rights is a final order for
7 purposes of appeal.

8
9 **NEW SECTION. Section 79. Expediency.** A contested termination of parental rights action must
10 take precedence over other cases and matters in the court or on appeal. The court shall examine any issues
11 raised in challenging termination of a parent's rights or regarding the validity of any interlocutory or final
12 adoption decree and shall render a decision as soon as possible.

13
14 **NEW SECTION. Section 80. Finality.** Subject to the disposition of a timely appeal, upon expiration
15 of 6 months after an order terminating parental rights has been issued, the order may not be questioned
16 by any person, in any manner, or upon any ground, including fraud, misrepresentation, failure to give any
17 required notice, or lack of jurisdiction of the parties or the subject matter.

18
19 **NEW SECTION. Section 81. Duty to disclose information -- form -- availability -- filing.** (1) Except
20 for an adoption proceeding by a stepparent, in any adoption under [sections 1 through 156], a birth parent,
21 the department, or an agency shall provide a prospective adoptive parent with social and medical histories
22 of the birth families, including tribal affiliation, if applicable.

23 (2) In a direct parental placement adoption, the birth family social and medical histories must be
24 completed on a form provided by the department and filed with the court when the adoption petition is
25 filed.

26 (3) The department shall make a form available to agencies and court administrators for public
27 distribution.

28
29 **NEW SECTION. Section 82. Retention of disclosures.** (1) In a direct parental placement adoption,
30 the disclosures required by [section 81] must be filed with the court in support of the notice of parental

1 placement filed pursuant to [section 95] and must be permanently maintained.

2 (2) In an adoption arranged by the department or an agency, the disclosures required by [section
3 81] must be permanently maintained in the files of the department or the agency.

4

5 **NEW SECTION. Section 83. Preplacement evaluation -- timing.** (1) A child may not be placed for
6 purposes of adoption unless the person with whom a child is proposed to be placed has had a preplacement
7 evaluation completed to determine fitness and readiness as an adoptive parent.

8 (2) In a direct parental placement adoption, the placing parent must be provided with a copy of the
9 preplacement evaluation prior to execution of a relinquishment and consent to adoption of the child.

10 (3) The required preplacement evaluation must provide all pertinent information pertaining to the
11 topics identified in [section 85].

12

13 **NEW SECTION. Section 84. Initiation of preplacement evaluation -- who conducts evaluation --**
14 **payment of fees.** (1) A prospective adoptive parent who wishes to adopt a child may initiate the process
15 by:

- 16 (a) establishing a client relationship with the department or a licensed child-placing agency; or
- 17 (b) requesting a preplacement evaluation from either the department or a licensed child-placing
18 agency.

19 (2) The department may contract with a licensed social worker or a licensed child-placing agency
20 to conduct the evaluation.

21 (3) The prospective adoptive parent and the home of the prospective adoptive parent must be
22 studied and evaluated according to the department's or licensed child-placing agency's standards for
23 placement of a child.

24 (4) A department or agency from which an individual is seeking to adopt a child may require the
25 individual to be evaluated by its own qualified employee or independent contractor even if the individual
26 has received a favorable preplacement evaluation from another evaluator.

27 (5) Fees for the study and report are set by the entity completing them and must be paid for by
28 the prospective adoptive parent.

29

30 **NEW SECTION. Section 85. Information to be reviewed in conducting preplacement evaluation.**

1 (1) A preplacement evaluation must include a review of the following information about the prospective
2 adoptive parent:

3 (a) a check of criminal conviction data, data on substantiated abuse or neglect of a child under Title
4 41, chapter 3, and data pertaining to any involvement in incidents of domestic violence by any person over
5 the age of 13 living in the prospective home;

6 (b) medical and social history and current health;

7 (c) assessment of potential parenting skills;

8 (d) assessment of ability to provide adequate financial support for a child; and

9 (e) assessment of the level of knowledge and awareness of adoption issues, including when
10 appropriate, matters relating to open, interracial, cross-cultural, and special needs adoptions.

11 (2) (a) The prospective adoptive parent, the department of justice, and other state, county, and
12 local agencies, after written notice to the subject of the study, shall give the department or agency
13 completing the adoption study substantiated data pertaining to criminal convictions and any reports
14 concerning domestic violence and substantiated abuse or neglect of children or vulnerable adults.

15 (b) The adoption study must also include a check of the youth court records of each person over
16 the age of 13 living in the prospective home. Pursuant to sections 41-5-603 and 41-5-604, the youth court
17 shall release the requested information to the agency or department completing the adoption study. The
18 study must include an evaluation of the effect of a conviction, adjudication, or finding of substantiated
19 abuse or neglect on the ability to care for a child.

20 (3) The preplacement evaluation must include at least one in-home visit with the prospective
21 adoptive parent and at least one interview with each family member.

22
23 **NEW SECTION. Section 86. Contents of preplacement evaluation.** (1) The preplacement
24 evaluation report must contain the following information if available:

25 (a) age and date of birth, nationality, racial or ethnic background, and any religious affiliation;

26 (b) marital status and family history, including the age and location of any child of the individual
27 and the identity of and relationship to anyone else living in the individual's household;

28 (c) physical and mental health and any history of abuse of alcohol or drugs;

29 (d) educational and employment history and any special skills;

30 (e) property and income, including outstanding financial obligations as indicated in a current credit

1 report or financial statement furnished by the individual;

2 (f) any previous request for an evaluation or involvement in an adoptive placement and the outcome
3 of the evaluation or placement;

4 (g) whether the individual has been charged with or convicted of domestic violence or has been
5 involved in a substantiated charge of child abuse or neglect or elder abuse or neglect and the disposition
6 of the charges;

7 (h) whether the individual is subject to a court order restricting the individual's right to custody or
8 visitation with a child;

9 (i) whether the individual has been convicted of a crime other than a minor traffic violation;

10 (j) whether the individual has located a parent interested in placing a child with the individual for
11 adoption and, if so, a brief description of the parent and the child; and

12 (k) any other fact or circumstance that may be relevant in determining whether the individual is
13 suited to be an adoptive parent, including the quality of the environment in the individual's home and the
14 functioning of other children in the individual's household.

15 (2) The report must contain recommendations regarding the suitability of the subject of the study
16 to be an adoptive parent.

17 (3) A preplacement evaluation is valid for 1 year following its date of completion and must be
18 updated if there is a significant change in circumstances.

19 (4) Prior to accepting physical custody of a child for purposes of adoption, a prospective adoptive
20 parent must have the preplacement evaluation completed by the evaluator, and the evaluation must
21 specifically address the appropriateness of placing the specifically identified child or children who will be
22 the subject of the adoption proceedings with the prospective adoptive parent.

23

24 **NEW SECTION. Section 87. Recommendation.** (1) An evaluator shall assess the information
25 required by [section 85] to determine if it raises a specific concern that placement of any child or a
26 particular child in the home of the individual would pose a significant risk of harm to the physical or
27 psychological well-being of the child.

28 (2) If an evaluator determines that the information assessed does not raise a specific concern, the
29 evaluator shall find that the individual is suited to be an adoptive parent. The evaluator may comment
30 about any factor that in the evaluator's opinion makes the individual suited in general or for a particular

1 child.

2 (3) If an evaluator determines that the information assessed raises a specific concern, the
3 evaluator, on the basis of the original or any further investigation, shall find that the individual is or is not
4 suited to be an adoptive parent. The evaluator shall support the finding with a written explanation.

5
6 **NEW SECTION. Section 88. Distribution of evaluation -- retention -- immunity for evaluator.** (1)
7 If a preplacement evaluation contains a finding that an individual is suited to be an adoptive parent, the
8 evaluator shall give the individual a signed copy of the evaluation. The evaluator shall furnish a copy of
9 the evaluation to a department, agency, or other person authorized to place a child for adoption.

10 (2) The evaluator shall provide a signed copy of the evaluation to the individual and to the
11 department. The department shall permanently retain the copy of the evaluation.

12 (3) An evaluator shall retain the original of a completed or incomplete preplacement evaluation and
13 a list of each source for each item of information in the evaluation for 2 years.

14 (4) An evaluator who conducted an evaluation in good faith is not subject to civil liability for
15 anything contained in the evaluation.

16
17 **NEW SECTION. Section 89. Action by department.** If, before a decree of adoption is issued, the
18 department learns from an evaluator or another person that a child has been placed for adoption with an
19 individual who is the subject of a preplacement evaluation on file with the department containing a finding
20 of unsuitability, the department shall immediately review the evaluation and make a determination of
21 whether the department has authority pursuant to Title 41, chapter 3, to intervene.

22
23 **NEW SECTION. Section 90. Court waiver for relatives.** The court may waive the requirement of
24 a preplacement evaluation when a parent or guardian places a child for adoption directly with an extended
25 family member of the child. A postplacement evaluation must be conducted during the pendency of a
26 proceeding for adoption.

27
28 **NEW SECTION. Section 91. Filing of evaluation in adoption proceedings.** (1) In a direct parental
29 placement adoption, the preplacement evaluation must be filed with the court in support of the petition to
30 terminate parental rights for purposes of adoption.

1 (2) In an adoption arranged by the department or a licensed child-placing agency, the preplacement
2 evaluation must be permanently maintained in the files of the department or the licensed child-placing
3 agency.

4
5 **NEW SECTION. Section 92. Requirement for preplacement evaluation.** (1) Before the department
6 or licensed child-placing agency may place a child for purposes of adoption, the prospective adoptive parent
7 and the home of the prospective adoptive parent must be studied and evaluated as provided in [section 84].

8 (2) The department or agency shall prepare a written report containing the results of its evaluation.
9

10 **NEW SECTION. Section 93. Parties to direct parental placement adoption.** A parent of a child may
11 directly place the child for adoption with a specifically identified prospective adoptive parent who:

12 (1) resides in Montana or in another state that allows direct parental placement;

13 (2) is known to and has been personally selected by the parent; and

14 (3) has previously obtained a favorable preplacement evaluation.
15

16 **NEW SECTION. Section 94. Duties of placing parent.** (1) A parent who is directly placing a child
17 for adoption shall execute a voluntary relinquishment and consent to adopt, including:

18 (a) receiving the counseling required by [section 48]; and

19 (b) if the parent is a minor, being advised by legal counsel other than the attorney representing the
20 prospective adoptive parent.

21 (2) Unless a birth mother relies on the right to privacy, a placing parent shall identify and provide
22 information on the location of any other legal parent or guardian of the child, including:

23 (a) any current spouse;

24 (b) any spouse who is the other birth parent and to whom the parent was married at the probable
25 time of conception or birth of the child; and

26 (c) any adoptive parent.

27 (3) A placing parent shall identify and provide information pertaining to any Indian heritage of the
28 child that would bring the child within the jurisdiction of the Indian Child Welfare Act, 25 U.S.C. 1901, et
29 seq.

30 (4) A parent placing a child for adoption in a direct parental placement adoption shall provide:

- 1 (a) the disclosures of medical and social history required pursuant to [section 81];
- 2 (b) a certified copy of the child's birth certificate or other document certifying the place and date
3 of the child's birth; and
- 4 (c) a certified copy of any existing court orders pertaining to custody or visitation of the child.
- 5 (5) A parent placing a child for adoption in a direct parental placement adoption shall file a notice
6 of parental placement.
- 7 (6) A parent placing a child for adoption in a direct parental placement adoption shall file a
8 disclosure of all disbursements made to or for the benefit of the parent by the prospective adoptive parent
9 or any person acting on behalf of the prospective adoptive parent.
- 10 (7) Subject to the limitations set in [section 148], counseling expenses, legal fees, and the
11 reasonable costs of preparing reports documenting the required disclosures of medical and social history
12 and the disclosures documenting disbursements are allowable expenses that can be paid for by the
13 prospective adoptive parent.

14

15 **NEW SECTION. Section 95. Direct parental placement -- information to be filed.** (1) A parent who
16 proposes to place a child for adoption with a prospective adoptive parent who resides in Montana and who
17 is not the child's stepparent or an extended family member shall file with the court of the county in which
18 the prospective adoptive parent or the parent making the placement resides the following:

- 19 (a) a notice of parental placement containing the following information:
- 20 (i) the name and address of the placing parent;
- 21 (ii) the name and address of each prospective adoptive parent;
- 22 (iii) the name and address or expected date and place of birth of the child;
- 23 (iv) the identity and information on the location of any other legal parent or guardian of the child,
24 including any current spouse, any spouse who is the other birth parent and to whom the parent was
25 married at the probable time of conception or birth of the child, and any adoptive parent;
- 26 (v) all relevant information pertaining to any Indian heritage of the child that would bring the child
27 within the jurisdiction of the Indian Child Welfare Act, 25 U.S.C. 1901, et seq.; and
- 28 (vi) the name and address of counsel, a guardian ad litem, or other representative, if any, of each
29 of the parties mentioned in subsections (1)(a)(i) through (1)(a)(iii);
- 30 (b) a relinquishment and consent to adoption of the child by the adoptive parent;

- 1 (c) the counseling report required by [section 48];
- 2 (d) the medical and social history disclosures required by [section 81];
- 3 (e) a report of disbursements identifying all payments made to or to the benefit of the placing
- 4 parent by the prospective adoptive parent or anyone acting on the parent’s behalf that contains a statement
- 5 by each person furnishing information in the report attesting to the truthfulness of the information furnished
- 6 by that person;
- 7 (f) a certified copy of the child’s birth certificate or other document certifying the place and date
- 8 of the child’s birth;
- 9 (g) a certified copy of any existing court orders pertaining to custody or visitation of the child; and
- 10 (h) the preplacement evaluation.
- 11 (2) The notice of parental placement must be signed by the parent making the placement.

12

13 **NEW SECTION. Section 96. Duty of prospective adoptive parent to provide preplacement**
 14 **evaluation.** (1) Prior to taking custody of a child whom the prospective adoptive parent intends to adopt,
 15 the prospective adoptive parent shall obtain a favorable preplacement evaluation.

16 (2) A placing parent must be provided with a copy of the preplacement evaluation prior to
 17 execution of a relinquishment and consent to adoption of the child.

18

19 **NEW SECTION. Section 97. Duty to promptly petition.** (1) Within 30 days after the filing of a
 20 notice of parental placement or the execution of a relinquishment and consent to the adoption of the child,
 21 whichever is later, a prospective adoptive parent shall promptly act to resolve the child’s legal status by
 22 filing:

23 (a) a petition for termination of parental rights for purposes of adoption, including a request for
 24 custody, that includes:

25 (i) the relinquishment and consent to adopt executed by any legal parent other than the placing
 26 parent who has filed the notice of parental placement;

27 (ii) a certified copy of any court order terminating the rights and duties of any parent or guardian
 28 of the child; and

29 (iii) any other evidence supporting termination of the legal rights a person has with regard to the
 30 child;

- 1 (b) a petition to adopt the child who is the subject of the proceedings;
- 2 (c) a copy of the preplacement evaluation pertaining to the adoptive parent;
- 3 (d) a copy of an agreement with the department or a licensed child-placing agency agreeing to
- 4 accept supervision over the postplacement evaluation period and to prepare the postplacement evaluation;
- 5 (e) a disclosure of all disbursements made with regard to the adoptive placement to date; and
- 6 (f) an affidavit from the department reporting on whether any individual has registered with the
- 7 putative father registry and claims an interest in the child.
- 8 (2) The prospective adoptive parent shall request that the court promptly notice the matters
- 9 provided for in subsection (1) for hearing in a timely manner.

10

11 **NEW SECTION. Section 98. Custody order.** (1) The court shall consider the petition to adopt and

12 shall make a determination as to whether temporary custody should be awarded to the petitioner. In

13 making that determination, the court shall consider:

- 14 (a) the preplacement evaluation that pertains specifically to placement of the child who is the
- 15 subject of the adoption petition with the petitioner; and
- 16 (b) if any significant change in the petitioner's or child's circumstances has occurred since
- 17 preparation of the preplacement evaluation.

18 (2) Upon a determination that it is in the best interests of the child, the court shall enter an order

19 granting temporary custody to the prospective adoptive parent.

20 (3) Upon a determination that it is not in the best interests of the child to place custody with the

21 prospective adoptive parent, the court shall deny the petition to terminate parental rights of the placing

22 parent and shall make any other order with regard to the custody of the child that is necessary to protect

23 the well-being of the child.

24

25 **NEW SECTION. Section 99. Period for postplacement supervision.** (1) In a direct parental

26 placement adoption, the court shall maintain jurisdiction over the placement during a postplacement

27 evaluation period and issue an order for postplacement supervision and a postplacement evaluation.

28 (2) The postplacement evaluation period must be supervised and evaluated by a qualified person

29 appointed, contracted with, or employed by:

- 30 (a) the department, if the department has accepted supervision of the placement; or

1 (b) a licensed child-placing agency.

2 (3) The court shall provide the evaluator with copies of the petition for adoption and the items filed
3 with the petition.

4 (4) A decree of adoption may not be entered for at least 6 months from the date an order is entered
5 granting temporary custody during the pendency of the proceedings.

6

7 **NEW SECTION. Section 100. Postplacement evaluation for direct parental placement adoption.**

8 (1) An evaluation must be based on a personal interview with the prospective adoptive parent in the
9 prospective parent’s home and an observation of the relationship between the child and the prospective
10 adoptive parent.

11 (2) An evaluation must be in writing.

12 (3) At a minimum, the evaluation must include the following information:

13 (a) assessment of adaptation by the prospective adoptive parent to parenting the child;

14 (b) assessment of the health and well-being of the child in the prospective adoptive home;

15 (c) analysis of the level of incorporation by the child into the prospective adoptive parent’s home,
16 extended family, and community;

17 (d) assessment of the level of incorporation of the child’s previous history into the prospective
18 adoptive home, such as cultural or ethnic practices, or contact with former foster parents or biological
19 relatives; and

20 (e) an account of any change in the prospective adoptive parent’s marital status or family history,
21 physical or mental health, home environment, property, income, or financial obligations since the filing of
22 the preplacement evaluation.

23 (4) The evaluation must contain a definite recommendation stating the reasons for or against the
24 proposed adoption.

25

26 **NEW SECTION. Section 101. Time and filing of evaluation.** (1) Unless the court for good cause
27 allows an earlier or later filing, the evaluator shall file a complete written evaluation with the court within
28 not less than 90 days and not more than 180 days after receipt of the court’s order for an evaluation.

29 (2) If an evaluation raises a specific concern, as described in [section 87], the evaluation must be
30 filed immediately and must explain why the concern poses a significant risk of harm to the physical or

1 psychological well-being of the child.

2 (3) An evaluator shall give the prospective adoptive parent a copy of the evaluation when it is filed
3 with the court and shall permanently retain a copy of the evaluation and a list of every source for each item
4 of information in the evaluation. If the evaluator ceases to conduct business in Montana, all evaluations
5 in the evaluator's possession must be forwarded to the department for permanent retention.

6
7 **NEW SECTION. Section 102. Motion to enter adoption decree.** (1) The prospective adoptive
8 parent may file a motion for entry of an adoption decree no sooner than 6 months after the court has
9 granted temporary custody to the prospective adoptive parent.

10 (2) The motion must be supported by the following documents:

11 (a) the postplacement evaluation prepared pursuant to [section 100]; and

12 (b) an updated list of all disbursements made in connection with the adoption proceeding.

13 (3) A notice of hearing is not required for any party whose parental rights have been terminated
14 in prior proceedings.

15 (4) The court shall consider the petition and shall grant or deny the petition pursuant to the
16 provisions of [sections 125 through 134].

17 (5) If the petition to adopt is denied, the court shall provide notice to the placing parent that the
18 petition has been denied and shall take appropriate action for placement of the child pursuant to [section
19 131].

20 (6) Finality of the decree or the order denying the decree and the time for appeal are determined
21 pursuant to [section 137].

22
23 **NEW SECTION. Section 103. Records.** All records filed with the court in a direct parental
24 placement adoption must be permanently maintained by the court.

25
26 **NEW SECTION. Section 104. Factors to be considered -- best interests of child.** (1) All relevant
27 factors must be considered in determining the best interests of the child in an adoption proceeding. Factors
28 relevant to the determination of a prospective adoptive parent's parenting ability, the future security for a
29 child, and familial stability must be considered. In determining the best interests of the child, the following
30 factors with regard to a prospective adoptive parent may be considered:

1 (a) age, as it relates to health, earning capacity, provisions for the support of a child, or other
2 relevant circumstances;

3 (b) marital status, as it relates to the ability to serve as a parent in particularized circumstances;
4 and

5 (c) religion, as it relates to the ability to provide the child with an opportunity for religious or
6 spiritual and ethical development and as it relates to the express preference of a birth parent or a child to
7 be placed with an adoptive parent of a particular religious faith or denomination.

8 (2) For purposes of ensuring that the best interests of the child are met, the department or a
9 licensed child-placing agency is authorized to gather and use, in an appropriate, nonarbitrary manner,
10 information concerning the age, marital status, and religious beliefs of a prospective adoptive parent. The
11 authority granted by this subsection includes the authority to receive and to consider, consistent with the
12 best interests of the child, the preferences of birth parents relating to the age, marital status, or religious
13 beliefs of an adoptive parent.

14 (3) Consideration of religious factors by a licensed child-placing agency that is affiliated with a
15 particular religious faith is not arbitrary consideration of religion within the meaning of this section.

16

17 **NEW SECTION. Section 105. Parties to department or agency placement.** A parent of a child may
18 relinquish the child for adoption to the department or a licensed child-placing agency. The department or
19 agency shall agree in writing to accept the relinquishment of a placing parent as provided in [section 43]
20 before the relinquishment is valid.

21

22 **NEW SECTION. Section 106. Duties of placing parent.** (1) A parent who is placing a child for
23 adoption shall comply with the provisions for executing a voluntary relinquishment and consent to adopt.

24 (2) A parent placing a child for adoption shall identify and provide information on the location of:

25 (a) any other legal parent or guardian of the child, including any current spouse; and

26 (b) any spouse who is the other birth parent and to whom the parent was married at the probable
27 time of conception or birth of the child.

28 (3) A parent placing a child for adoption shall identify and provide information pertaining to any
29 Indian heritage of the child that would bring the child within the jurisdiction of the Indian Child Welfare Act,
30 25 U.S.C. 1901, et seq.

- 1 (4) A parent placing a child for adoption shall provide:
- 2 (a) the disclosures of medical and social history;
- 3 (b) a certified copy of the child's birth certificate or other document certifying the place and date
- 4 of the child's birth; and
- 5 (c) a certified copy of any existing court orders pertaining to custody or visitation of the child.
- 6

7 **NEW SECTION. Section 107. Counseling requirements.** To the extent required by [sections 1

8 through 156] and the department's or agency's standards, the department or agency shall provide

9 counseling to the parties involved in the adoption.

10

11 **NEW SECTION. Section 108. Waiting period following placement of child.** (1) Once the

12 department or agency has received custody of the child and placed the child for adoption, the department

13 or agency shall supervise and evaluate the placement during a 6-month postplacement evaluation period.

14 (2) The department or agency may recommend in the postplacement evaluation filed with the

15 petition for adoption that the court issue a decree of adoption sooner than the 6-month postplacement

16 evaluation period if:

17 (a) (i) a period of at least 6 months has elapsed since the department or agency placed the child

18 in the prospective adoptive home; and

19 (ii) the department or agency has completed a postplacement evaluation during that period; or

20 (b) (i) a postplacement evaluation has been completed and filed with the court; and

21 (ii) there are detailed extenuating circumstances supporting a waiver of the 6-month postplacement

22 evaluation period.

23 (3) The department or an agency may recommend the waiver of the 6-month postplacement

24 evaluation period and the postplacement evaluation if the adoptee has been in the petitioner's home as a

25 foster child for at least 1 year.

26

27 **NEW SECTION. Section 109. Petition for adoption filed by prospective adoptive parent.** After the

28 child has been placed by the department or agency with the prospective adoptive parent, the parent shall

29 file a petition for adoption.

30

1 **NEW SECTION.** **Section 110. Postplacement department or agency evaluation.** (1) The
2 department or agency shall complete a written postplacement evaluation. The postplacement evaluation
3 must be conducted according to the department's or agency's standards for placement of a child and at
4 a minimum must include a personal interview with the prospective adoptive parent in that person's home
5 and observation of the relationship between the child and the prospective adoptive parent.

6 (2) Upon the filing of a petition for adoption by the prospective adoptive parent, the department
7 or agency shall file the postplacement evaluation.

8 (3) The evaluation must include the following information:

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

10 (b) whether the proposed home is suitable for the child;

11 (c) a statement that the medical and social histories of the birth parents and child have been
12 provided to the prospective adoptive parent;

13 (d) an assessment of adaptation by the prospective adoptive parent to parenting the child;

14 (e) a statement that the 6-month postplacement evaluation period has been complied with or
15 should be waived;

16 (f) any other circumstances and conditions that may have a bearing on the adoption and of which
17 the court should have knowledge;

18 (g) whether the agency waives notice of the proceeding;

19 (h) a statement that any applicable provision of law governing an interstate or intercountry
20 placement of the child has been complied with; and

21 (i) a statement of compliance with any applicable provisions of the Indian Child Welfare Act, 25
22 U.S.C. 1901, et seq.

23 (4) The evaluation must contain a definite recommendation stating the reasons for or against the
24 proposed adoption.

25
26 **NEW SECTION.** **Section 111. Consent to adoption.** (1) Upon the filing of the petition for adoption
27 by the prospective adoptive parent, the department or agency that has custody of the child shall file its
28 consent to adoption.

29 (2) Except as provided in subsection (3), the withdrawal of a consent for an adoption filed by the
30 department or an agency in connection with that petition for adoption is not permitted.

1 (3) Upon a motion to withdraw consent, notice and opportunity to be heard must be given to the
2 petitioner and to the person seeking to withdraw consent. The court may, if it finds that the best interests
3 of the child will be furthered, issue a written order permitting the withdrawal of the consent.

4 (4) The entry of a decree of adoption renders a consent irrevocable.
5

6 **NEW SECTION. Section 112. Relinquishment to stepparent.** (1) A parent may relinquish parental
7 rights for the purposes of adoption of a child by the child's stepparent or a member of the child's extended
8 family. The relinquishment must be executed in accordance with [sections 42 through 52]. The
9 relinquishment may be executed at any time after the child is 72 hours old.

10 (2) The stepparent or extended family member shall accept the relinquishment in writing.
11

12 **NEW SECTION. Section 113. Standing to adopt stepchild.** (1) A stepparent has standing to file
13 a petition for adoption of a minor stepchild of the stepparent's spouse if:

14 (a) the spouse has sole legal and physical custody of the child and the child has been in the
15 physical custody of the spouse and the stepparent during the 60 days preceding the filing of a petition for
16 adoption;

17 (b) the spouse is deceased or mentally incompetent but, before dying or being judicially declared
18 mentally incompetent, had legal and physical custody of the child, and the child has resided primarily with
19 the stepparent during the 12 months preceding the filing of the petition; or

20 (c) the department or an agency placed the child with the stepparent.

21 (2) For good cause shown, a court may allow an individual who is not the stepparent but who has
22 the consent of the custodial parent of a child to file a petition for adoption. The petition must be treated
23 as if the petitioner were a stepparent.

24 (3) A petition for adoption by a stepparent may be joined with a petition for termination of parental
25 rights.
26

27 **NEW SECTION. Section 114. Consent to adoption.** (1) Upon the filing of the petition for adoption
28 by the stepparent, the child's parent shall file consent to adoption executed pursuant to [section 115 or
29 116].

30 (2) If the child has attained 12 years of age the child must consent to the adoption.

1 **NEW SECTION. Section 115. Consent to adoption -- stepparent's spouse.** (1) A consent to
2 adoption executed by a parent who is the stepparent's spouse must be signed in the presence of an
3 individual authorized to take acknowledgements.

4 (2) A consent must be in writing and must state that:

5 (a) the parent executing the consent has legal and physical custody of the parent's child and
6 voluntarily and unequivocally consents to the adoption of the child by the stepparent;

7 (b) the adoption will not terminate the parental relationship between the parent executing the
8 consent and the child; and

9 (c) the parent executing the consent understands and agrees that:

10 (i) the adoption will terminate the relationship of parent and child between the child's other parent
11 and the child and will terminate any existing court order for custody, visitation, or communication with the
12 child;

13 (ii) the child and any descendant of the child will retain rights of inheritance from or through the
14 child's other parent; and

15 (iii) a court order for visitation or communication with the child by an individual related to the child
16 through the parent executing the consent or an agreement or order concerning another individual that is
17 approved by the court survives the decree of adoption, but that failure to comply with the terms of the
18 order or agreement is not a ground for revoking or setting aside the consent or the adoption.

19
20 **NEW SECTION. Section 116. Consent to adoption -- child's other parent.** A consent executed
21 by a child's parent who is not the stepparent's spouse must be in writing and must state that:

22 (1) the parent executing the consent voluntarily and unequivocally consents to the adoption of the
23 child by the stepparent and the transfer to the stepparent's spouse and the adoptive stepparent of any right
24 that the parent executing the consent has to legal or physical custody of the child;

25 (2) the parent executing the consent understands and agrees that:

26 (a) the adoption will terminate the parent's parental relationship with the child and will terminate
27 any existing court order for custody, visitation, or communication with the child;

28 (b) the child and any descendant of the child will retain rights of inheritance from or through the
29 parent executing the consent; and

30 (c) a court order for visitation or communication with the child by an individual related to the child

1 through the child's other parent or an agreement or order concerning another individual that is approved
2 by the court survives the decree of adoption, but that failure to comply with the terms of the order or
3 agreement is not a ground for revoking or setting aside the consent or the adoption.

4
5 **NEW SECTION. Section 117. Postplacement evaluation period -- waiver.** If the child is a stepchild
6 or a member of the extended family of the petitioner, the court may, if satisfied that the adoption is in the
7 best interests of the child, waive the 6-month postplacement evaluation period and the postplacement
8 evaluation and grant a decree of adoption.

9
10 **NEW SECTION. Section 118. Petition for adoption -- notice -- hearing.** A stepparent who desires
11 to adopt a stepchild must file a petition for adoption, any necessary consents, any required postplacement
12 evaluation, give notice of the hearing on the petition, and attend a hearing conducted by the court.

13
14 **NEW SECTION. Section 119. Legal consequences of adoption of stepchild.** (1) Except as
15 provided in subsections (2) and (3), the legal consequences of an adoption of a stepchild by a stepparent
16 are the same as the consequences under [section 136].

17 (2) An adoption by a stepparent does not affect:

18 (a) the relationship between the adoptee and the adoptee's parent who is the adoptive stepparent's
19 spouse or deceased spouse;

20 (b) an existing court order for visitation or communication with a child by an individual related to
21 the adoptee through either parent; or

22 (c) the right of the adoptee or a descendant of the adoptee to inheritance or intestate succession
23 through or from the adoptee's former parent.

24 (3) Failure to comply with an agreement or order is not a ground for challenging the validity of an
25 adoption by a stepparent.

26
27 **NEW SECTION. Section 120. Arrearages of child support.** A termination of a parent's rights and
28 responsibilities toward a child does not cancel any responsibility to pay arrearages of child support unless
29 the party to whom the arrearages are owed agrees in writing to waive payment.

30

1 **NEW SECTION. Section 121. Adoption of adult.** A person who has attained the age of legal
2 majority may be adopted without the consent of the person's parents.

3
4 **NEW SECTION. Section 122. Who may adopt adult or emancipated minor.** (1) An adult may
5 adopt another adult or an emancipated minor pursuant to this section. However, an adult may not adopt
6 the adult's spouse. An adoption of an incompetent individual of any age must comply with all requirements
7 set by law for the adoption of a child.

8 (2) An individual who has adopted an adult or emancipated minor may not adopt another adult or
9 emancipated minor within 1 year after the adoption unless the prospective adoptee is a sibling of the
10 adoptee.

11
12 **NEW SECTION. Section 123. Consent to adoption.** (1) Consent to the adoption of an adult or
13 emancipated minor is required only of:

14 (a) the adoptee;

15 (b) the prospective adoptive parent; and

16 (c) the spouse of the prospective adoptive parent unless:

17 (i) the spouse and the prospective adoptive parent are legally separated; or

18 (ii) the court finds that the spouse is not capable of giving consent or is withholding consent
19 contrary to the best interests of the adoptee and the prospective adoptive parent.

20 (2) The consent of the adoptee and the prospective adoptive parent must:

21 (a) be in writing and be signed in the presence of the court or an individual authorized to take
22 acknowledgments;

23 (b) state that the parties agree to assume toward each other the legal relationship of parent and
24 child and to have all of the rights and be subject to all of the duties of that relationship; and

25 (c) state that the parties understand the consequences that the adoption may have for any right
26 of inheritance, property, or support.

27 (3) The consent of the spouse of the prospective adoptive parent:

28 (a) must be in writing and be signed in the presence of the court or an individual authorized to take
29 acknowledgments;

30 (b) must state that the spouse:

- 1 (i) consents to the proposed adoption; and
 2 (ii) understands the consequences that the adoption may have for any right of inheritance,
 3 property, or support that the spouse has; and
 4 (c) may contain a waiver of any proceeding for adoption.

5
 6 **NEW SECTION. Section 124. Jurisdiction and venue.** (1) The court has jurisdiction over a
 7 proceeding for the adoption of an adult or emancipated minor if the petitioner has lived in Montana for at
 8 least 90 days immediately preceding the filing of a petition for adoption.

9 (2) A petition for adoption may be filed in the court in the county in which a petitioner lives.
 10

11 **NEW SECTION. Section 125. Procedure.** Except as otherwise provided in [sections 121 through
 12 125], the procedure and law for adoption of a child set forth in [sections 1 through 156] is applicable in
 13 proceedings for the adoption of an adult. The provisions concerning the counseling requirement,
 14 preplacement evaluation, postplacement supervision period, and postplacement evaluation are not applicable
 15 to the adoption of an adult.

16
 17 **NEW SECTION. Section 126. Petition for adoption.** (1) A petition for adoption must be filed in
 18 triplicate, must be notarized by the petitioners, and must specify:

- 19 (a) the full names, ages, and place and duration of residence of the petitioners;
 20 (b) the current marital status of petitioners and, if married, the place and date of the marriage;
 21 (c) the circumstances under which the petitioners obtained physical custody of the child and the
 22 name of the individual or agency who placed the child;
 23 (d) the date and place of birth of the child, if known;
 24 (e) the name used for the child in the proceeding and, if a change in name is desired, the full name
 25 by which the child is to be known;
 26 (f) that it is the desire of the petitioners that the relationship of parent and child be established
 27 between the petitioners and the child and to have all the rights and be subject to all the duties of that
 28 relationship;
 29 (g) a full description and statement of value of all property owned or possessed by the child;
 30 (h) the facts, if any, that excuse consent on the part of a person whose consent is required for the

1 adoption;

2 (i) that any applicable law governing interstate or intercountry placement was complied with;

3 (j) that, if applicable, the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., was complied with;

4 (k) whether a previous petition has been filed by petitioner to adopt the child at issue or any other
5 child in any court and the disposition of the petitions; and

6 (l) the name and address, if known, of any person who is entitled to receive notice of the petition
7 for adoption.

8 (2) There must be attached to or accompanying the petition:

9 (a) any written consent required by [sections 125 through 134];

10 (b) a certified copy of any court order terminating the rights of the child's parents;

11 (c) a certified copy of any existing court order in any pending proceeding concerning custody of
12 or visitation with the child;

13 (d) a copy of any agreement with a public agency to provide a subsidy for the benefit of the child
14 with a special need;

15 (e) the postplacement evaluation prepared pursuant to [section 100 or 110];

16 (f) a disclosure of any disbursements made in connection with the adoption proceeding.

17 (3) One copy of the petition must be retained by the court. A copy must be sent to:

18 (a) the department or to the agency participating in the adoption proceeding; and

19 (b) the parent placing the child for adoption in a direct parental placement adoption.
20

21 **NEW SECTION. Section 127. Time for action on petition for adoption -- waiver.** Not less than 6
22 months from the date the child has been placed with the prospective adoptive parent, the prospective
23 adoptive parent may apply to the court for a decree of adoption. If the best interests of the adoptee are
24 served, the court may waive the 6-month postplacement evaluation period and summarily consider an
25 adoption petition.
26

27 **NEW SECTION. Section 128. Notice of hearing.** (1) Upon the filing of a petition for adoption,
28 notice of hearing must be served on:

29 (a) a person whose consent to adoption is required under [section 39];

30 (b) the department or agency whose consent to adoption is required;

- 1 (c) the spouse of the petitioner if the spouse has not joined in the petition;
- 2 (d) a person who has revoked a consent or relinquishment or is attempting to have a consent or
3 relinquishment set aside; and
- 4 (e) any other person named by the court to receive notice.
- 5 (2) The notice must direct the person to appear in court at the time specified and to show cause
6 why the petition should not be granted.
- 7 (3) The notice of hearing must be served in a manner appropriate under the Montana Rules of Civil
8 Procedure.
- 9 (4) A notice of hearing is not required to be served on any party:
- 10 (a) whose parental rights have been terminated in prior proceedings;
- 11 (b) who waives notice in a relinquishment, consent, or other document signed by the party;
- 12 (c) who has consented in writing to an adoption; or
- 13 (d) whose consent to adoption is not required under [section 40].

14

15 **NEW SECTION. Section 129. Content of notice.** The notice required by [section 128] must
16 contain:

- 17 (1) the caption of the petition;
- 18 (2) the address and telephone number of the court in which the petition is pending;
- 19 (3) a concise summary of the relief requested in the petition;
- 20 (4) the name, mailing address, and telephone number of the petitioner or the petitioner's attorney;
- 21 and
- 22 (5) a statement of the method of responding to the notice and the consequences of failure to
23 respond.

24

25 **NEW SECTION. Section 130. Hearing on petition for adoption.** (1) The petitioners and the child
26 shall appear at the hearing unless the presence of the child is waived by the court.

- 27 (2) The court shall examine the petition, the documents accompanying the petition, and the
28 petitioners and shall receive evidence in support of the petition.

29

30 **NEW SECTION. Section 131. Granting petition for adoption -- denial of petition.** (1) The court

1 shall issue a decree of adoption awarding custody of the child to the petitioners based on the evidence
2 received if it determines that:

3 (a) the child has been in the physical custody of the petitioners for at least 6 months, unless the
4 court for good cause shown waives this requirement pursuant to [section 108 or 117];

5 (b) notice of hearing on the petition for adoption was properly served or dispensed with;

6 (c) every necessary consent, relinquishment, waiver, disclaimer, or judicial order terminating
7 parental rights has been obtained and filed with the court;

8 (d) any evaluation required by [sections 1 through 156] has been filed with and considered by the
9 court; and

10 (e) the adoption is in the best interests of the child.

11 (2) If the petition for adoption is denied, the court shall dismiss the petition and enter an
12 appropriate order as to the future custody of the child according to the best interests of the child.

13

14 **NEW SECTION. Section 132. Best interests of child.** (1) In determining whether to grant a
15 petition to adopt, the court shall consider all relevant factors in determining the best interests of the child.
16 The court shall consider factors relevant to the determination of a prospective adoptive parent's parenting
17 ability, the future security for a child, and familial stability.

18 (2) In a contested adoption proceeding involving a child, the court shall consider the factors set
19 out in subsection (1) and shall also consider:

20 (a) the nature and length of any relationship already established between a child and any person
21 seeking to adopt the child;

22 (b) the nature of any family relationship between the child and any person seeking to adopt the
23 child and whether that person has established a positive emotional relationship with the child;

24 (c) the harm that could result to the child from a change in placement;

25 (d) whether any person seeking to adopt the child has adopted a sibling or half-sibling of the child;

26 (e) which, if any, of the persons seeking to adopt the child were selected by the placing parent or
27 the department or agency whose consent to the adoption is required.

28 (3) In an Indian child placement, the court shall determine if the requirements of the Indian Child
29 Welfare Act, 25 U.S.C. 1901, et seq., have been met.

30

1 **NEW SECTION. Section 133. Removal of child from state.** Before a decree of adoption is issued,
2 a petitioner may not remove the child from the state for more than 30 consecutive days without the
3 permission of:

- 4 (1) the court if the child was placed directly for adoption; or
5 (2) the department or the agency that placed the child for adoption.

6
7 **NEW SECTION. Section 134. Decree of adoption.** A decree of adoption must state:

- 8 (1) the original name of the child;
9 (2) the name of the petitioner for adoption;
10 (3) whether the petitioner is married or unmarried;
11 (4) whether the petitioner is a stepparent of the child;
12 (5) the name by which the child is to be known;
13 (6) a direction to the vital statistics bureau to issue a new birth certificate unless the adoptee is
14 12 years of age or older and requests that a new certificate not be issued;
15 (7) the child's date and place of birth, if known;
16 (8) the effect of the decree of adoption as stated in [section 136];
17 (9) that the adoption is in the best interests of the child; and
18 (10) whether the birth mother objects to the release of the original birth certificate information upon
19 the adoptee reaching 18 years of age.

20
21 **NEW SECTION. Section 135. Communication of decree to department.** (1) Within 30 days after
22 a decree of adoption becomes final, the clerk of court shall send a report of the adoption to the department.

23 (2) If petitioners have requested it, the court shall order the vital statistics bureau to issue a new
24 birth certificate to the child.

25
26 **NEW SECTION. Section 136. Effect of decree.** (1) After the decree of adoption is entered:

- 27 (a) the relationship of parent and child and all the rights, duties, and other legal consequences of
28 the relation of parent and child exist between the adoptee and the adoptive parent and the kindred of the
29 adoptive parent;
30 (b) the former parents and the kindred of the former parents of the adoptee, unless they are the

1 adoptive parents or the spouse of an adoptive parent, are relieved of all parental responsibilities for the
 2 adoptee and have no rights over the adoptee except for a former parent's duty to pay arrearages for child
 3 support.

4 (2) A decree of adoption is not subject to a challenge after the decree is issued.

5 (3) A decree of adoption should include a notice to the vital statistics bureau as to the birth
 6 mother's consent to release of the information on the original birth certificate upon the adoptee reaching
 7 18 years of age.

8 (4) The relationship of parent and child for the purposes of intestate succession is governed by Title
 9 72.

10

11 **NEW SECTION. Section 137. Finality of decree -- expediency.** (1) For purposes of appeal, the
 12 decree of adoption is a final order when it is issued.

13 (2) A person may appeal from the order in the manner and form provided for appeals from a
 14 judgment in civil actions.

15 (3) An appeal from a decree of adoption must be heard expeditiously pursuant to the provisions
 16 of [section 78].

17

18 **NEW SECTION. Section 138. Rights of adoptee.** A decree of adoption does not affect any right
 19 or benefit vested in the adoptee before the decree became final.

20

21 **NEW SECTION. Section 139. Foreign adoption decrees.** When the relationship of parent and child
 22 has been created by a decree of adoption of a court of any other state or country, the rights and obligations
 23 of the parties as to matters within the jurisdiction of this state must be determined pursuant to [sections
 24 1 through 156].

25

26 **NEW SECTION. Section 140. Visitation and communication agreements.** (1) Except as otherwise
 27 provided in [sections 1 through 156], a decree of adoption terminates any existing order or written or oral
 28 agreement for contact or communication between the adoptee and the birth parents or family.

29 (2) Any express written agreement entered into between the placing parent and the prospective
 30 adoptive parent after the execution of a relinquishment and consent to adoption is independent of the

1 adoption proceedings, and any relinquishment and consent to adopt remains valid whether or not the
2 agreement for contact or communication is later performed. Failure to perform an agreement is not grounds
3 for setting aside an adoption decree.

4 (3) A court may order that an agreement for contact or communication entered into under this
5 section may not be enforced upon a finding that:

6 (a) enforcement is detrimental to the child;

7 (b) enforcement undermines the adoptive parent's parental authority; or

8 (c) due to a change in circumstances, compliance with the agreement would be unduly burdensome
9 to one or more of the parties.

10
11 **NEW SECTION. Section 141. Confidentiality of records and proceedings.** (1) Unless the court
12 orders otherwise, all hearings held in proceedings under [sections 1 through 156] are confidential and must
13 be held in closed court without admittance of any person other than interested parties and their counsel.

14 (2) All papers and records pertaining to the adoption must be kept as a permanent record of the
15 court and must be withheld from inspection. A person may not have access to the records, except:

16 (a) for good cause shown on order of the judge of the court in which the decree of adoption was
17 entered;

18 (b) as provided in [sections 141 through 146];

19 (c) as provided in 50-15-121 and 50-15-122.

20 (3) All files and records pertaining to adoption proceedings retained by the department, a licensed
21 child-placing agency, a lawyer, or any authorized agency are confidential and must be withheld from
22 inspection, except as provided in 50-15-121, 50-15-122, and [sections 141 through 146].

23
24 **NEW SECTION. Section 142. Disclosure of records -- nonidentifying information -- consensual
25 release.** (1) The department or authorized person or agency may disclose:

26 (a) nonidentifying information to an adoptee, an adoptive or birth parent, or an extended family
27 member of an adoptee or birth parent; and

28 (b) identifying information to a court-appointed confidential intermediary upon order of the court
29 or as provided in 50-15-121 and 50-15-122.

30 (2) Information may be disclosed to any person who consents in writing to the release of

1 confidential information to other interested persons who have also consented. Identifying information
2 pertaining to an adoption involving an adoptee who is still a child may not be disclosed based upon a
3 consensual exchange of information unless the adoptee's adoptive parent consents in writing.

4
5 **NEW SECTION. Section 143. Petition for appointment of confidential intermediary.** (1) An adult
6 adoptee, an adoptive or birth parent, or an adult extended family member of the adoptee or birth parent
7 may petition the court for disclosure of identifying information regarding the adoptee, a birth child, a birth
8 parent, or an extended family member.

9 (2) A petition for disclosure must contain:

10 (a) as much of the following information as is known by the petitioner:

11 (i) the name, address, and identification of the petitioner;

12 (ii) the date of the adoptee's birth;

13 (iii) the county and state where the adoption occurred;

14 (iv) the date of the adoption; and

15 (v) any other information known to the petitioner concerning the birth parents, the adoptive parent,
16 and the adoptee that could assist in locating the person being sought;

17 (b) written documentation from a certified confidential intermediary agreeing to conduct the search;

18 and

19 (c) if the petitioner is not the adoptee or birth parent, the reason the petitioner is requesting the
20 appointment of a confidential intermediary.

21
22 **NEW SECTION. Section 144. Appointment of confidential intermediary -- duties -- payment.** (1)

23 After a petition for disclosure has been filed under [section 143], the court shall appoint a confidential
24 intermediary who shall:

25 (a) conduct a confidential search for the person sought as requested in the petition for disclosure;

26 (b) refrain from disclosing directly or indirectly any identifying information to the petitioner, unless
27 ordered to do so by the court; and

28 (c) make a written report of the results of the search to the court not later than 6 months after
29 appointment.

30 (2) Upon appointment, a confidential intermediary is entitled to be paid a reasonable fee plus actual

1 expenses incurred in conducting the search. The fee and expenses must be paid by the petitioner.

2 (3) A confidential intermediary may inspect otherwise confidential records of the court, the
3 department, or an authorized agency for use in the search. The confidential intermediary may not disclose
4 identifying information from the records or any results of a search unless authorized by the court or unless
5 the parties have executed written consent to the confidential intermediary. Nonidentifying information from
6 any source may be disclosed without further order from the court.

7 (4) If a confidential intermediary locates the person being sought, a confidential inquiry must be
8 made as to whether the located person consents to having that person's present identity disclosed to the
9 petitioner. The court may request that the confidential intermediary assist in arranging contact between the
10 petitioner and the located person.

11 (5) If a confidential intermediary locates the person being sought and the located person does not
12 consent to having that person's identity disclosed, identifying information regarding that person may be
13 disclosed only upon order of the court for good cause shown.

14 (6) If the person being sought is found to be deceased, the court may order disclosure of identifying
15 information regarding the deceased to the petitioner.

16
17 **NEW SECTION. Section 145. Disclosure authorized in course of employment.** [Sections 1 through
18 156] do not preclude an employee or agent of a court, department, or agency from:

19 (1) inspecting permanent, confidential, or sealed records for the purpose of discharging any
20 obligation under [sections 1 through 156];

21 (2) disclosing the name of the court in which a proceeding for adoption occurred or the name of
22 an agency that placed an adoptee to an individual described in [section 143(1)] who can verify the
23 individual's identity; or

24 (3) disclosing nonidentifying information contained in confidential or sealed records in accordance
25 with any other applicable state or federal law.

26
27 **NEW SECTION. Section 146. Release of original birth certificate -- certificate of adoption.** (1) For
28 a person adopted on or before July 1, 1967, in addition to any copy of an adoptee's original birth certificate
29 authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall
30 furnish a copy of the original birth certificate upon the written request of an adoptee.

1 (2) For a person adopted between July 1, 1967, and September 30, 1997, in addition to any copy
2 of an adoptee's original birth certificate authorized for release by a court order issued pursuant to
3 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate upon a court
4 order.

5 (3) For a person adopted on or after [the effective date of this section], in addition to any copy of
6 an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121
7 or 50-15-122, the department shall furnish a copy of the original birth certificate upon:

8 (a) the written request of an adoptee who has attained 18 years of age unless the birth parent has
9 requested in writing that the original birth certificate not be automatically released; or

10 (b) a court order.

11 (4) For a person adopted on or after [the effective date of this section] and subject to subsection
12 (5), upon the request of an adoptive parent or an adoptee who has attained 18 years of age, the clerk of
13 the court that entered a decree of adoption shall issue a certificate of adoption that states the date and
14 place of adoption, the date of birth of the adoptee, the name of each adoptive parent, and the name of the
15 adoptee as provided in the decree.

16 (5) A birth parent may request in writing to the vital statistics bureau that the birth certificate for
17 an adoptee not be released without a court order.

18
19 **NEW SECTION. Section 147. Fees related to placement for adoption by parent.** (1) Reasonable
20 adoption fees may be paid by the adoptive parent for the actual cost of services. The cost of services must
21 relate to:

22 (a) a petition for adoption;

23 (b) placement of a child;

24 (c) medical care or services;

25 (d) prenatal care;

26 (e) foster care;

27 (f) a preplacement evaluation;

28 (g) counseling related to providing information necessary to make an informed decision to
29 voluntarily relinquish a child;

30 (h) travel or temporary living costs for the birth mother;

- 1 (i) legal fees incurred for services on behalf of the placing parent;
- 2 (j) the reasonable costs incurred by a placing parent in a direct parental placement adoption to
3 document the disclosures of medical and social history required by [section 81]; and
- 4 (k) other reasonable costs related to adoption that do not include education, vehicles, salary or
5 wages, vacations, or permanent housing for the birth parent.

6 (2) A birth parent or a provider of a service listed in subsection (1) may receive or accept a
7 payment authorized by subsection (1). The payment may not be made contingent on the placement of a
8 child for adoption or upon relinquishment of and consent to adoption of the child. If the adoption is not
9 completed, a person who is authorized by subsection (1) to make a specific payment is not liable for that
10 payment unless the person has agreed in a signed writing with a birth parent or a provider of a service to
11 make the payment regardless of the outcome of the proceeding for adoption.

12

13 **NEW SECTION. Section 148. Limitations on payment of counseling and legal fees.** (1) A
14 prospective adoptive parent may pay counseling expenses for a maximum of 10 hours of counseling.

15 (2) A prospective adoptive parent may pay for legal costs entailed for providing legal counsel for
16 one birth parent unless the birth parents elect joint representation. The right of a relinquishing parent to
17 legal counsel paid by the prospective adoptive parent continues only until the relinquishment becomes
18 irrevocable. An attorney may not represent both a birth parent and a prospective adoptive parent.

19

20 **NEW SECTION. Section 149. Prohibited activities -- violations -- penalties.** (1) A person, other
21 than the department or a licensed child-placing agency, may not:

- 22 (a) advertise in any public medium that the person:
- 23 (i) knows of a child who is available for adoption; or
- 24 (ii) is willing to accept a child for adoption or knows of prospective adoptive parents for a child;
- 25 or

26 (b) engage in placement activities as defined in [section 151].

27 (2) An individual other than an extended family member or stepparent of a child may not obtain
28 legal or physical custody of a child for purposes of adoption unless the individual has a favorable
29 preplacement evaluation or a court-ordered waiver of the evaluation.

30 (3) A person who, as a condition for placement, relinquishment, or consent to the adoption of a

1 child, knowingly offers, gives, agrees to give, solicits, accepts, or agrees to accept from another person,
 2 either directly or indirectly, anything other than the fees allowed under [section 147] commits the offense
 3 of paying or charging excessive adoption process fees.

4 (4) It is illegal to require repayment or reimbursement of anything provided to a birth parent under
 5 [section 147]. All payments by the adoptive parent made on behalf of a birth parent pursuant to this
 6 section are considered a gift to the birth parent.

7 (5) A person convicted of the offense of paying or charging excessive adoption process fees,
 8 attempting to recover expenses incurred from an adoption process, or otherwise violating [sections 1
 9 through 156] may be fined an amount not to exceed \$10,000 in an action brought by the appropriate city
 10 or county attorney. The court may also enjoin from further violations any person who violates [sections
 11 1 through 156].

12
 13 **NEW SECTION. Section 150. Action by department.** The department may review and investigate
 14 compliance with [sections 1 through 156] and may maintain an action in court to compel compliance.

15
 16 **NEW SECTION. Section 151. Definitions.** As used in [sections 151 through 156], the following
 17 definitions apply:

18 (1) "Person" includes any individual, partnership, voluntary association, or corporation.

19 (2) "Placement activities" means any of the following:

20 (a) placement of a child for adoption;

21 (b) arranging or providing short-term foster care for a child pending an adoptive placement; or

22 (c) facilitating placement of a child by maintaining a list in any form of birth parents or prospective
 23 adoptive parents.

24 (3) "Soliciting" means to request, offer, promote, refer, or entice, either directly or indirectly
 25 through correspondence, advertising, or other method, a potential adoptive parent or couple, birth parent
 26 or parents, or placement of a child by a birth parent.

27
 28 **NEW SECTION. Section 152. General duties of department.** The department shall:

29 (1) issue licenses to entities engaged in child placement activities on [the effective date of this
 30 section] if the licensed applicant has met the requirements established by the department by rule;

- 1 (2) prescribe the conditions upon which child-placing licenses are issued and revoked; and
2 (3) adopt rules for the conduct of the affairs of child-placing agencies that are consistent with the
3 welfare of children.

4
5 **NEW SECTION. Section 153. License required -- term of license -- no fee charged.** (1) Only an
6 entity holding a current child-placing agency license issued by the department may act as an agency for
7 the purpose of:

- 8 (a) procuring or selecting proposed adoptive homes;
9 (b) placing children in proposed adoptive homes;
10 (c) soliciting persons to adopt children or arranging for persons to adopt children;
11 (d) soliciting persons to relinquish children or place children in potential adoptive homes; or
12 (e) engaging in placement activities.
13 (2) Licenses are valid for 1 year after issuance. A fee may not be charged for a license.
14

15 **NEW SECTION. Section 154. Requirements for licensure.** The department may issue licenses to
16 agencies meeting the following minimum requirements:

- 17 (1) The chief function of the agency or a specific program within the agency must be the care and
18 placement of children.
19 (2) The agency operates on a nonprofit basis and is financially responsible in and for its operation.
20 (3) The agency meets the requirements as designated by the department by rule.
21 (4) The directing or managing personnel of the agency must be qualified both on the basis of
22 professional educational experience and character.
23 (5) Complete records must be kept of both the children and adopting parents with which the
24 agency deals, and the records must be maintained in accordance with [section 141].
25 (6) The agency shall maintain and use an in-state office for making a social study of the child and
26 proposed adoptive parent before placement of the child, particularly with regard to:
27 (a) the physical and mental health, emotional stability, and personal integrity of the adoptive parent
28 and the parent's ability to promote the child's welfare; and
29 (b) the physical and mental condition of the child and the child's family background.
30 (7) The agency must have the ability to provide education for adoptive parents and counseling for

1 placing parents as required in [section 48] and department rules.

2 (8) The agency shall agree to cooperate with courts having jurisdiction in adoptive matters and with
3 other public agencies having to deal with the welfare of children.

4 (9) The agency shall, annually, submit a full, complete, and true financial statement to the
5 department, and the statement must contain a full accounting of the operations of the agency during the
6 preceding year.

7
8 **NEW SECTION. Section 155. Investigation of agencies -- cancellation of licenses.** (1) The
9 department may, through its authorized representative, investigate the operations of licensed agencies and
10 may cancel licenses for failure to observe prescribed rules or to maintain minimum requirements. An
11 agency shall give to representatives of the department all information requested and allow them to observe
12 the operation of the agency.

13 (2) When the department finds, upon the basis of the statement required by [section 154(9)] or
14 upon its own investigation, that an agency has not conducted or is financially incapable of conducting its
15 operations according to the established standards, the department may suspend, revoke, or deny a license
16 for the agency.

17
18 **NEW SECTION. Section 156. Violation a misdemeanor -- penalty.** (1) Any person who maintains
19 or conducts an agency for procuring the adoption of children or assists in the maintaining or conducting
20 of an agency without first obtaining a child-placing license is guilty of a misdemeanor and upon conviction
21 of a first offense shall be punished by a fine not exceeding \$1,000 or imprisonment for up to 1 year in jail
22 and shall be enjoined from further engaging in agency activities.

23 (2) Upon the second conviction of a person for violation of [sections 153 through 155], the person
24 is guilty of a felony and may be punished by a fine not exceeding \$10,000 or imprisonment for up to 5
25 years in prison and shall be enjoined from further engaging in agency activities.

26
27 **Section 157.** Section 2-6-104, MCA, is amended to read:

28 **"2-6-104. Records of officers open to public inspection.** Except as provided in ~~40-8-126~~ and
29 27-18-111 and [section 141], the public records and other matters in the office of any officer are at all
30 times during office hours open to the inspection of any person."

1 **Section 158.** Section 2-18-606, MCA, is amended to read:

2 **"2-18-606. Parental leave for state employees.** (1) The department of administration shall develop
3 a parental leave policy for permanent state employees. The policy must permit an employee to take a
4 reasonable leave of absence and permit the employee to use sick leave, immediately following the birth or
5 placement of a child, for a period not to exceed 15 working days if:

6 (a) the employee is adopting a child; or

7 (b) the employee is a birth father.

8 (2) As used in this section, "placement" means placement for adoption as defined in ~~40-8-103~~
9 33-22-130."

10

11 **Section 159.** Section 17-7-502, MCA, is amended to read:

12 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
13 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
14 without the need for a biennial legislative appropriation or budget amendment.

15 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply
16 with both of the following provisions:

17 (a) The law containing the statutory authority must be listed in subsection (3).

18 (b) The law or portion of the law making a statutory appropriation must specifically state that a
19 statutory appropriation is made as provided in this section.

20 (3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;
21 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;
22 15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;
23 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304;
24 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205;
25 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306; 23-5-409;
26 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503;
27 39-71-907; 39-71-2321; 39-71-2504; [section 16]; 44-12-206; 44-13-102; 50-4-623; 50-5-232;
28 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214;
29 75-11-313; 76-12-123; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220;
30 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

1 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
2 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
3 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
4 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as
5 determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the
6 bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec.
7 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for
8 supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates
9 July 1, 2001.)"

10
11 **Section 160.** Section 25-1-201, MCA, is amended to read:

12 **"25-1-201. Fees of clerk of district court.** (1) The clerk of the district court shall collect the
13 following fees:

14 (a) at the commencement of each action or proceeding, except a petition for dissolution of
15 marriage, from the plaintiff or petitioner, \$80; for filing a complaint in intervention, from the intervenor,
16 \$80; for filing a petition for dissolution of marriage, a fee of \$120; and for filing a petition for legal
17 separation, a fee of \$120;

18 (b) from each defendant or respondent, on appearance, \$60;

19 (c) on the entry of judgment, from the prevailing party, \$45;

20 (d) for preparing copies of papers on file in the clerk's office, 50 cents per page for the first five
21 pages of each file, per request, and 25 cents per additional page;

22 (e) for each certificate, with seal, \$2;

23 (f) for oath and jurat, with seal, \$1;

24 (g) for search of court records, 50 cents for each year searched, not to exceed a total of \$25;

25 (h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts,
26 the fee for entry of judgment provided for in subsection (1)(c);

27 (i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;

28 (j) for transmission of records or files or transfer of a case to another court, \$5;

29 (k) for filing and entering papers received by transfer from other courts, \$10;

30 (l) for issuing a marriage license, \$30;

1 (m) on the filing of an application for informal, formal, or supervised probate or for the appointment
 2 of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from
 3 the applicant or petitioner, \$70, which includes the fee for filing a will for probate;

4 (n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative
 5 of the estate of a nonresident decedent, \$55;

6 (o) for filing a declaration of marriage without solemnization, \$30;

7 (p) for filing a motion for substitution of a judge, \$100;

8 (q) for filing a petition for adoption, \$75.

9 (2) Except as provided in subsections (3) through (8), 32% of all fees collected by the clerk of the
 10 district court must be deposited in and credited to the district court fund. If no district court fund exists,
 11 that portion of the fees must be deposited in the general fund for district court operations. The remaining
 12 portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

13 (3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage
 14 without solemnization, \$14 must be deposited in and credited to the state general fund, \$6.40 must be
 15 deposited in and credited to the county general fund, and \$9.60 must be remitted to the state to be
 16 deposited as provided in 19-5-404.

17 (4) Of the fee for filing a petition for dissolution of marriage or legal separation, \$40 must be
 18 deposited in the state general fund, \$35 must be remitted to the state to be deposited as provided in
 19 19-5-404, \$5 must be deposited in the children's trust fund account established by 41-3-702, and \$20
 20 must be deposited in and credited to the district court fund. If no district court fund exists, the \$20 must
 21 be deposited in the general fund for district court operations.

22 (5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the
 23 district court fund or the county general fund or remitted to the state, the clerk of the district court shall
 24 deduct from the following fees the amounts indicated:

25 (i) at the commencement of each action or proceeding and for filing a complaint in intervention as
 26 provided in subsection (1)(a), \$35;

27 (ii) from each defendant or respondent, on appearance, as provided in subsection (1)(b), \$25;

28 (iii) on the entry of judgment as provided in subsection (1)(c), \$15; and

29 (iv) from the applicant or petitioner, on the filing of an application for probate or for the appointment
 30 of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as

1 provided in subsection (1)(m), \$15.

2 (b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the
3 county general fund for district court operations unless the county has a district court fund. If the county
4 has a district court fund, the money must be deposited in that fund.

5 (6) The fee for filing a motion for substitution of a judge as provided in subsection (1)(p) must be
6 remitted to the state to be deposited as provided in 19-5-404.

7 (7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court
8 fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

9 (8) The clerk of the district court shall remit to the credit of the state general fund \$20 of each fee
10 collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion of
11 judicial salaries.

12 (9) The clerk of district court shall remit to the credit of the special revenue account established
13 in [section 16] \$70 of the filing fee required in subsection (1)(q)."

14

15 **Section 161.** Section 33-22-130, MCA, is amended to read:

16 **"33-22-130. Coverage for adopted children from time of placement -- preexisting conditions. (1)**
17 Each group and individual disability policy, certificate of insurance, or membership contract that is delivered,
18 issued for delivery, renewed, extended, or modified in this state must provide coverage for an adopted child
19 of the insured or subscriber to the same extent as for natural children of the insured or subscriber.

20 (2) The coverage required by this section must be effective from the date of placement for the
21 purpose of adoption and must continue unless the placement is disrupted prior to legal adoption and the
22 child is removed from placement. Coverage at the time of placement must include the necessary care and
23 treatment of medical conditions existing prior to the date of placement.

24 (3) As used in this section, "placement" means ~~placement for adoption as defined in 40-8-103~~ the
25 transfer of physical custody of a child who is legally free for adoption to a person who intends to adopt the
26 child."

27

28 **Section 162.** Section 33-30-1016, MCA, is amended to read:

29 **"33-30-1016. Coverage for adopted children from time of placement -- preexisting conditions. (1)**
30 Each individual or group membership contract issued or amended by a health service corporation in this

1 state that provides coverage of dependent children of a member must provide coverage for an adopted child
2 of the member to the same extent as for natural children of the member.

3 (2) The coverage required by this section must be effective from the date of placement for the
4 purpose of adoption and must continue unless the placement is disrupted prior to legal adoption and the
5 child is removed from placement. Coverage at the time of placement must include the necessary care and
6 treatment of medical conditions existing prior to the date of placement.

7 (3) As used in this section, "placement" ~~means placement for adoption~~ has the meaning as defined
8 in ~~40-8-103~~ 33-22-130."

9

10 **Section 163.** Section 33-31-114, MCA, is amended to read:

11 **"33-31-114. Coverage for adopted children from time of placement -- preexisting conditions.** (1)

12 Each health maintenance contract regulated under this chapter must provide coverage for an adopted child
13 of the enrollee to the same extent as for natural children of the enrollee.

14 (2) The coverage required by this section must be effective from the date of placement for the
15 purpose of adoption and must continue unless the placement is disrupted prior to legal adoption and the
16 child is removed from placement. Coverage at the time of placement must include the necessary care and
17 treatment of medical conditions existing prior to the date of placement.

18 (3) As used in this section, "placement" ~~means placement for adoption~~ has the meaning as defined
19 in ~~40-8-103~~ 33-22-130."

20

21 **Section 164.** Section 37-60-301, MCA, is amended to read:

22 **"37-60-301. License required.** (1) Except as provided in 37-60-105, it is unlawful for any person
23 to act as or perform the duties as defined in 37-60-101 of a contract security company or proprietary
24 security organization, a private investigator, or a private security guard without having first obtained a
25 license from the board. Those persons licensed on April 18, 1983, shall retain their current licensure status
26 and shall renew their licenses on the renewal date as prescribed by the department.

27 (2) It is unlawful for any unlicensed person to act as, pretend to be, or represent to the public that
28 the person is licensed as a private investigator, a contract security company, a proprietary security
29 organization, or a private security guard.

30 (3) A person appointed by the court as a confidential intermediary under [section 144] is not

1 required to be licensed under this chapter. A person who is licensed under this chapter is not authorized
 2 to act as a confidential intermediary, as defined in [section 3], without meeting the requirements of [section
 3 144].

4 ~~(3)~~(4) A person who knowingly engages an unlicensed private investigator, private security guard,
 5 or contract security company is guilty of a misdemeanor punishable under 37-60-411."

6
 7 **Section 165.** Section 40-6-108, MCA, is amended to read:

8 **"40-6-108. Statute of limitations.** (1) An action may be commenced at any time for the purpose
 9 of declaring the existence or nonexistence of the father and child relationship presumed under ~~subsection~~
 10 ~~(a), (b), or (c)~~ of 40-6-105(1)(a), (1)(b), or (1)(c).

11 (2) After the presumption has been rebutted, paternity of the child by another ~~man~~ individual may
 12 be determined in the same action if the other ~~man~~ individual has been made a party.

13 (3) An action to determine the existence or nonexistence of the father and child relationship as to
 14 a child who has no presumed father under 40-6-105:

15 (a) may not be brought by the child later than 2 years after the child attains the age of majority;

16 (b) may be brought by a state agency at any time after the first application is made under Title IV-D
 17 of the Social Security Act for services to the child and before the child attains the age of majority. This
 18 subsection is intended to apply retroactively, within the meaning of 1-2-109, to any child for whom a
 19 paternity action was barred or could have been barred by a shorter limitation period. However, in previously
 20 barred actions that are revived by this subsection, the father is not liable to the state agency for support
 21 of the child.

22 (4) The father's liability for a statutory debt created by the payment of public assistance is limited
 23 to the amount of assistance paid during the 2-year period preceding commencement of the action. This
 24 subsection does not limit the subsequent accrual of a statutory debt.

25 (5) Section 40-6-107 and this section do not extend the time within which a right of inheritance
 26 or a right to a succession may be asserted beyond the time provided by law relating to distribution and
 27 closing of decedents' estates or to the determination of heirship or otherwise.

28 (6) After the conclusion of an adoption proceeding under ~~Title 40, chapter 8~~ [sections 1 through
 29 156], a further action to declare the existence or nonexistence of the father and child relationship of the
 30 adopted child may not be commenced, except as provided in 40-8-112."

1 **Section 166.** Section 41-3-609, MCA, is amended to read:

2 "**41-3-609. Criteria for termination.** (1) The court may order a termination of the parent-child legal
3 relationship upon a finding that any of the following circumstances exist:

4 (a) the parents have relinquished the child pursuant to ~~40-6-135~~ sections 43 and 51;

5 (b) the child has been abandoned by the parents as set forth in 41-3-102(7)(e);

6 (c) the child is an adjudicated youth in need of care and both of the following exist:

7 (i) an appropriate treatment plan that has been approved by the court has not been complied with
8 by the parents or has not been successful; and

9 (ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a
10 reasonable time; or

11 (d) the parent has failed to successfully complete a treatment plan approved by the court within
12 the time periods allowed for the child to be in foster care under 41-3-410 unless it orders other permanent
13 legal custody under 41-3-410.

14 (2) In determining whether the conduct or condition of the parents is unlikely to change within a
15 reasonable time, the court ~~must~~ shall enter a finding that continuation of the parent-child legal relationship
16 will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders
17 the parents unfit, unable, or unwilling to give the child adequate parental care. In making the
18 determinations, the court shall consider but is not limited to the following:

19 (a) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature
20 as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child
21 within a reasonable time;

22 (b) a history of violent behavior by the parent;

23 (c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child
24 caused by the parent;

25 (d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's
26 ability to care and provide for the child;

27 (e) present judicially ordered long-term confinement of the parent;

28 (f) the injury or death of a sibling due to proven parental abuse or neglect; and

29 (g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the
30 parent.

1 (3) In considering any of the factors in subsection (2) in terminating the parent-child relationship,
2 the court shall give primary consideration to the physical, mental, and emotional conditions and needs of
3 the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's
4 physical, mental, and emotional conditions.

5 (4) A treatment plan is not required under this part upon a finding by the court following hearing
6 if:

7 (a) two medical doctors submit testimony that the parent is so severely mentally ill that the parent
8 cannot assume the role of parent;

9 (b) the parent is incarcerated for more than 1 year and a treatment plan is not practical considering
10 the incarceration; or

11 (c) the death of a sibling caused by abuse or neglect by the parent has occurred.

12 (5) If a person is convicted of a felony in which sexual intercourse occurred or if a minor is
13 adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which
14 sexual intercourse occurred and, as a result of the sexual intercourse, a child is born, the court may
15 terminate the offender's parental rights to the child at any time after the conviction or adjudication."
16

17 **Section 167.** Section 41-5-603, MCA, is amended to read:

18 **"41-5-603. Youth court and department records.** (1) Except as provided in subsection (2), all
19 youth court records on file with the clerk of court, including reports of preliminary inquiries, petitions,
20 motions, other filed pleadings, court findings, verdicts, orders, and decrees, are open to public inspection
21 until the records are sealed under 41-5-604.

22 (2) Social, medical, and psychological records, predispositional studies, supervision records of
23 probationers, and any report, charge, or allegation that is not adjudicated pursuant to this chapter are open
24 only to the following:

25 (a) the youth court and its professional staff;

26 (b) representatives of any agency providing supervision and having legal custody of a youth;

27 (c) any other person, by order of the court, having a legitimate interest in the case or in the work
28 of the court;

29 (d) any court and its probation and other professional staff or the attorney for a convicted party
30 who had been a party to proceedings in the youth court when considering the sentence to be imposed upon

1 the party;

2 (e) the county attorney;

3 (f) the youth who is the subject of the report or record, after emancipation or reaching the age of
4 majority;

5 (g) a member of a county interdisciplinary child information team formed under 52-2-211 who is
6 not listed in this subsection (2);

7 (h) members of a local interagency staffing group provided for in 52-2-203; ~~and~~

8 (i) persons allowed access to the records under 45-5-624(7); and

9 (j) persons allowed access under [section 85].

10 (3) Any part of records information secured from records listed in subsection (2), when presented
11 to and used by the court in a proceeding under this chapter, must also be made available to the counsel
12 for the parties to the proceedings.

13 (4) After youth court and department records, reports of preliminary inquiries, predispositional
14 studies, and supervision records of probationers are sealed, they are not open to inspection except, upon
15 order of the youth court, for good cause to:

16 (a) those persons and agencies listed in subsection (2); and

17 (b) adult probation professional staff preparing a presentence report on a youth who has reached
18 the age of majority."

19

20 **Section 168.** Section 41-5-604, MCA, is amended to read:

21 **"41-5-604. Disposition of records.** (1) Except as provided in subsections (2) and (5), youth court
22 records and law enforcement records pertaining to a youth covered by this chapter must be physically
23 sealed 3 years after supervision for an offense ends. The records may be unsealed if a new offense is
24 committed.

25 (2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's
26 18th birthday, the records and files not exempt from sealing under subsection (5) must be physically sealed
27 upon termination of the extended jurisdiction.

28 (3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, an
29 agency or department that has in its possession copies of the sealed records shall also seal or destroy the
30 copies of the records. Anyone violating the provisions of this subsection is subject to contempt of court.

1 (4) This section does not prohibit the destruction of records with the consent of the youth court
2 judge or county attorney after 10 years from the date of sealing.

3 (5) The requirements for sealed records in this section do not apply to fingerprints, DNA records,
4 photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements
5 of the court's judgment or disposition, or records referred to in 45-5-624(7) or [section 85]."

6
7 **Section 169.** Section 50-15-223, MCA, is amended to read:

8 **"50-15-223. Certificates of birth following adoption, legitimation, or determination or**
9 **acknowledgment of paternity.** (1) The department shall establish a new certificate of birth for a person born
10 in this state when the department receives the following:

11 (a) a certificate of adoption, as provided in 50-15-311, a certificate of adoption prepared and filed
12 in accordance with the laws of another state or foreign country, or a certified copy of the decree of
13 adoption, together with the information necessary to identify the original certificate of birth and to establish
14 a new certificate of birth; or

15 (b) a request that a new certificate be established if the request shows that:

16 (i) a district court has determined the paternity of the person; or

17 (ii) both parents have acknowledged the paternity of the person and request that the surname be
18 changed from that shown on the original certificate.

19 (2) The date of birth and the city and county of birth must be stated in the newly established
20 certificate of birth. The department shall substitute the new certificate of birth for the original certificate
21 of birth in the files. The original certificate of birth and the evidence of adoption, legitimation, court
22 determination of paternity, or paternity acknowledgment ~~may not be~~ are only subject to inspection, except
23 upon order of a district court, as provided by rule, as provided in [sections 141 through 146], or as
24 otherwise provided by state law.

25 (3) Upon receipt of a report of an amended decree of adoption, the department shall amend the
26 certificate of birth as provided in rules adopted by the department.

27 (4) Upon receipt of a report or decree of annulment of adoption, the department shall restore the
28 original certificate of birth issued before the adoption to its place in the files and the certificate of birth
29 issued upon adoption and evidence pertaining to the adoption proceeding may not be open to inspection,
30 except upon order of a district court or as provided by rule adopted by the department.

1 (5) Upon written request of both parents and receipt of a sworn acknowledgment and other
2 credible evidence of paternity signed by both parents of a child born outside of marriage, the department
3 shall reflect the paternity on the child's certificate of birth if paternity is not already shown on the certificate
4 of birth.

5 (6) If a certificate of birth is not on file for the adopted child for whom a new certificate of birth
6 is to be established under this section and the date and place of birth have not been determined in the
7 adoption or paternity proceedings pertaining to the child, a delayed certificate of birth must be filed with
8 the department, as provided in 50-15-204, before a new certificate of birth may be established. The new
9 certificate of birth must be prepared on a form prescribed by the department.

10 (7) When a new certificate of birth is established by the department, the department may direct
11 that all copies of the original certificate of birth in the custody of any other custodian of vital records in this
12 state either be sealed from inspection or be forwarded to the department for sealing from inspection.

13 (8) (a) The department shall, upon request of the adopting parents, prepare and register a
14 certificate of birth in this state for a person born in a foreign country who is not a citizen of the United
15 States and who was adopted through a district court in this state.

16 (b) The certificate of birth must be established by the department upon receipt of a certificate of
17 adoption, conforming to the requirements of 50-15-311, from the court that reflects entry of an order of
18 adoption, proof of the date and place of the child's birth, and a request for the establishment of a certificate
19 of birth from the court, the adopting parents, or the adopted person, if the person is 18 years of age or
20 older.

21 (c) The certificate of birth must be labeled "Certificate of Foreign Birth" and must contain the actual
22 country of birth. A statement must be included on the certificate indicating that it is not evidence of United
23 States citizenship for the child for whom it is issued.

24 (d) After registration of the certificate of birth in the new name of the adopted person, the
25 department shall seal and file the certificate of adoption, which is not subject to inspection, except upon
26 order of the district court, as provided by rule, or as otherwise provided by state law.

27 (9) The department may promulgate rules necessary to implement this section."
28

29 **Section 170.** Section 52-2-505, MCA, is amended to read:

30 **"52-2-505. Records to be confidential.** All records regarding subsidized adoption are confidential

1 and may be disclosed only in accordance with the provisions of ~~40-8-126~~ [section 141]."

2

3 NEW SECTION. Section 171. Repealer. Sections 40-6-125, 40-6-126, 40-6-127, 40-6-128,
4 40-6-129, 40-6-130, 40-6-135, 40-8-101, 40-8-102, 40-8-103, 40-8-104, 40-8-105, 40-8-106, 40-8-107,
5 40-8-108, 40-8-109, 40-8-110, 40-8-111, 40-8-112, 40-8-113, 40-8-114, 40-8-115, 40-8-116, 40-8-117,
6 40-8-121, 40-8-122, 40-8-123, 40-8-124, 40-8-125, 40-8-126, 40-8-127, 40-8-128, 40-8-135, 40-8-136,
7 40-8-201, and 40-8-202, MCA, are repealed.

8

9 NEW SECTION. Section 172. Severability. If a part of [this act] is invalid, all valid parts that are
10 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
11 applications, the part remains in effect in all valid applications that are severable from the invalid
12 applications.

13

14 NEW SECTION. Section 173. Applicability. (1) [Sections 1 through 156] apply to proceedings
15 commenced on or after October 1, 1997.

16 (2) A petition for adoption filed prior to October 1, 1997, is governed by the law in effect at the
17 time the petition was filed.

18 (3) The putative father registry requirements apply to children born on or after October 1, 1997.

19

20 NEW SECTION. Section 174. Code commissioner instructions. The code commissioner shall
21 renumber Title 41, chapter 4, and Title 52, chapter 2, parts 4 and 5, as an integral part of [sections 1
22 through 156] and make any changes necessary to reflect the renumbering. The entire body of material
23 must be codified as Title 42.

24

25 NEW SECTION. Section 175. Termination. [Sections 27, 59, 64, 66, 68, and 74] terminate
26 October 1, 1998.

27

28 NEW SECTION. Section 176. Notification to tribal governments. The secretary of state shall send
29 a copy of [this act] to each tribal government located on the seven Montana reservations.

30

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0163, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising and clarifying adoption laws; providing procedures for various types of adoptions; providing for a putative father registry; providing for degrees of access to records; prescribing a fee for filing a petition for adoption; and statutorily appropriating fees.

ASSUMPTIONS:

Department of Health and Human Services (DPHHS), Child and Family Services Division:

1. There is a state special revenue account created for deposit of fees that may be charged by the DPHHS to complete an adoption or to contract for services to complete an adoption. Proceeds of the account are statutorily appropriated to DPHHS to use for adoption services.
2. It is assumed that about 600 adoptions will be completed each year.
3. The bill creates an adoption filing fee of \$75. DPHHS will receive \$70 of that amount, which also must be deposited to the new state special revenue account.
4. DPHHS intends to fund the putative father registry from the new state special revenue account.
5. DPHHS anticipates that the adoption filing fee will generate \$42,000 annually and that other adoption fees will raise \$15,000 annually, for total annual revenue to the new state special revenue account of \$57,000.
6. DPHHS anticipates using all the revenue in the account to fund adoption activities operating expense and the putative father registry.

DPHHS Child Support Enforcement Division (CSED):

7. The bill removes the child support obligation at the time the child is relinquished by the responsible parent. Should the adoption fail after relinquishment, the child support responsibility has already been terminated by the original parent and a new child support responsibility has not been established.
8. CSED serves approximately 50 families per year where the child has been relinquished and the adoption fails.
9. The average CSED child support order as of March 1996 was \$231. Over the child's first eighteen years, the amount of support would be about \$49,900.
10. CSED collections of support would be reduced by \$138,600 per year (50 families X \$231 per child support order X 12 months).
11. CSED Temporary Assistance to Needy Families (TANF) collections are about 30% of the total collections. About \$97,020 would be Non-TANF and \$41,580 would be TANF. CSED retains about 40% of in-state TANF collections in state special revenue. CSED would lose about \$16,632 in state special revenue.

FISCAL IMPACT:

Child Support Enforcement Division:

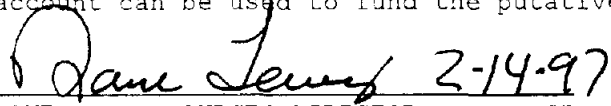
	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
Revenues:		
Child Support State Special (02)	\$(16,632)	\$(16,632)

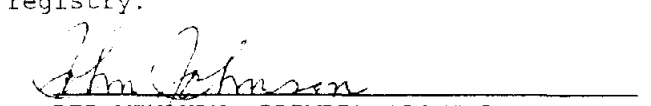
Expenditures:

The bill contains statutory appropriation authority for the operating expenses.

TECHNICAL NOTES:

Section 16, which creates the state special revenue account to fund adoption services, does not include \$70 of the adoption filing fee authorized in Section 160 of the bill. Section 160 requires the \$70 fee be deposited in the new state special revenue account, but the account and statutory appropriation to use account proceeds do not recognize the revenue from the adoption fee. The department intends to fund the putative father registry from this account and proceeds of the \$70 adoption fee are intended to cover part of the putative father registry cost. It is unclear whether the fees deposited in this account can be used to fund the putative father registry.


 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning


 RED MENAHAN, PRIMARY SPONSOR DATE

1 HOUSE BILL NO. 163

2 INTRODUCED BY J. JOHNSON, MENAHAN

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE LAWS
6 GOVERNING ADOPTION; PROVIDING PROCEDURES FOR VARIOUS TYPES OF ADOPTIONS; PROVIDING
7 FOR A PUTATIVE FATHER REGISTRY; PROVIDING FOR THE RELINQUISHMENT AND TERMINATION OF
8 PARENTAL RIGHTS; PROVIDING FOR DEGREES OF ACCESS TO RECORDS; PRESCRIBING A FEE FOR
9 FILING A PETITION FOR ADOPTION; STATUTORILY APPROPRIATING FEES; AMENDING SECTIONS
10 2-6-104, 2-18-606, 17-7-502, 25-1-201, 33-22-130, 33-30-1016, 33-31-114, 37-60-301, 40-6-108,
11 41-3-609, 41-5-603, 41-5-604, 50-15-223, AND 52-2-505, MCA; REPEALING SECTIONS 40-6-125,
12 40-6-126, 40-6-127, 40-6-128, 40-6-129, 40-6-130, 40-6-135, 40-8-101, 40-8-102, 40-8-103, 40-8-104,
13 40-8-105, 40-8-106, 40-8-107, 40-8-108, 40-8-109, 40-8-110, 40-8-111, 40-8-112, 40-8-113, 40-8-114,
14 40-8-115, 40-8-116, 40-8-117, 40-8-121, 40-8-122, 40-8-123, 40-8-124, 40-8-125, 40-8-126, 40-8-127,
15 40-8-128, 40-8-135, 40-8-136, 40-8-201, ~~AND 40-8-202,~~ 52-2-401, 52-2-402, 52-2-403, 52-2-404,
16 52-2-405, 52-2-406, AND 52-2-407, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES,
17 AND A TERMINATION DATE."

18
19 STATEMENT OF INTENT

20 A statement of intent is required for this bill because the bill gives the department of public health
21 and human services authority to adopt administrative rules. The rules must provide procedures for the
22 putative father registry, including methods of notification, filing, and accessing information. The
23 department shall adopt rules for licensing child-placing agencies. To the extent feasible, the rules should
24 incorporate existing procedures. The needs of the child in the adoption proceeding must be the primary
25 focus of the rules.

26
27 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:28
29 NEW SECTION. **Section 1. Short title.** [Sections 1 through 156] may be cited as the "Montana
30 Adoption Act".

1 **NEW SECTION. Section 2. Adoption policy.** (1) It is the policy of the state of Montana to ensure
2 that the best interests of the child are met by adoption proceedings.

3 (2) The primary purpose of adoption is to help a child become a permanent member of a nurturing
4 family that can give the child the care, protection, and opportunities essential for healthy personal growth
5 and development.

6 (3) The well-being of the adopted child is the main objective in the placement of a child for
7 adoption. The needs of the child must be the primary focus of adoption proceedings, with full recognition
8 of the interdependent needs and interests of birth parents and adoptive parents.

9 (4) It is the policy of the state of Montana to support relationships between adoptees and their birth
10 families when desired by the affected parties.

11

12 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 156], unless the context
13 requires otherwise, the following definitions apply:

14 (1) "Adoptee" means an adopted person or a person who is the subject of adoption proceedings
15 that are intended to result in the adoptee becoming the legal child of another person.

16 (2) "Adoption" means the act of creating the legal relationship between parent and child when it
17 does not exist genetically.

18 (3) "Adoptive parent" means an adult who has become the mother or father of a child through the
19 legal process of adoption.

20 (4) "Agency" means a public or nonprofit entity that is licensed by any jurisdiction of the United
21 States and that is expressly empowered to place children preliminary to a possible adoption.

22 (5) "Birth parent" means the woman who gave birth to the child or the father of genetic origin of
23 the child.

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

25 (7) "Confidential intermediary" means a person certified by the department and under contract with
26 or employed by a nonprofit entity with expertise in adoption.

27 (8) "Court" means a court of record in a competent jurisdiction and in Montana means a district
28 court or a tribal court.

29 (9) "Department" means the department of public health and human services, provided for in
30 2-15-2201.

1 (10) "Direct parental placement adoption" means an adoption in which the parent of the child
2 places the child with a prospective adoptive parent personally known and selected by the parent
3 independent of an agency.

4 (11) "Extended family member" means a person who is or was the adoptee's parent, grandparent,
5 aunt or uncle, brother or sister, or child.

6 (12) "Identifying information" means information that directly reveals or indirectly indicates the
7 identity of a person and includes the person's name or address.

8 (13) "Nonidentifying information" means information that does not directly reveal or indirectly
9 indicate the identity of a person, including:

10 (a) medical information and information related to general physical characteristics;

11 (b) family information, including marital status and the existence of siblings;

12 (c) religious affiliation;

13 (d) educational background information that does not reveal specific programs or institutions
14 attended;

15 (e) general occupation;

16 (f) hobbies; and

17 (g) photographs provided by any of the parties involved that were specifically intended to be
18 provided to another party.

19 (14) "Parent" means the birth or adoptive mother or the birth, adoptive, or legal father whose
20 parental rights have not been terminated.

21 (15) "Placing parent" means a parent who is voluntarily making a child available for adoption.

22 (16) "Preplacement evaluation" means the home study process conducted by the department or
23 a licensed child-placing agency that:

24 (a) assists a prospective adoptive parent or family to assess its own readiness to adopt; and

25 (b) assesses whether the prospective adoptive parent or family and home meet applicable standards.

26 (17) "Records" means all documents, exhibits, and data pertaining to an adoption.

27 (18) "Relinquishment" means the informed and voluntary release in writing of all parental rights
28 with respect to a child by a parent to an agency or individual.

29
30 **NEW SECTION. Section 4. Venue.** (1) Proceedings for adoption must be brought in the district

1 court of the county where the petitioners reside.

2 (2) Petitions for appointment of a confidential intermediary may be filed:

3 (a) in the county where the decree of adoption was issued;

4 (b) in the county of residence of the petitioner; or

5 (c) if the petitioner resides out of state, in any county.

6

7 **NEW SECTION. Section 5. Who may be adopted.** (1) A child is legally free for adoption if:

8 (a) the child does not have a living parent;

9 (b) the parental rights of the living parents of the child have been terminated according to the laws
10 of this state or of another jurisdiction; or

11 (c) the living parents, guardian authorized by the court, or department or agency with custody of
12 the child consent to the adoption.

13 (2) An adult may be adopted as provided in [sections 121 through 125].

14 (3) A stepchild may be adopted as provided in [sections 112 through 120].

15

16 **NEW SECTION. Section 6. Who may adopt.** The following individuals who otherwise meet the
17 requirements of [sections 1 through 156] are eligible to adopt a child:

18 (1) a husband and wife jointly or either the husband or wife if the other spouse is a parent of the
19 child;

20 (2) an unmarried individual who is at least 18 years of age; or

21 (3) a married individual at least 18 years of age who is legally separated from the other spouse or
22 whose spouse has judicially been declared incompetent.

23

24 **NEW SECTION. Section 7. Adoption prohibited if child not legally free.** (1) An adoption decree
25 may not be entered if the child who is the subject of an adoption proceeding is not legally free for adoption.

26 (2) A child may be placed for adoption only by:

27 (a) the department or another agency to which the child has been relinquished for purposes of
28 adoption;

29 (b) the department or another agency expressly authorized to place the child for adoption by a
30 court order terminating the relationship between the child and the child's parent or guardian;

1 (c) the child's parents; or

2 (d) a guardian expressly authorized by the court to place the child for adoption.

3

4 **NEW SECTION. Section 8. Rights and responsibilities of parties in adoption proceedings.** (1) The
5 legislature finds that the rights and interests of all parties affected by an adoption proceeding must be
6 considered and balanced in determining the necessary constitutional protection and appropriate processes.

7 (2) The legislature finds that:

8 (a) every child deserves to be raised by a family in which support and care are promptly provided
9 by one or more parents in a nurturing environment on a regular and ongoing basis;

10 (b) the state has a compelling interest in providing stable and permanent homes for adoptive
11 children in a prompt manner, in preventing the disruption of adoptive placements, and in holding parents
12 accountable for meeting the needs of children;

13 (c) an unmarried mother, faced with the responsibility of making crucial decisions about the future
14 of a newborn child, is entitled to privacy, has the right to make timely and appropriate decisions regarding
15 the mother's future and the future of the child, and is entitled to assurance regarding the permanence of
16 an adoptive placement;

17 (d) adoptive children have a right to permanence and stability in adoptive placements;

18 (e) adoptive parents have a constitutionally protected liberty and privacy interest in retaining
19 custody of an adopted child; and

20 (f) a birth father who is not married to the child's mother has the primary responsibility to protect
21 the father's rights. The father's inchoate interest in the child requires constitutional protection only when
22 the father has demonstrated a timely ~~and full~~ commitment to the responsibilities of parenthood, both during
23 pregnancy and upon the child's birth. The state has a compelling interest in requiring a birth father to
24 demonstrate that commitment by:

25 (i) timely and consistently providing financial support;

26 (ii) complying with the requirements of the putative father registry; and

27 (iii) demonstrating the establishment of a substantial relationship with the child as described in
28 [section 73].

29 (3) If a birth father who is not married to the child's mother fails to grasp the opportunities that
30 are available to the father to establish a relationship with the child, the father's parental rights will be lost

1 entirely by the failure to timely exercise it or by the failure to ~~strictly~~ comply with the available legal steps
2 to substantiate the parental interest.

3

4 NEW SECTION. Section 9. Need for finality -- balancing of interests. Finality is necessary in order
5 to facilitate the state's compelling interest. The legislature finds that the INTERESTS OF THE CHILD
6 OUTWEIGH THE interests of the state, the mother, ~~the child, and~~ the adoptive parents ~~outweigh the interest~~
7 ~~of, AND~~ a birth father who is not married to the child's mother ~~and who does not timely grasp the~~
8 ~~opportunities available to establish and demonstrate a relationship with the father's child in accordance with~~
9 ~~the requirements of the putative father registry.~~

10

11 NEW SECTION. Section 10. Presumed knowledge that child may be adopted without notice. A
12 birth father who is not married to the mother of the child is presumed to know that the child may be
13 adopted without the father's consent and ~~without notice to THAT~~ the father ~~unless the father strictly~~
14 ~~complies~~ IS REQUIRED TO COMPLY with the provisions of [sections 1 through 156] and ~~manifests~~
15 MANIFEST a ~~prompt and full~~ commitment to the father's parental responsibilities.

16

17 NEW SECTION. Section 11. Unmarried birth mother's right of privacy. An unmarried birth mother
18 has a right of privacy with regard to the mother's pregnancy and adoption plan ~~and therefore has no legal~~
19 ~~obligation to disclose the identity of the birth father of the child prior to or during an adoption proceeding.~~
20 ~~The mother does not have an obligation to volunteer information to the court with respect to a potential~~
21 ~~birth father who is not married to the mother.~~ BIRTH MOTHERS ARE ENCOURAGED TO PROVIDE ALL
22 KNOWN INFORMATION ABOUT THE BIRTH FATHER OF ANY CHILD FOR WHOM AN ADOPTION IS
23 PLANNED.

24

25 NEW SECTION. Section 12. Recognition of adoption in another jurisdiction. (1) A decree or order
26 of adoption has the same effect as a decree or order of adoption issued by a court of this state if the decree
27 or order is:

- 28 (a) issued by a court of any other state that is entitled to full faith and credit in this state; or
29 (b) entered by a court or administrative entity in another country acting pursuant to:
30 (i) that country's law; or

1 (ii) to any convention or treaty on intercountry adoption that the United States has ratified.

2 (2) The rights and obligations of the parties as to matters within the jurisdiction of this state must
3 be determined as though the decree or order were issued by a court of this state.

4
5 **NEW SECTION. Section 13. Proceedings subject to Indian Child Welfare Act.** A proceeding under
6 [sections 1 through 156] that pertains to an Indian child, as defined in the Indian Child Welfare Act of
7 1978, 25 U.S.C. 1901, et seq., is subject to that act.

8
9 **NEW SECTION. Section 14. Interstate placement.** The Interstate Compact on the Placement of
10 Children, Title 41, chapter 4, governs:

11 (1) an adoption in this state of a child brought into this state from another state by a prospective
12 adoptive parent;

13 (2) a person residing in or an agency doing business from another state who places the child for
14 adoption in this state; and

15 (3) the placement of a Montana child in another state.

16
17 **NEW SECTION. Section 15. International placement.** An adoption in this state of a child brought
18 into this state from another country by a prospective adoptive parent or by a person who places the child
19 for adoption in this state is governed by [sections 1 through 156] and is subject to any convention or treaty
20 governing adoption that the United States has ratified and to any relevant federal law.

21
22 **NEW SECTION. Section 16. Fees for services -- special revenue account -- statutory appropriation.**

23 (1) The department shall establish fees that it may charge and that are reasonably related to the cost
24 incurred by the department in completing or contracting for adoption services.

25 (2) The department may contract with licensed social workers or licensed child-placing agencies
26 for the purposes of completing the preplacement or postplacement evaluation or for providing
27 postplacement supervision.

28 (3) An agency contracting to perform the services may set and charge a reasonable fee
29 commensurate with the services provided.

30 (4) There is an adoption services account in the state special revenue fund. The fees collected by

1 the department under [sections 1 through 156] AND FROM THE DISTRICT COURT FILING FEE PURSUANT
 2 TO 25-1-201(1)(Q) must be deposited into this account and may be used by the department for adoption
 3 services. The money in the account is statutorily appropriated, as provided in 17-7-502, to the department.

4

5 NEW SECTION. Section 17. Rulemaking authority. The department may adopt rules to implement
 6 the administration and purposes of [sections 1 through 156].

7

8 NEW SECTION. Section 18. Definitions. As used in [sections 18 through 38], unless the context
 9 requires otherwise, the following definitions apply:

- 10 (1) "Child" includes an unborn child.
- 11 (2) (a) "Putative father" means an individual who may be a child's birth father but who:
- 12 (i) is not married to the child's mother on or before the date that the child is born; or
- 13 (ii) has not established paternity of the child ~~in a court proceeding~~ prior to the filing of a petition for
 14 termination of parental rights to the child for purposes of adoption.
- 15 (b) The term includes an individual who is:
- 16 (i) less than 18 years of age; and
- 17 (ii) not married to the child's mother even though the individual is a presumed father within the
 18 meaning of 40-6-105.
- 19 (3) "Registry" means the putative father registry established under [section 19].

20

21 NEW SECTION. Section 19. Putative father registry. The putative father registry is established
 22 within the vital statistics bureau of the department. The department shall adopt rules to administer the
 23 registry.

24

25 NEW SECTION. Section 20. Purpose of registry. (1) The purpose of the putative father registry
 26 is to provide notice of ~~adoption proceedings~~ TERMINATION OF PARENTAL RIGHTS to a putative father who
 27 asserts a parental interest in a child so that the putative father may appear in ~~an adoption~~ A proceeding and
 28 have an opportunity to establish that the putative father's inchoate rights in the child have vested because
 29 a substantial relationship with the child has been established as provided in [section 73].

30

(2) A IN ADDITION TO ANY OTHER NOTICE TO WHICH THE PUTATIVE FATHER IS ENTITLED,

1 A putative father of a child who complies with the requirements of the putative father registry is entitled
 2 to notice of any ~~adoption~~ proceedings involving TERMINATION OF PARENTAL RIGHTS TO the child.

3
 4 NEW SECTION. Section 21. Presumed knowledge of pregnancy -- duty to register to be afforded
 5 notice -- putative and presumed fathers. (1) A person who engages in sexual relations with a member of
 6 the opposite sex is presumed to know that a pregnancy could result.

7 (2) A IN ADDITION TO ANY OTHER NOTICE TO WHICH THE PUTATIVE FATHER IS ENTITLED,
 8 A putative father is ~~not~~ entitled to notice of termination of parental rights proceedings for the purposes of
 9 adoption ~~unless~~ IF the putative father has ~~strictly~~ complied with the requirements of the putative father
 10 registry.

11 (3) An individual who is not married to the mother but who is presumed to be a father under
 12 40-6-105 ~~is not relieved from the obligation of registering~~ AND REGISTERS in accordance with [sections
 13 18 through 38] ~~in order~~ IS ENTITLED to receive notice of a termination of parental rights proceeding ~~for a~~
 14 ~~child for whom the individual may be the presumed father.~~

15
 16 NEW SECTION. Section 22. Registration. (1) A IN ADDITION TO ANY OTHER NOTICE TO
 17 WHICH THE PUTATIVE FATHER IS ENTITLED, A putative father is entitled to notice of any ~~adoption~~
 18 proceedings TO TERMINATE PARENTAL RIGHTS involving a child whom the putative father might have
 19 fathered if the putative father timely files the following information with the department:

- 20 (a) the putative father's:
- 21 (i) full name;
- 22 (ii) address at which the putative father may be served by certified mail, return receipt requested,
 23 with notice of a proceeding to terminate parental rights;
- 24 (iii) social security number;
- 25 (iv) date of birth; and
- 26 (v) tribal affiliation if applicable;
- 27 (b) the mother's:
- 28 (i) name, including all other names known to the putative father that the mother uses; and
- 29 (ii) address, social security number, and date of birth, if known;
- 30 (c) the child's:

- 1 (i) name and place of birth, if known; or
 2 (ii) the approximate date and location of A POSSIBLE conception and the approximate expected
 3 date of delivery.

4 (2) If a putative father does not have an address where the putative father can receive notice of
 5 a termination of parental rights proceeding, the putative father may designate another person as an agent
 6 for the purpose of receiving notice. The putative father shall provide the department with the agent's name
 7 and the address at which the agent may be served. Service of notice by certified mail, return receipt
 8 requested, constitutes service of notice upon the putative father.

9 (3) A putative father shall register under this section on a registration form prescribed by the
 10 department or with a legibly typed or handwritten statement that provides the required information and that
 11 is submitted to the department pursuant to [section 24]. The registration must be signed by the putative
 12 father and notarized.

13 (4) A putative father who registers under this section is responsible for providing written updates
 14 regarding any change of the putative father's name or address.

15

16 **NEW SECTION. Section 23. When putative father to register -- actual knowledge of pregnancy**
 17 **not required.** (1) In order to be entitled, BECAUSE OF REGISTRATION, to receive notice of a termination
 18 of parental rights proceeding, a putative father's registration form complying with the requirements of
 19 [section 22] must be received by the department not later than ~~close of business on the date of the child's~~
 20 ~~birth~~ 5 DAYS PRIOR TO A HEARING TO TERMINATE PARENTAL RIGHTS.

21 (2) A putative father may file all information required by [section 22] before a child's birth even
 22 though the putative father has no actual knowledge that a pregnancy has occurred or that a pregnancy has
 23 continued through gestation.

24

25 **NEW SECTION. Section 24. How registration submitted.** A putative father shall submit a
 26 registration form:

- 27 (1) in person; or
 28 (2) by facsimile transmission, mail, private courier, or express delivery service.

29

30 **NEW SECTION. Section 25. Burden of putative father to preserve rights upon receipt of notice.**

1 When a putative father receives notice that a child in whom the putative father claims a parental interest
2 is the subject of a termination of parental rights proceeding, the putative father must appear at the hearing
3 held on the petition to terminate parental rights and demonstrate, at a minimum, that the criteria set out
4 in [section 73] for determining whether the putative father has made reasonable efforts to establish a
5 substantial relationship with the child who is the subject of the proceedings have been met.

6
7 **NEW SECTION. Section 26. Presumption created -- admissibility in other proceedings.** A person
8 filing a registration form is presumed to be the father of the child for purposes of adoption unless the
9 mother denies that the registrant is the father. The registration or any revocation that is filed is admissible
10 in a paternity proceeding ~~under 40-6-107~~ and creates a rebuttable presumption as to the paternity of the
11 child ~~for purposes of 40-6-107~~. The registration creates a rebuttable presumption as to paternity of the
12 child for purposes of an abuse or neglect proceeding under Title 41, chapter 3, or a child support
13 enforcement action under Title 40, chapter 5.

14
15 **NEW SECTION. Section 27. Duties of department.** (1) The department shall:

16 (a) prescribe a registration form for the information that a putative father submits under [section
17 22]; and

18 (b) make the registration forms available through:

19 (i) the department;

20 (ii) each clerk of a district court;

21 (iii) each local health department; and

22 (iv) each county clerk and recorder.

23 (2) A notice provided by the department that informs the public about the purpose and operation
24 of the registry must be posted in a conspicuous place by each:

25 (a) clerk of a district court;

26 (b) driver's examination station of the motor vehicle division of the department of justice;

27 (c) local health department; and

28 (d) county clerk and recorder.

29 (3) The title and registration bureau of the motor vehicle division of the department of justice and
30 the county treasurer of each county shall deliver a copy of the notice described in subsection (4) with the

1 registration tags for every vehicle registered in Montana between July 1, 1997, and October 1, 1998. The
2 department shall provide the copies of the notices to the title and registration bureau and the county
3 treasurers.

4 (4) The notice under subsection (2) must include information regarding:

5 (a) where to obtain a registration form;

6 (b) where to register;

7 (c) the circumstances under which a putative father is required to register;

8 (d) the period under [section 23] during which a putative father is required to register in order to
9 entitle the putative father to receive notice of a proceeding to terminate parental rights;

10 (e) the information that must be provided for the registry and what other actions the putative father
11 is required to take to preserve a right to notice;

12 (f) the consequences of not submitting a timely registration; and

13 (g) the penalties for filing a false claim with the putative father registry.

14

15 **NEW SECTION. Section 28. Duties of department.** (1) The department shall:

16 (a) prescribe a registration form for the information that a putative father submits under [section
17 22]; and

18 (b) make the registration forms available through:

19 (i) the department;

20 (ii) each clerk of a district court; and

21 (iii) each local health department.

22 (2) A notice provided by the department that informs the public about the purpose and operation
23 of the registry must be posted in a conspicuous place by each:

24 (a) clerk of a district court;

25 (b) driver's examination station of the motor vehicle division of the department of justice;

26 (c) local health department; and

27 (d) county clerk and recorder.

28 (3) The notice under subsection (2) must include information regarding:

29 (a) where to obtain a registration form;

30 (b) where to register;

- 1 (c) the circumstances under which a putative father is required to register;
- 2 (d) the period under [section 23] during which a putative father is required to register in order to
- 3 entitle the putative father to receive notice of an adoption;
- 4 (e) the information that must be provided for the registry and what other actions the putative father
- 5 is required to take to preserve a right to notice;
- 6 (f) the consequences of not submitting a timely registration; and
- 7 (g) the penalties for filing a false claim with the putative father registry.

8

9 **NEW SECTION. Section 29. Information maintained in registry.** The department shall maintain the

10 following information in the registry:

- 11 (1) the registration information provided by the putative father under [section 22];
- 12 (2) the date that the department receives a putative father's registration;
- 13 (3) the name and affiliation of any person who requests that the department search the registry
- 14 to determine whether a putative father is registered in relation to a mother whose child is or may be the
- 15 subject of a termination proceeding and the date the request is submitted; and
- 16 (4) any other information that the department determines is necessary to access the information
- 17 in the registry.

18

19 **NEW SECTION. Section 30. Storage of data.** The department shall store the registry's data in a

20 manner so that the data is accessible through:

- 21 (1) the putative father's name;
- 22 (2) the mother's name, INCLUDING HER MAIDEN NAME, IF KNOWN;
- 23 (3) the date of birth of the putative father, the mother, and the child, if known;
- 24 (4) the child's name, if known; and
- 25 (5) the social security number for the putative father, the mother, and the child, if known.

26

27 **NEW SECTION. Section 31. Registry search -- request -- affidavit.** (1) The following persons may

28 at any time request that the department search the registry to determine whether a putative father is

29 registered in relation to a child who is or may be the subject of a proceeding to terminate parental rights:

- 30 (a) a representative of the department;

1 (b) a representative of an agency when the agency is or may be arranging an adoption;

2 (c) a prospective adoptive parent or an attorney representing a prospective adoptive parent in a
3 direct parental placement adoption who has the notarized consent of the birth mother; or

4 (d) any woman who is the subject of a registration.

5 (2) When a petition to terminate parental rights for purposes of an adoption is filed, the petitioner
6 shall:

7 (a) request that the department search the registry at least 1 day after the expiration of the period
8 specified under [section 23]; and

9 (b) file an affidavit prepared by the department in response to a request under subsection (2)(a)
10 with the court presiding over the termination of parental rights proceeding under [section 63]. The affidavit
11 must meet the requirements of subsections (4) and (5).

12 (3) A request for information about a registration from the department must be in writing.

13 (4) Not later than 5 days after receiving a request under subsection (2)(a), the department shall
14 submit an affidavit to the requestor verifying whether a putative father has registered within the period
15 allowed under [section 23] in relation to a mother whose child or expected child is the subject of the
16 termination proceeding.

17 (5) Whenever the department finds that one or more putative fathers are registered, the department
18 shall:

19 (a) submit a copy of each registration form with the department's affidavit; and

20 (b) include in the affidavit the date that the department representative, agency, or attorney
21 submitted the request for the search.

22 (6) A court may not issue an order terminating parental rights unless the department's affidavit
23 under subsection (5) is filed with the court.

24

25 **NEW SECTION. Section 32. Duties of department upon receipt of request.** (1) Whenever the
26 department receives a request, the department shall:

27 (a) search its records of putative father registrations and search its records for any
28 acknowledgement of paternity filed pursuant to 40-6-105; and

29 (b) notify the requestor as to whether a paternity action has been filed and a paternity order issued
30 to the department pursuant to ~~40-6-116~~ requiring the issuance of a new birth certificate concerning a child

1 who is or may be the subject of an adoption that the attorney or agency is arranging.

2 (2) The department may charge a reasonable fee for responding to a request under this section.

3

4 **NEW SECTION. Section 33. Failure to register—irrevocable implied consent—fraud OF AGENCY**

5 **TO POST NOTICE.** ~~(1) A putative father who fails to register within the period specified under [section~~
6 ~~23] waives notice of a termination proceeding.~~

7 ~~(2) The putative father's waiver under subsection (1) constitutes an irrevocable implied consent~~
8 ~~to the child's adoption.~~

9 ~~(3) Failure of an agency to post a proper notice under [section 27] does not relieve a putative father~~
10 ~~of the obligation to register with the department in accordance with the putative father registry in order to~~
11 ~~entitle the putative father, BECAUSE OF REGISTRATION, to notice of proceedings involving a child who~~
12 ~~may have been fathered by the putative father.~~

13

14 **NEW SECTION. Section 34. Revocation of registration. A UNLESS A SUPPORT ORDER HAS BEEN**
15 **ISSUED, A** putative father may revoke a registration at any time by submitting to the department a signed,
16 notarized statement revoking the registration.

17

18 **NEW SECTION. Section 35. Certified copy of registration form to be furnished upon request.** The
19 department shall furnish a certified copy of the putative father's registration form upon written request by:

20 (1) a putative father whose name appears on the registration form being requested;

21 (2) a mother whose name appears on the registration form being requested;

22 (3) upon reaching majority, a person who was the subject of a registration;

23 (4) a prospective adoptive parent or an attorney representing a prospective adoptive parent in a
24 direct parental placement adoption who has the notarized consent of the birth mother;

25 (5) a licensed child-placing agency;

26 (6) a court that presides over a pending adoption;

27 (7) the child support enforcement division of the department; or

28 (8) a representative of the department involved in an adoption or a neglect and dependency
29 proceeding under Title 41, chapter 3.

30

1 NEW SECTION. **Section 36. Information confidential.** Except as otherwise provided in [sections
2 18 through 38], information contained within the registry is confidential.

3

4 NEW SECTION. **Section 37. Registration of false information -- criminal and civil penalties.** A
5 person who purposely or knowingly registers false information or requests confidential information in
6 violation of a putative father registry commits a misdemeanor and may be civilly liable for damages.

7

8 NEW SECTION. **Section 38. Responsibility of each party to protect interests -- putative fathers --**
9 **fraud no defense.** (1) The legislature finds no practical way to remove all risk of fraud or misrepresentation
10 in adoption proceedings and has provided ~~a method for absolute~~ protection of a putative father's rights ~~by~~
11 ~~compliance with the provisions of the putative father registry.~~ In balancing the rights and interests of the
12 state and of all parties affected by fraud, specifically the child, the adoptive parents, and the putative
13 father, the legislature determines that the putative father is in the best position to prevent or ameliorate the
14 effects of fraud and that, therefore, the burden of establishing fraud AGAINST THE PUTATIVE FATHER by
15 clear and convincing evidence must be born by the putative father.

16 (2) Each parent of a child conceived or born outside of marriage to the other parent is responsible
17 for that parent's own actions and assertion of their parental rights notwithstanding any action, statement,
18 or omission of the other parent or third parties.

19 (3) A person injured by fraudulent representations or actions in connection with an adoption is
20 entitled to pursue civil or criminal penalties. A fraudulent representation is not a defense for failure to
21 ~~strictly~~ comply with the requirements of the putative father registry and is not a basis for dismissal of a
22 petition for adoption, vacation of an adoption decree, or an automatic grant of custody to the injured party.

23 (4) A putative father who resides in another state may contest an adoption prior to issuance of a
24 decree of adoption and may assert the putative father's interest in the child. If the adoption is contested,
25 the court shall hold an evidentiary hearing to determine if:

26 (a) the putative father resides and has resided in another state where the unmarried mother lived
27 or resided either at the time of conception or through a portion of the pregnancy;

28 (b) the mother left that state, concealing the location from the putative father regarding where the
29 mother could be contacted or located;

30 (c) the father has, through every reasonable means, attempted to locate the mother but has been

1 unable to do so; and

2 (d) the putative father has complied with the ~~most stringent and complete~~ requirements of the state
3 where the mother previously resided or was located in order to protect and preserve the putative father's
4 parental interest and rights concerning the child in cases of adoption.

5
6 **NEW SECTION. Section 39. Consent required.** An adoption of a child may be decreed when
7 written consents to adoption have been executed by:

8 (1) the birth mother;

9 (2) the husband of the birth mother if the husband is the presumed father of the child under
10 40-6-105;

11 (3) any other person whose parental rights have been established by a court;

12 (4) the department or an agency that has custody of the child and the authority to place the child
13 for adoption;

14 (5) the legal guardian of the child if both parents are dead or their rights have been judicially
15 terminated and the guardian has authority by order of the court appointing the guardian to consent to the
16 adoption;

17 (6) the child, either in writing or in court, if the child is 12 years of age or older unless the child
18 does not have the mental capacity to consent.

19
20 **NEW SECTION. Section 40. Persons whose consent not required.** Consent to adoption of a child
21 is not required from:

22 (1) an individual whose parental relationship to the child has been judicially terminated for unfitness
23 or has been determined not to exist or who has waived parental rights;

24 (2) a parent who has been judicially declared incompetent;

25 (3) an individual who has not been married to the mother of the child and who, after the
26 conception of the child, executes a notarized statement denying paternity or a notarized statement
27 acknowledging paternity and denying any interest in the child; or

28 (4) the personal representative of a deceased parent's estate.

29
30 **NEW SECTION. Section 41. Form of consent.** The consents required by [section 39] must be

1 acknowledged before an officer authorized to take acknowledgments or witnessed by a representative of
2 the department, an agency, or the court.

3

4 **NEW SECTION. Section 42. Child available for adoption -- voluntary acts of parents.** A parent may
5 voluntarily make a child available for adoption by:

6 (1) executing a voluntary relinquishment and consent to adoption;

7 (2) executing a denial of paternity; or

8 (3) submitting a notarized acknowledgment of paternity and a denial of any interest in custody of
9 the child.

10

11 **NEW SECTION. Section 43. Voluntary relinquishment -- validity.** (1) A voluntary relinquishment
12 is not valid unless the parent specifically relinquishes custody of the child to the department, a licensed
13 child-placing agency, or a specifically identified prospective adoptive parent and:

14 (a) the department or agency to whom the child is being relinquished has agreed in writing to
15 accept custody of the child until the child is adopted; or

16 (b) the identified prospective adoptive parent has agreed in writing to accept temporary custody
17 and to provide support and care to the child until that person's adoption petition is granted or denied.

18 (2) A voluntary relinquishment of a parent's rights solely to the child's other parent does not relieve
19 the parent executing the relinquishment of any duty owed to the child OR FOR THE CHILD'S SUPPORT.

20

21 **NEW SECTION. Section 44. Arrearages of child support -- responsibility to child.** (1) A voluntary
22 relinquishment of a parent's rights and responsibilities toward a child ~~do~~ DOES not cancel any responsibility
23 to pay arrearages of child support unless the party to whom the arrearages are owed agrees in writing to
24 waive the payment of the arrearages.

25 (2) A parent who executes a voluntary relinquishment of rights and responsibilities toward a child
26 remains financially responsible for the child until a court actually terminates parental rights to the child.

27

28 **NEW SECTION. Section 45. Who may relinquish -- to whom.** (1) A parent or guardian whose
29 consent to the adoption of a child is required may relinquish to the department or an agency all rights with
30 respect to the child, including legal and physical custody and the right to consent to the child's adoption.

1 (2) A parent or guardian whose consent to the adoption of a child is required and who has filed
2 a notice of parental placement under [section 95] for a direct parental placement adoption may:

3 (a) relinquish to the prospective adoptive parent all rights with respect to the child, including legal
4 and physical custody; and

5 (b) consent to the child's adoption by the prospective adoptive parents.

6
7 **NEW SECTION. Section 46. Relinquishment by minor parent -- separate legal counsel in direct**
8 **parental placement adoption.** (1) A parent who is a minor has the right to relinquish all rights to that minor
9 parent's child and to consent to the child's adoption. The relinquishment is not subject to revocation by
10 reason of minority.

11 (2) In a direct parental placement adoption, a relinquishment and consent to adopt executed by a
12 parent who is a minor is not valid unless the minor parent has been advised by an attorney who does not
13 represent the prospective adoptive parent. Legal fees charged by the minor parent's attorney are an
14 allowable expense that may be paid by prospective adoptive parents under [section 147], subject to the
15 limitations in [section 148].

16
17 **NEW SECTION. Section 47. Time and prerequisites for execution of relinquishment and consent**
18 **to adoption -- copy of preplacement evaluation -- notarization.** (1) A parent whose consent to the adoption
19 of a child is required may execute a relinquishment and consent to adoption only after the following criteria
20 have been met:

21 (a) the child has been born;

22 (b) not less than 72 hours have elapsed since the birth of the child ~~if the person relinquishing~~
23 ~~parental rights is the child's birth mother;~~

24 (c) the parent has received counseling in accordance with [section 48]; and

25 (d) in a direct parental placement adoption:

26 (i) the parent has been informed that fees for any required counseling and legal fees are allowable
27 expenses that may be paid by a prospective adoptive parent under [section 147], subject to the limitations
28 set in [section 148];

29 (ii) if the parent is a minor, the parent has been represented by separate legal counsel; and

30 (iii) prior to the execution of the relinquishment, the parent has been provided a copy of the

1 preplacement evaluation prepared pursuant to [section 86] pertaining to the prospective adoptive parent.

2 (2) A guardian may execute a relinquishment and consent to adopt at any time after being
3 authorized by a court.

4 (3) The department or a licensed child-placing agency may execute a consent for the adoption at
5 any time before or during the hearing on the petition for adoption.

6 (4) A child whose consent is required may execute a consent at any time before or during the
7 hearing on the petition to adopt.

8 (5) Except as provided in this section, a relinquishment and consent to adopt must be a separate
9 instrument executed before a notary public.

10 (6) If the person from whom a relinquishment and consent to adopt is required is a member of the
11 armed services or is in prison, the relinquishment may be executed and acknowledged before any person
12 authorized by law to administer oaths.

13

14 **NEW SECTION. Section 48. Counseling requirements.** (1) Counseling of the birth mother is
15 required in department, agency, and direct parental placement adoptions. If any other parent is involved
16 in an adoptive placement, counseling of that parent is encouraged.

17 (2) Counseling must be performed by a person employed by the department or by a staff person
18 of a licensed child-placing agency designated to provide this type of counseling. Unless the counseling
19 requirement is waived for good cause by a court, a minimum of 3 hours of counseling must be completed
20 prior to execution of a relinquishment of parental rights and consent to adopt. A relinquishment and
21 consent to adopt executed prior to completion of required counseling is void.

22 (3) During counseling, the counselor shall offer an explanation of:

23 (a) adoption procedures and options that are available to a parent through the department or
24 licensed child-placing agencies;

25 (b) adoption procedures and options that are available to a parent through direct parental placement
26 adoptions, including the right to an attorney and that legal expenses are an allowable expense that may be
27 paid by a prospective adoptive parent as provided in [sections 147 and 148];

28 (c) the alternative of parenting rather than relinquishing the child for adoption;

29 (d) the resources that are available to provide assistance or support for the parent and the child
30 if the parent chooses not to relinquish the child;

1 (e) the legal and personal effect and impact of terminating parental rights and of adoption;

2 (f) the options for contact and communication between the birth family and the adoptive family;

3 (g) postadoptive issues, including grief and loss;

4 (h) the reasons for and importance of providing accurate medical and social history information
5 under [section 81];

6 (i) the operation of the confidential intermediary program; and

7 (j) the fact that the adoptee may be provided with a copy of the original birth certificate upon
8 request after reaching 18 years of age, unless the birth parent has specifically requested in writing that the
9 vital statistics bureau withhold release of the original birth certificate.

10 (4) The counselor shall prepare a written report containing a description of the topics covered and
11 the number of hours of counseling. The report must specifically include the counselor's opinion of whether
12 or not the parent understood all of the issues and was capable of informed consent. The report ~~may~~ **MUST,**
13 **ON REQUEST,** be released to the person counseled, to the department, to an agency, or with the consent
14 of the person counseled, to an attorney for the prospective adoptive parents.

15
16 **NEW SECTION. Section 49. Revocation of relinquishment and consent.** (1) The parent who
17 executed the relinquishment and consent to adopt and the department, agency, or prospective adoptive
18 parent named or described in the relinquishment and consent to adopt may mutually agree to its revocation
19 prior to the issuance of an order terminating parental rights.

20 (2) A relinquishment may not be revoked if an order has been issued terminating parental rights.

21
22 **NEW SECTION. Section 50. Conditional relinquishment and consent.** (1) A relinquishment and
23 consent to adopt may provide that it not take effect only if:

24 (a) the other parent does not execute a relinquishment and consent to adopt within a specified
25 period; or

26 (b) a court decides to not terminate another individual's parental relationship to the child.

27 (2) A relinquishment and consent to adopt may not be conditioned on whether or not existing
28 agreements for matters, including but not limited to visitation and ongoing communication with the child,
29 are later performed.

30

1 **NEW SECTION. Section 51. Content of relinquishment and consent to adopt.** (1) A
2 relinquishment and consent to adopt must be in writing and must contain:

3 (a) the date, place, and time of the execution of relinquishment and consent to adopt;

4 (b) the name, date of birth, and current mailing address of the individual executing the
5 relinquishment and consent to adopt;

6 (c) the date of birth and the name of the child to be adopted; and

7 (d) the name, address, and telephone numbers of the department or agency to which the child is
8 being relinquished or the name, address, and telephone numbers of the prospective adoptive parent or the
9 lawyer representing the prospective adoptive parent with whom the individual executing the relinquishment
10 and consent has placed or intends to place the child for adoption.

11 (2) A relinquishment and consent to adopt executed by a parent or guardian must state that the
12 parent or guardian executing the document is voluntarily and unequivocally consenting to the:

13 (a) permanent transfer of legal and physical custody of the child to the department or agency for
14 the purposes of adoption; or

15 (b) transfer of permanent legal and physical custody to, and the adoption of the child by, a specific
16 identified adoptive parent whom the parent or guardian has selected.

17 (3) A relinquishment and consent to adopt must state:

18 (a) that after the document is signed or confirmed in substantial compliance with this section, it
19 is final and, except under a circumstance stated in [section 50], may not be revoked or set aside for any
20 reason, including the failure of an adoptive parent to permit the individual executing the relinquishment and
21 consent to adopt to visit or communicate with the child;

22 (b) that the adoption will extinguish all parental rights and obligations that the individual executing
23 the relinquishment and consent to adopt has with respect to the child, except for arrearages of child
24 support unless the arrearages are waived by the person to whom they are owed, and that the
25 relinquishment will remain valid whether or not any agreement for visitation or communication with the child
26 is later performed;

27 (c) that the individual executing the relinquishment and consent to adoption has:

28 (i) received a copy of the relinquishment and consent to adoption;

29 (ii) received a copy of a written agreement by the department, agency, or prospective adoptive
30 parent to accept temporary custody and to provide support and care to the child until an adoption petition

1 is granted or denied;

2 (iii) if required, received counseling services and information about adoption pursuant to [section
3 48] explaining the meaning and consequences of an adoption;

4 (d) in direct parental placement adoptions, that the individual has:

5 (i) been advised if the individual is:

6 (A) a minor parent, by a lawyer who is not representing an adoptive parent or the agency to which
7 the child is being relinquished; or

8 (B) an adult, of the right to have a lawyer who is not representing an adoptive parent or the agency
9 and whose fees are allowable expenses that can be paid by the prospective adoptive parents;

10 (ii) been provided with a copy of the prospective adoptive parent's preplacement evaluation;

11 (e) in agency and direct parental placement adoptions, that the individual has:

12 (i) been advised of the obligation to provide the medical and social history information required
13 under [section 81] pertaining to disclosures; and

14 (ii) not received or been promised any money or anything of value for execution of the
15 relinquishment and consent to adopt, except for payments authorized by [sections 147 and 148].

16 (4) A relinquishment and consent to adopt ~~must~~ MAY provide that the individual who is
17 relinquishing waives notice of any proceeding for adoption.

18

19 **NEW SECTION. Section 52. Consequences of relinquishment and consent to adopt.** Except under
20 a circumstance stated in [section 50] a relinquishment and consent to the adoption of a child that is
21 executed by a parent or guardian in substantial compliance with [section 51] is final and irrevocable. The
22 relinquishment and consent to adopt:

23 (1) unless a court orders otherwise to protect the welfare of the child, entitles the department,
24 agency, or prospective adoptive parent named or described to the legal and physical custody of the child
25 and imposes on that department, agency, or prospective adoptive parent responsibility for the support and
26 medical and other care of the child;

27 (2) terminates, AS PROVIDED IN [SECTION 44], any duty of the parent who executed the
28 document with respect to the child except for arrearages of child support; and

29 (3) terminates any right of the parent or guardian who executed the document to:

30 (a) object to the placement of the child for adoption by the department or agency; AND

- 1 (b) object to the child's adoption by the prospective adoptive parent; ~~and~~
2 ~~(c) notice of the proceeding for adoption.~~

3

4 **NEW SECTION. Section 53. Grounds for court to set aside relinquishment and consent.** (1) The
5 court shall set aside a relinquishment and consent to adopt if the individual who executed the
6 relinquishment and consent establishes:

7 (a) by clear and convincing evidence, before a decree of adoption is issued, that the consent was
8 obtained by fraud or duress; or

9 (b) by a preponderance of the evidence, that a condition permitting revocation has occurred, as
10 expressly provided for in [section 50].

11 (2) A verbatim record of testimony must be made.

12

13 **NEW SECTION. Section 54. Remedy when relinquishment and consent to adopt revoked or set**
14 **aside -- expediency.** (1) If a relinquishment and consent to adopt that was executed by an individual is
15 revoked or set aside, the department, agency, or prospective adoptive parent shall immediately return the
16 child to the individual's custody and move to dismiss a proceeding for adoption or termination of the
17 individual's parental rights to the child unless:

18 (a) the department has legal custody pursuant to a court order;

19 (b) there are grounds for the department to seek a court order under the provisions of Title 41,
20 chapter 3; or

21 (c) the individual did not have legal custody of the child at the time the relinquishment and consent
22 to adopt was executed.

23 (2) In the circumstances described in subsections (1)(a) through (1)(c) and when there is no
24 existing court order providing for care and custody, the court shall issue an order providing for the care and
25 custody of the child according to the best interests of the child under any law applicable to the
26 circumstances of the case.

27 (3) Except as provided in subsection (1), if after revocation or the setting aside of a relinquishment
28 or consent a child is not returned immediately by the department, agency, or prospective adoptive parent,
29 the individual may petition the court for appropriate relief. The action must take precedence over other
30 cases and matters in the court. The court shall examine the petition, hear the case, and render a decision

1 as soon as possible.

2

3 **NEW SECTION. Section 55. Notarized denial of paternity -- no entitlement to notice.** (1) Execution
4 of a notarized denial of paternity of a child is a voluntary act that constitutes a waiver of all parental rights
5 to the child, EXCEPT FOR THE DUTY TO PAY SUPPORT IF PATERNITY IS ESTABLISHED OR PRESUMED.

6 (2) A notarized denial of paternity is irrevocable when executed. An individual who has executed
7 a denial of paternity toward a child who is the subject of adoption proceedings is not entitled to notice of
8 either the hearing to terminate parental rights or the hearing on an adoption petition.

9

10 **NEW SECTION. Section 56. Notarized acknowledgment of paternity and denial of interest in**
11 **custody -- no entitlement to notice.** (1) Submission of a notarized acknowledgment of paternity and a
12 denial of any interest in the custody of the child is a voluntary act that constitutes a waiver of all parental
13 rights to the child BUT DOES NOT ABSOLVE THE PERSON OF THE DUTY TO PAY SUPPORT.

14 (2) An individual who has executed an acknowledgment of paternity and denial of interest in the
15 custody in a child who is the subject of adoption proceedings is not entitled to notice of either the hearing
16 to terminate parental rights or the hearing on an adoption petition unless, subsequent to execution of the
17 acknowledgment of paternity and denial of interest in custody, the individual has ~~strictly~~ complied with all
18 of the requirements of [section 22] and has done so within the time limits established in [section 23].

19

20 **NEW SECTION. Section 57. Timing of proceedings to terminate.** (1) In order to provide notice
21 to a putative father at the earliest possible time of an expectant mother's intent to release an expected child
22 for adoption and in order to facilitate early placement of a child for adoption, an expectant mother may
23 initiate proceedings to terminate paternal rights by filing a petition of intent to place a child for adoption
24 prior to the birth of the child.

25 (2) A petition to terminate parental rights may also be filed after a child is born.

26

27 **NEW SECTION. Section 58. Expected child -- filing of petition indicating intent to release or**
28 **consent to adoption.** (1) A pregnant individual may file a petition with the court indicating the intention to
29 place an expected child for adoption.

30 (2) The petition must include the following information:

- 1 (a) the individual's intent to release the expected child for adoption;
- 2 (b) the approximate date and location of conception;
- 3 (c) the expected date of delivery;
- 4 (d) any information concerning the identity and whereabouts of any putative or presumed father
- 5 of the expected child ~~unless the birth mother relies on the right to privacy~~; and
- 6 (e) in a situation in which there is a presumed father, the grounds upon which the individual relies
- 7 in contending that the nonexistence of the father and child relationship can be established in an action
- 8 brought under 40-6-107.
- 9 (3) The petition may allege more than one putative or presumed father.
- 10 (4) The petition must be signed by the petitioner and notarized.

11

12 **NEW SECTION. Section 59. Notice to any named father of intent to release child for adoption.**

13 (1) Upon the filing of the petition under [section 58], the court shall issue a notice of intent to release a

14 child for adoption.

15 (2) The notice must be served by the petitioner, in the manner provided by the Montana Rules of

16 Civil Procedure, upon each putative or presumed father at least 20 days prior to the expected date of birth

17 of the child. Proof of service must be filed with the court.

18 (3) A notice of intent to release directed to a putative father must indicate the approximate date

19 and location of conception of the child and the expected date of birth and must inform the putative father

20 that:

21 (a) in order to protect the putative father's rights to the child, the putative father is required to file

22 notice of intent to claim paternity before the expected date of birth;

23 (b) the putative father is required to appear at the hearing at the time and date set by the court;

24 (c) the failure to file notice of intent to claim paternity before the expected date of birth:

25 (i) constitutes a waiver of the right to receive the notice provided for in [section ~~22~~ 66];

26 (ii) constitutes an irrevocable denial of the putative father's interest in the custody of the child; and

27 (iii) will result in the court's termination of the putative father's rights to the child.

28 (4) In addition to the information contained in subsection (3), a notice of intent to release directed

29 to an individual presumed to be the father under 40-6-105 must also indicate the intention of the mother

30 to ask for a declaration establishing the nonexistence of the father and child relationship and the grounds

1 for seeking the declaration.

2

3 NEW SECTION. Section 60. Notice to any named father of intent to release child for adoption.

4 (1) Upon the filing of the petition under [section 58], the court shall issue a notice of intent to release a
5 child for adoption.

6 (2) The notice must be served by the petitioner, in the manner provided by the Montana Rules of
7 Civil Procedure, upon each putative or presumed father at least 20 days prior to the expected date of birth
8 of the child. Proof of service must be filed with the court.

9 (3) A notice of intent to release directed to a putative father must indicate the approximate date
10 and location of conception of the child and the expected date of birth and must inform the putative father:

11 ~~(a) that in order to protect the putative father's rights to the child, the putative father is required~~
12 ~~to register with the putative father registry as of the close of business on the expected date of birth of the~~
13 ~~child;~~

14 ~~(b)~~(A) that the putative father is required to appear at the hearing at the time and date set by the
15 court;

16 ~~(c)~~(B) of the rights and responsibilities to which the putative father will be entitled upon registering
17 with the putative father registry; and

18 ~~(d)~~(C) that the failure to TIMELY comply with all requirements of filing with the putative father
19 registry ~~before the expected date of birth:~~

20 (i) constitutes a waiver of the right to receive the notice provided for in [section 22]; AND

21 ~~(ii) constitutes an irrevocable denial of the putative father's interest in the custody of the child; and~~

22 ~~(iii)~~(II) will MAY result in the court's termination of the putative father's rights to the child.

23 (4) In addition to the information contained in subsection (3), a notice of intent to release directed
24 to an individual presumed to be the father under 40-6-105 must also indicate the intention of the mother
25 to ask for a declaration establishing the nonexistence of the father and child relationship and the grounds
26 for seeking the declaration.

27

28 NEW SECTION. Section 61. Venue. Proceedings to terminate parental rights may be filed in the
29 court in the county in which a petitioner resides, the child resides, or an office of the agency that is placing
30 the child is located.

1 **NEW SECTION. Section 62. Necessity for parental rights to be terminated.** A child is not legally
2 free for adoption until the parental rights of the birth parent or parents have been terminated by a court:

- 3 (1) as provided in [sections 1 through 156];
4 (2) pursuant to Title 41, chapter 3; or
5 (3) of competent jurisdiction in another state or country.

6
7 **NEW SECTION. Section 63. Petition for termination of parental rights.** (1) Pending the termination
8 or other disposition of the rights of the father of the child, the birth mother may execute a relinquishment
9 and consent to adoption.

10 (2) The department, a licensed child-placing agency, the prospective adoptive parent to whom the
11 relinquishment is issued, or a guardian with custody of the child shall file with the court a signed and
12 notarized petition for termination of parental rights pursuant to [sections 1 through 156] or pursuant to Title
13 41, chapter 3.

14 (3) At the request of the relinquishing parent, the execution of a relinquishment may be conditioned
15 as set forth in [section 50].

16 (4) Pending disposition of the petition, the court may enter an order authorizing temporary care of
17 the child.

18
19 **NEW SECTION. Section 64. Contents of petition for termination of parental rights.** (1) The
20 petition for termination of parental rights must state:

- 21 (a) the identity of the petitioner;
22 (b) the date and location of the birth of the child;
23 (c) the date of the relinquishment by the birth mother or relinquishing parent;
24 (d) the current location of the child;
25 (e) the names and locations, if known, of any putative or presumed father of the child;
26 (f) efforts and inquiries made to locate any parent whose identity is known but whose whereabouts
27 are unknown;
28 (g) the grounds on which the parental rights of any ~~putative or presumed father~~ PARENT to the
29 child should be terminated;
30 (h) whether a putative or presumed father is one from whom consent is not required;

1 (i) whether court orders from any other proceeding have been issued terminating parental rights
2 to the child who is the subject of the petition;

3 (j) any other evidence supporting termination of the legal rights that a person has with regard to
4 the child; and

5 (k) a request for custody of the child prior to the adoption.

6 (2) The petitioner shall file with the petition for termination of parental rights the following
7 documents received in support of the petition:

8 (a) any relinquishments and consents to adoption;

9 (b) any denials of paternity;

10 (c) any acknowledgments of paternity and denial of parental rights;

11 (d) any response from the department to a request of whether any notice of intent to claim
12 paternity has been filed;

13 (e) a counseling report required under [section 48]; ~~and~~

14 (f) proof of PRIOR service of any notice or acknowledgement of service or waiver of service
15 received; AND

16 (G) PROOF OF COMPLIANCE WITH THE INDIAN CHILD WELFARE ACT OF 1978 AND INTERSTATE
17 COMPACT ON THE PLACEMENT OF CHILDREN, IF APPLICABLE.

18
19 **NEW SECTION. Section 65. Contents of petition for termination of parental rights.** (1) The
20 petition for termination of parental rights must state:

21 (a) the identity of the petitioner;

22 (b) the date and location of the birth of the child;

23 (c) the date of the relinquishment by the birth mother or relinquishing parent;

24 (d) the current location of the child;

25 (e) the names and locations, if known, of any putative or presumed father of the child;

26 (f) whether a parent is one from whom consent is not required;

27 (g) whether court orders from any other proceeding have been issued terminating parental rights
28 to the child that is the subject of the petition;

29 (h) any other evidence supporting termination of the legal rights that a person has with regard to
30 the child; and

1 (i) a request for temporary custody of the child prior to the adoption.

2 (2) The petitioner shall file with the petition for termination of parental rights the following
3 documents received in support of the petition:

4 (a) any relinquishments and consents to adoption;

5 (b) any denials of paternity;

6 (c) any acknowledgments of paternity and denial of parental rights;

7 (d) any affidavits from the putative father registry that have been executed by the department;

8 (e) a counseling report required under [section 48]; ~~and~~

9 (f) proof of PRIOR service of any notice or acknowledgement of service or waiver of service
10 received; AND

11 (G) PROOF OF COMPLIANCE WITH THE INDIAN CHILD WELFARE ACT OF 1978 AND INTERSTATE
12 COMPACT ON THE PLACEMENT OF CHILDREN, IF APPLICABLE.

13

14 NEW SECTION. Section 66. Notice of hearing -- service. (1) Notice of a hearing to be held on
15 the petition for termination of parental rights must be served in any manner appropriate under the Montana
16 Rules of Civil Procedure or in any manner that the court may direct on:

17 (a) a putative or presumed father;

18 (b) a putative father who was not served with a notice of intent to release at least 20 days before
19 the expected date of birth as specified in the notice of intent to release;

20 (c) a spouse, if the parent relinquishing the child for adoption was married to that person at the
21 time of conception of the child or at any time after conception but prior to birth;

22 (d) a parent or legal guardian of the child in question who has not waived notice; or

23 (e) any other person who is reasonably believed to be the father.

24 (2) The notice of hearing must inform the putative or presumed father that failure to appear at the
25 hearing constitutes a denial of the individual's interest in custody of the child and will result in the court's
26 termination of the individual's rights to the child.

27 (3) Proof of service of the notice of hearing must be filed with the court. A notarized
28 acknowledgement of service by the party to be served is proof of personal service. Proof of service is not
29 required if the putative father is present at the hearing. A waiver of notice of the hearing by an individual
30 entitled to receive notice is sufficient.

1 (4) If a person has not been identified as the father or putative father of the child, the court, on
 2 the basis of all information available, shall determine whether publication of notice of the proceeding is
 3 likely to lead to identification. If so, the court shall order publication in the manner that it considers
 4 appropriate. The name of the birth mother may be included in the publication only with the mother's
 5 written consent.

6 (5) If the court finds that the father of the child is a person who did not receive either a timely
 7 notice of intent to release pursuant to [section 22] or a notice required pursuant to this section and who
 8 has not waived the right to notice of hearing and that person is not present at the hearing, the court shall
 9 adjourn further proceedings until that person is served with a notice of hearing.

10
 11 NEW SECTION. Section 67. Notice of hearing -- service. (1) Notice of a hearing to be held on
 12 the petition for termination of parental rights must be served in any manner appropriate under the Montana
 13 Rules of Civil Procedure or in any manner that the court may direct on:

14 (a) a putative or presumed father who has timely and properly complied with the putative father
 15 registry;

16 (b) a putative father who was not served with a notice of intent to release at least 20 days before
 17 the expected date of birth as specified in the notice of intent to release;

18 (C) A PERSON ADJUDICATED, IN MONTANA, TO BE THE FATHER OF THE CHILD FOR THE
 19 PURPOSE OF CHILD SUPPORT;

20 (D) A PERSON WHO IS RECORDED ON THE CHILD'S BIRTH CERTIFICATE AS THE CHILD'S
 21 FATHER;

22 (E) A PERSON WHO IS OPENLY LIVING WITH THE CHILD AND THE CHILD'S MOTHER AT THE
 23 TIME THAT THE PROCEEDING IS INITIATED OR AT THE TIME THE CHILD WAS PLACED IN THE CARE OF
 24 AN AUTHORIZED AGENCY AND WHO IS REPRESENTING TO THE PUBLIC THAT THE PERSON IS THE
 25 CHILD'S FATHER;

26 ~~(F)~~ (F) a spouse, if the parent relinquishing the child for adoption was married to that person at the
 27 time of conception of the child or at any time after conception but prior to birth; or

28 ~~(G)~~ (G) a parent or legal guardian of the child in question who has not waived notice.

29 (2) The notice of hearing must inform the putative or presumed father or other parent that failure
 30 to appear at the hearing constitutes a ~~denial~~ WAIVER of the individual's interest in custody of the child and

1 will result in the court's termination of the individual's rights to the child.

2 (3) Proof of service of the notice of hearing must be filed with the court. A notarized
3 acknowledgement of service by the party to be served is proof of personal service. Proof of service is not
4 required if the putative father is present at the hearing. A waiver of notice of the hearing by an individual
5 entitled to receive notice is sufficient.

6 (4) If the court finds that the father of the child is a person who did not receive either a timely
7 notice of intent to release pursuant to [section 22] or a notice required pursuant to this section and who
8 has not waived the right to notice of hearing and that person is not present at the hearing, the court shall
9 adjourn further proceedings until that person is served with a notice of hearing.

10

11 **NEW SECTION. Section 68. Hearing on petition to terminate parental rights.** (1) The court shall
12 hold a hearing as soon as practical to determine the identity of and terminate the parental rights of the
13 ~~father~~ **PARENTS** of the child.

14 (2) If ~~the mother has failed to name~~ a putative father **HAS NOT BEEN NAMED** and no one has ~~filed~~
15 ~~notice of intent to claim paternity~~ **REGISTERED WITH THE PUTATIVE FATHER REGISTRY**, the court shall
16 cause inquiry to be made in an effort to identify ~~the~~ **ANY LEGAL** father. The inquiry must include whether
17 the mother was married at the time of conception of the child or at any time after conception **AND PRIOR**
18 **TO BIRTH.**

19 (3) Based on the evidence received and the court's inquiry, the court shall enter a finding
20 identifying the father or declaring that the identity of the father could not be determined.

21 (4) Based on the grounds set forth in [section 70] and the evidence received at the hearing, the
22 court shall enter an order concerning the parental rights to the child.

23 (5) If the court terminates the parental rights to the child and the department, agency, or
24 prospective adoptive parent has agreed to accept custody of the child until the child is adopted, the court
25 shall issue an order awarding custody of the child to the petitioner.

26

27 **NEW SECTION. Section 69. Hearing on petition to terminate parental rights.** (1) The court shall
28 hold a hearing as soon as practical to determine the identity of and terminate the parental rights of the
29 ~~father~~ **PARENT** of the child.

30 (2) If ~~the mother has failed to name~~ a putative father **HAS NOT BEEN NAMED** and no one has

1 ~~registered with the putative father registry~~ FILED NOTICE OF INTENT TO CLAIM PATERNITY, the court shall
 2 cause inquiry to be made in an effort to identify the father. The inquiry must include:

3 (a) whether the mother:

4 (i) was married at the time of conception of the child or at any time after conception AND PRIOR
 5 TO BIRTH;

6 (ii) was cohabiting with an individual of the opposite sex at the time of conception or birth of the
 7 child; and

8 (iii) has received support payments or promises of support payments for the child or in connection
 9 with the pregnancy; and

10 (b) whether any person formally or informally acknowledged possible paternity to the child.

11 (3) PROOF OF SERVICE OF NOTICE OR PROOF OF ACKNOWLEDGEMENT OF SERVICE ON ANY
 12 PERSON OR PROOF OF WAIVER BY A PERSON LEGALLY REQUIRED TO BE GIVEN NOTICE MUST BE
 13 FILED WITH THE COURT.

14 ~~(3)(4)~~ Based on the evidence received and the court's inquiry, the court shall enter a finding
 15 identifying the father or declaring that the identity of the father could not be determined.

16 ~~(4)(5)~~ Based on the grounds set forth in [section 70] and the evidence received at the hearing, the
 17 court shall enter an order concerning the parental rights to the child.

18 ~~(5)(6)~~ If the court terminates the parental rights to the child and the department, agency, or
 19 prospective adoptive parent has agreed to accept custody of the child until the child is adopted, the court
 20 shall issue an order awarding custody of the child to the petitioner.

21
 22 NEW SECTION. Section 70. Grounds for termination of parental rights. The court may terminate
 23 a parent's rights to a child who is the subject of an adoption proceeding based upon:

24 (1) the voluntary acts of the parent in:

25 (a) executing a voluntary relinquishment and consent to adopt;

26 (b) submitting a notarized denial of paternity executed pursuant to [section 55]; or

27 (c) submitting a notarized acknowledgment of paternity and denial of interest in custody of the
 28 child executed pursuant to [section 56];

29 (2) a determination under [section 71] that the parent is unfit;

30 (3) a determination under [section 72] that the relationship of parent and child does not exist; or

1 (4) a determination that the parent has irrevocably waived parental rights by failing to timely act
2 to protect the rights.

3

4 **NEW SECTION. Section 71. Finding of unfitness.** (1) The court may terminate parental rights for
5 purposes of making a child available for adoption on the grounds of unfitness if:

6 (a) the court makes a determination that the parent has been judicially deprived of custody of the
7 child on account of abuse or neglect toward the child;

8 (b) the parent has in the state of Montana or in any other jurisdiction of the United States willfully
9 abandoned the child, as defined in 41-3-102(7)(e), in Montana or in any other jurisdiction of the United
10 States;

11 (c) it is proven, to the satisfaction of the court, that the parent, if able, has not contributed to the
12 support of the child for an aggregate period of 1 year before the filing of a petition for adoption;

13 (d) it is proven, to the satisfaction of the court, that the parent is in violation of a court order to
14 support either the child that is the subject of the adoption proceedings or other children with the same birth
15 mother;

16 (e) the parent has been found guilty by a court of competent jurisdiction of:

17 (i) aggravated assault on the adoptee, as provided in 45-5-202;

18 (ii) sexual assault on a child, as provided in 45-5-502;

19 (iii) sexual intercourse without consent, as provided in 45-5-503, if the victim was a child;

20 (iv) incest, as provided in 45-5-507, if the victim was a child;

21 (v) homicide of a child, as provided in 45-5-102 or 45-5-103;

22 (vi) sexual abuse of a child, as provided in 45-5-625; or

23 (vii) ritual abuse of a minor, as provided in 45-5-627;

24 (f) the child has been maintained by a public or private children's institution, a charitable agency,
25 a licensed child-placing agency, or the department for a period of 1 year without the parent contributing
26 to the support of the child during that period, if able;

27 (g) a finding is made for a parent who is given proper notice of hearing:

28 (i) that the parent has been convicted of a crime of violence or of violating a restraining or
29 protective order; and

30 (ii) the facts of the crime or violation and the parent's behavior indicate that the parent is unfit to

1 maintain a relationship of parent and child with the child;

2 (h) a finding is made for a parent who is given proper notice of hearing and is a respondent to the
3 petition to terminate parental rights and:

4 (i) by a preponderance of the evidence, it is found that termination is in the best interests of the
5 child; and

6 (ii) upon clear and convincing evidence, it is found that one of the following grounds exists:

7 (A) if the child is not in the legal and physical custody of the other parent, that the respondent is
8 not able or willing to promptly assume legal and physical custody of the child and to pay for the child's
9 support in accordance with the respondent's financial means;

10 (B) if the child is in the legal and physical custody of the other parent and a stepparent who is the
11 prospective adoptive parent, that the respondent is not able or willing to promptly establish and maintain
12 contact with the child and to pay for the child's support in accordance with the respondent's financial
13 means;

14 (C) placing the child in the respondent's legal and physical custody would pose a risk of substantial
15 harm to the physical or psychological well-being of the child because the circumstances of the child's
16 conception, the respondent's behavior during the mother's pregnancy or since the child's birth, or the
17 respondent's behavior with respect to other children indicates that the respondent is unfit to maintain a
18 relationship of parent and child with the child; or

19 (D) failure to terminate the relationship of parent and child would be detrimental to the child.

20 (2) In making a determination under subsection (1)(h)(ii)(D), the court shall consider any relevant
21 factor, including the respondent's efforts to obtain or maintain legal and physical custody of the child, the
22 role of other persons in thwarting the respondent's efforts to assert parental rights, the respondent's ability
23 to care for the child, the age of the child, the quality of any previous relationship between the respondent
24 and the child and between the respondent and any other children, the duration and suitability of the child's
25 present custodial environment, and the effect of a change of physical custody on the child.

26

27 **NEW SECTION. Section 72. Determination that no parent and child relationship exists.** For
28 purposes of making a child available for adoption, the court may terminate the parental rights of a putative
29 father on the grounds that the parent and child relationship does not exist if:

30 (1) a judicial determination is made under 40-6-107 that the parent and child relationship does not

1 exist. This includes the termination of the parental rights of the husband of the mother who is placing the
2 child for adoption or the parental rights of an individual who is a presumed father of the child.

3 (2) a determination is made that:

4 (a) an individual has not timely registered with the putative father registry; ~~and~~

5 (B) A PERSON HAS NOT BEEN ADJUDICATED, IN MONTANA, TO BE THE FATHER OF THE CHILD
6 FOR THE PURPOSE OF CHILD SUPPORT;

7 (C) A PERSON HAS NOT BEEN RECORDED ON THE CHILD'S BIRTH CERTIFICATE AS THE CHILD'S
8 FATHER;

9 (D) A PERSON IS NOT OPENLY LIVING WITH THE CHILD AND THE CHILD'S MOTHER AT THE
10 TIME THAT THE PROCEEDING IS INITIATED OR AT THE TIME THE CHILD WAS PLACED IN THE CARE OF
11 AN AUTHORIZED AGENCY AND A PERSON IS NOT REPRESENTING TO THE PUBLIC THAT THE PERSON
12 IS THE CHILD'S FATHER; OR

13 ~~(b)~~(E) the child's mother was not married at the probable time of the child's conception or at the
14 time the child was born; or

15 (3) a putative father who ~~timely registered with the putative father registry~~ appears at the hearing
16 but is unable to establish by a preponderance of the evidence the minimum requirements provided in
17 [section 73] for demonstrating the establishment of a substantial relationship with the child.

18

19 **NEW SECTION. Section 73. Putative father -- termination based upon failure to establish**
20 **substantial relationship.** (1) The parental rights of a putative father may be terminated by the court if the
21 putative father has failed to timely establish and maintain a substantial relationship with the child.

22 (2) A putative father who is not married to the child's mother but who has openly lived with the
23 child SINCE THE CHILD'S BIRTH OR for a period of 6 months immediately preceding placement of the child
24 with adoptive parents and has openly claimed to be the father of the child during that period is considered
25 to have developed a substantial relationship with the child and to have otherwise met the requirements of
26 this section.

27 (3) In order to meet the minimal showing of having established a substantial relationship with
28 regard to a child who is the subject of an adoption proceeding ~~occurring more than 6 months after the~~
29 ~~child's birth~~, a putative father has the burden of showing that the putative father has:

30 (a) demonstrated a full commitment to the responsibilities of parenthood, ~~when not prevented from~~

1 ~~doing so by the person or authorized agency having lawful custody of the child,~~ by providing financial
2 support for the child in a fair and reasonable sum and in accordance with the putative father's ability and
3 either:

4 (i) visiting the child at least monthly when physically and financially able to do so; or
5 (ii) having regular contact with the child or with the person or agency having the care and custody
6 of the child when physically and financially ~~unable~~ ABLE to do so; and

7 (b) manifested an ability and willingness to assume legal and physical custody of the child if the
8 child was not in the physical custody of the other parent.

9 (4) In order to meet the minimal showing of having established a substantial relationship with
10 regard to a child who is the subject of an adoption proceeding involving a child who is under 6 months of
11 age at the time the child becomes the subject of adoption proceedings, a putative father has the burden
12 to show that:

13 (a) the putative father has manifested a full commitment to parental responsibilities by performing
14 all of the acts described in this subsection (4) prior to the time the mother executed a relinquishment and
15 consent for adoption, including registering with the putative father registry; and

16 (b) if the putative father had actual knowledge of the pregnancy, paying a fair and reasonable
17 amount of the expenses incurred in connection with the pregnancy and the child's birth in accordance with
18 the putative father's means when not prevented from doing so by the person or authorized agency having
19 lawful custody of the child;

20 (c) making reasonable and consistent payments, in accordance with the putative father's means,
21 for the support of the child since birth;

22 (d) visiting regularly with the child; and

23 (e) manifesting an ability and willingness to assume legal and physical custody of the child if,
24 during this time, the child was not in the physical custody of the mother.

25 (5) The subjective intent of a putative father, whether expressed or otherwise, unsupported by
26 evidence of acts specified in this section does not preclude a determination that the father failed to meet
27 the requirements of this section.

28
29 **NEW SECTION. Section 74. Irrevocable waiver of parental rights.** (1) The court may find an
30 irrevocable waiver of parental rights of:

1 (a) a putative father who was timely served with notice of intent to release if the court is provided
2 with proof of service and proof that the putative father failed to timely file a notice of intent to claim
3 paternity;

4 (b) a parent or putative father who is served with notice of proceedings and fails to appear at the
5 hearing; or

6 (c) a parent or putative father who is served with notice of proceedings and appears and denies
7 any interest in custody of the child.

8 (2) The court may terminate parental rights under this section upon a finding of irrevocable waiver
9 of all rights to the child.

10

11 **NEW SECTION. Section 75. Irrevocable waiver of parental rights.** (1) The court may find an
12 irrevocable waiver of parental rights of:

13 (a) a putative father who was timely served with notice of intent to release if the court is provided
14 with proof of service and proof that the putative father failed to timely comply with the requirements of the
15 putative father registry;

16 (b) a parent or putative father who is served with notice of proceedings and fails to appear at the
17 hearing; or

18 (c) a parent or putative father who is served with notice of proceedings and appears and denies
19 any interest in custody of the child.

20 (2) The court may terminate parental rights under this section upon a finding of irrevocable waiver
21 of all rights to the child.

22

23 **NEW SECTION. Section 76. Appearance of parent at hearing -- determination of custody.** (1) If
24 a parent appears at the hearing on the petition to terminate parental rights, objects to the termination of
25 rights, and requests custody of the child, the court shall set deadlines that allow the parties to complete
26 discovery and shall set a hearing on the determination of the parent's rights to the child.

27 (2) At the hearing, the court shall consider whether there is a basis for terminating parental rights
28 and whether the best interests of the child will be served by granting custody to the respondent parent,
29 the department, a licensed child-placing agency, or a prospective adoptive parent in a direct parental
30 placement adoption.

1 (3) If the petitioner has established that there are grounds for terminating parental rights and it is
2 in the best interests of the child for termination to occur, those rights must be terminated.

3
4 **NEW SECTION. Section 77. Effect of order terminating parental rights.** (1) An order granting the
5 petition for termination of parental rights:

6 ~~(1)~~(A) terminates the parent and child relationship except for an obligation for arrearages of child
7 support;

8 ~~(2)~~(B) terminates the jurisdiction of the court over the child in any dissolution or separate
9 maintenance action;

10 ~~(3)~~(C) extinguishes any right the parent had to withhold consent to a proposed adoption of the
11 child or to further notice of a proceeding for adoption; and

12 ~~(4)~~(D) awards custody of the child to the department, agency, or prospective adoptive parent to
13 whom the relinquishment was given if the department, agency, or prospective adoptive parent has agreed
14 in writing to accept custody of the child until the adoption is finalized.

15 **(2) A PERSON ACCEPTING CUSTODY IS RESPONSIBLE FOR THE SUPPORT OF THE CHILD.**

16
17 **NEW SECTION. Section 78. Appeal.** An order terminating parental rights is a final order for
18 purposes of appeal.

19
20 **NEW SECTION. Section 79. Expediency.** A contested termination of parental rights action must
21 take precedence over other cases and matters in the court or on appeal. The court shall examine any issues
22 raised in challenging termination of a parent's rights or regarding the validity of any interlocutory or final
23 adoption decree and shall render a decision as soon as possible.

24
25 **NEW SECTION. Section 80. Finality.** Subject to the disposition of a timely appeal, upon expiration
26 of 6 months after an order terminating parental rights has been issued, the order may not be questioned
27 by any person, in any manner, or upon any ground, including fraud, misrepresentation, failure to give any
28 required notice, or lack of jurisdiction of the parties or the subject matter.

29
30 **NEW SECTION. Section 81. Duty to disclose information -- form -- availability -- filing.** (1) Except

1 for an adoption proceeding by a stepparent, in any adoption under [sections 1 through 156], a birth parent,
2 the department, or an agency shall provide a prospective adoptive parent with social and medical histories
3 of the birth families, including tribal affiliation, if applicable.

4 (2) In a direct parental placement adoption, the birth family social and medical histories must be
5 completed on a form provided by the department and filed with the court when the adoption petition is
6 filed.

7 (3) The department shall make a form available to agencies and court administrators for public
8 distribution.

9

10 **NEW SECTION. Section 82. Retention of disclosures.** (1) In a direct parental placement adoption,
11 the disclosures required by [section 81] must be filed with the court in support of the notice of parental
12 placement filed pursuant to [section 95] and must be permanently maintained.

13 (2) In an adoption arranged by the department or an agency, the disclosures required by [section
14 81] must be permanently maintained in the files of the department or the agency.

15

16 **NEW SECTION. Section 83. Preplacement evaluation -- timing.** (1) A child may not be placed for
17 purposes of adoption unless the person with whom a child is proposed to be placed has had a preplacement
18 evaluation completed to determine fitness and readiness as an adoptive parent.

19 (2) In a direct parental placement adoption, the placing parent must be provided with a copy of the
20 preplacement evaluation prior to execution of a relinquishment and consent to adoption of the child.

21 (3) The required preplacement evaluation must provide all pertinent information pertaining to the
22 topics identified in [section 85].

23

24 **NEW SECTION. Section 84. Initiation of preplacement evaluation -- who conducts evaluation --**
25 **payment of fees.** (1) A prospective adoptive parent who wishes to adopt a child may initiate the process
26 by:

27 (a) establishing a client relationship with the department or a licensed child-placing agency; or

28 (b) requesting a preplacement evaluation from either the department or a licensed child-placing
29 agency.

30 (2) The department may contract with a licensed social worker or a licensed child-placing agency

1 to conduct the evaluation.

2 (3) The prospective adoptive parent and the home of the prospective adoptive parent must be
3 studied and evaluated according to the department's or licensed child-placing agency's standards for
4 placement of a child.

5 (4) A department or agency from which an individual is seeking to adopt a child may require the
6 individual to be evaluated by its own qualified employee or independent contractor even if the individual
7 has received a favorable preplacement evaluation from another evaluator.

8 (5) Fees for the study and report are set by the entity completing them and must be paid for by
9 the prospective adoptive parent.

10

11 **NEW SECTION. Section 85. Information to be reviewed in conducting preplacement evaluation.**

12 (1) A preplacement evaluation must include a review of the following information about the prospective
13 adoptive parent:

14 (a) a check of criminal conviction data, data on substantiated abuse or neglect of a child under Title
15 41, chapter 3, and data pertaining to any involvement in incidents of domestic violence by any person over
16 the age of 13 living in the prospective home;

17 (b) medical and social history and current health;

18 (c) assessment of potential parenting skills;

19 (d) assessment of ability to provide adequate financial support for a child; and

20 (e) assessment of the level of knowledge and awareness of adoption issues, including when
21 appropriate, matters relating to open, interracial, cross-cultural, and special needs adoptions.

22 (2) (a) The prospective adoptive parent, the department of justice, and other state, county, and
23 local agencies, after written notice to the subject of the study, shall give the department or agency
24 completing the adoption study substantiated data pertaining to criminal convictions and any reports
25 concerning domestic violence and substantiated abuse or neglect of children or vulnerable adults.

26 (b) The adoption study must also include a check of the youth court records of each person over
27 the age of 13 living in the prospective home. Pursuant to sections 41-5-603 and 41-5-604, the youth court
28 shall release the requested information to the agency or department completing the adoption study. The
29 study must include an evaluation of the effect of a conviction, adjudication, or finding of substantiated
30 abuse or neglect on the ability to care for a child.

1 (3) The preplacement evaluation must include at least one in-home visit with the prospective
2 adoptive parent and at least one interview with each family member.

3
4 **NEW SECTION. Section 86. Contents of preplacement evaluation.** (1) The preplacement
5 evaluation report must contain the following information if available:

- 6 (a) age and date of birth, nationality, racial or ethnic background, and any religious affiliation;
7 (b) marital status and family history, including the age and location of any child of the individual
8 and the identity of and relationship to anyone else living in the individual's household;
9 (c) physical and mental health and any history of abuse of alcohol or drugs;
10 (d) educational and employment history and any special skills;
11 (e) property and income, including outstanding financial obligations as indicated in a current credit
12 report or financial statement furnished by the individual;
13 (f) any previous request for an evaluation or involvement in an adoptive placement and the outcome
14 of the evaluation or placement;
15 (g) whether the individual has been charged with or convicted of domestic violence or has been
16 involved in a substantiated charge of child abuse or neglect or elder abuse or neglect and the disposition
17 of the charges;
18 (h) whether the individual is subject to a court order restricting the individual's right to custody or
19 visitation with a child;
20 (i) whether the individual has been convicted of a crime other than a minor traffic violation;
21 (j) whether the individual has located a parent interested in placing a child with the individual for
22 adoption and, if so, a brief description of the parent and the child; and
23 (k) any other fact or circumstance that may be relevant in determining whether the individual is
24 suited to be an adoptive parent, including the quality of the environment in the individual's home and the
25 functioning of other children in the individual's household.

26 (2) The report must contain recommendations regarding the suitability of the subject of the study
27 to be an adoptive parent.

28 (3) A preplacement evaluation is valid for 1 year following its date of completion and must be
29 updated if there is a significant change in circumstances.

30 (4) Prior to accepting physical custody of a child for purposes of adoption, a prospective adoptive

1 parent must have the preplacement evaluation completed by the evaluator, and the evaluation must
 2 specifically address the appropriateness of placing the specifically identified child or children who will be
 3 the subject of the adoption proceedings with the prospective adoptive parent.

4
 5 NEW SECTION. Section 87. Recommendation. (1) An evaluator shall assess the information
 6 required by [section 85] to determine if it raises a specific concern that placement of any child or a
 7 particular child in the home of the individual would pose a significant risk of harm to the physical or
 8 psychological well-being of the child.

9 (2) If an evaluator determines that the information assessed does not raise a specific concern, the
 10 evaluator shall find that the individual is suited to be an adoptive parent. The evaluator may comment
 11 about any factor that in the evaluator's opinion makes the individual suited in general or for a particular
 12 child.

13 (3) If an evaluator determines that the information assessed raises a specific concern, the
 14 evaluator, on the basis of the original or any further investigation, shall find that the individual is or is not
 15 suited to be an adoptive parent. The evaluator shall support the finding with a written explanation.

16
 17 NEW SECTION. Section 88. Distribution of evaluation -- retention -- immunity for evaluator. (1)
 18 ~~If a preplacement evaluation contains a finding that an individual is suited to be an adoptive parent, the~~
 19 ~~evaluator shall give the individual a signed copy of the evaluation.~~ The evaluator shall furnish a copy of
 20 the evaluation to a department, agency, or other person authorized to place a child for adoption AND,
 21 UPON PAYMENT BY THE PERSON EVALUATED OF THE COST OF THE EVALUATION SERVICES, TO THE
 22 PERSON EVALUATED.

23 ~~(2) The evaluator shall provide a signed copy of the evaluation to the individual and to the~~
 24 ~~department. The department shall permanently retain the copy of the evaluation.~~

25 ~~(3)(2)~~ An evaluator shall retain the original of a completed or incomplete preplacement evaluation
 26 and a list of each source for each item of information in the evaluation ~~for 2 years.~~ AN EVALUATOR WHO
 27 CEASES TO DO BUSINESS IN MONTANA SHALL GIVE THE EVALUATOR'S RECORDS TO THE
 28 DEPARTMENT FOR RETENTION.

29 ~~(4)(3)~~ An evaluator, EXCEPT A DEPARTMENT EVALUATOR, who conducted an evaluation in good
 30 faith is not subject to civil liability for anything contained in the evaluation.

1 **NEW SECTION. Section 89. Action by department.** If, before a decree of adoption is issued, the
2 department learns from an evaluator or another person that a child has been placed for adoption with an
3 individual who is the subject of a preplacement evaluation on file with the department containing a finding
4 of unsuitability, the department shall immediately review the evaluation and make a determination of
5 whether the department has authority pursuant to Title 41, chapter 3, to intervene.

6

7 **NEW SECTION. Section 90. Court waiver for relatives.** The court may waive the requirement of
8 a preplacement evaluation when a parent or guardian places a child for adoption directly with an extended
9 family member of the child. A postplacement evaluation must be conducted during the pendency of a
10 proceeding for adoption.

11

12 **NEW SECTION. Section 91. Filing of evaluation in adoption proceedings.** (1) In a direct parental
13 placement adoption, the preplacement evaluation must be filed with the court in support of the petition to
14 terminate parental rights for purposes of adoption.

15 (2) In an adoption arranged by the department or a licensed child-placing agency, the preplacement
16 evaluation must be permanently maintained in the files of the department or the licensed child-placing
17 agency.

18

19 **NEW SECTION. Section 92. Requirement for preplacement evaluation.** (1) Before the department
20 or licensed child-placing agency may place a child for purposes of adoption, the prospective adoptive parent
21 and the home of the prospective adoptive parent must be studied and evaluated as provided in [section 84].

22 (2) The department or agency shall prepare a written report containing the results of its evaluation.

23

24 **NEW SECTION. Section 93. Parties to direct parental placement adoption.** A parent of a child may
25 directly place the child for adoption with a specifically identified prospective adoptive parent who:

26 (1) resides in Montana or in another state that allows direct parental placement;

27 (2) is known to and has been personally selected by the parent; and

28 (3) has previously obtained a favorable preplacement evaluation.

29

30 **NEW SECTION. Section 94. Duties of placing parent.** (1) A parent who is directly placing a child

1 for adoption shall execute a voluntary relinquishment and consent to adopt, including:

2 (a) receiving the counseling required by [section 48]; and

3 (b) if the parent is a minor, being advised by legal counsel other than the attorney representing the
4 prospective adoptive parent.

5 (2) ~~Unless a birth mother relies on the right to privacy, a~~ A placing parent shall identify and provide
6 information on the location of any other legal parent or guardian of the child AND ANY OTHER PERSON
7 REQUIRED TO RECEIVE NOTICE UNDER [SECTION 67], including:

8 (a) any current spouse;

9 (b) any spouse who is the other birth parent and to whom the parent was married at the probable
10 time of conception or birth of the child; and

11 (c) any adoptive parent.

12 (3) A placing parent shall identify and provide information pertaining to any Indian heritage of the
13 child that would bring the child within the jurisdiction of the Indian Child Welfare Act, 25 U.S.C. 1901, et
14 seq.

15 (4) A parent placing a child for adoption in a direct parental placement adoption shall provide:

16 (a) the disclosures of medical and social history required pursuant to [section 81];

17 (b) a certified copy of the child's birth certificate or other document certifying the place and date
18 of the child's birth; and

19 (c) a certified copy of any existing court orders pertaining to custody or visitation of the child.

20 (5) A parent placing a child for adoption in a direct parental placement adoption shall file a notice
21 of parental placement.

22 (6) A parent placing a child for adoption in a direct parental placement adoption shall file a
23 disclosure of all disbursements made to or for the benefit of the parent by the prospective adoptive parent
24 or any person acting on behalf of the prospective adoptive parent.

25 (7) Subject to the limitations set in [section 148], counseling expenses, legal fees, and the
26 reasonable costs of preparing reports documenting the required disclosures of medical and social history
27 and the disclosures documenting disbursements are allowable expenses that can be paid for by the
28 prospective adoptive parent.

29

30 **NEW SECTION. Section 95. Direct parental placement -- information to be filed.** (1) A parent who

1 proposes to place a child for adoption with a prospective adoptive parent who resides in Montana and who
2 is not the child's stepparent or an extended family member shall file with the court of the county in which
3 the prospective adoptive parent or the parent making the placement resides the following:

4 (a) a notice of parental placement containing the following information:

5 (i) the name and address of the placing parent;

6 (ii) the name and address of each prospective adoptive parent;

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

8 (iv) the identity and information on the location of any other legal parent or guardian of the child

9 AND ANY OTHER PERSON REQUIRED TO RECEIVE NOTICE UNDER [SECTION 67], including any current
10 spouse, any spouse who is the other birth parent and to whom the parent was married at the probable time
11 of conception or birth of the child, and any adoptive parent;

12 (v) all relevant information pertaining to any Indian heritage of the child that would bring the child
13 within the jurisdiction of the Indian Child Welfare Act, 25 U.S.C. 1901, et seq.; and

14 (vi) the name and address of counsel, a guardian ad litem, or other representative, if any, of each
15 of the parties mentioned in subsections (1)(a)(i) through (1)(a)(iii);

16 (b) a relinquishment and consent to adoption of the child by the adoptive parent;

17 (c) the counseling report required by [section 48];

18 (d) the medical and social history disclosures required by [section 81];

19 (e) a report of disbursements identifying all payments made to or to the benefit of the placing
20 parent by the prospective adoptive parent or anyone acting on the parent's behalf that contains a statement
21 by each person furnishing information in the report attesting to the truthfulness of the information furnished
22 by that person;

23 (f) a certified copy of the child's birth certificate or other document certifying the place and date
24 of the child's birth;

25 (g) a certified copy of any existing court orders pertaining to custody or visitation of the child; and

26 (h) the preplacement evaluation.

27 (2) The notice of parental placement must be signed by the parent making the placement.

28
29 NEW SECTION. **Section 96. Duty of prospective adoptive parent to provide preplacement**
30 **evaluation.** (1) Prior to taking custody of a child whom the prospective adoptive parent intends to adopt,

1 the prospective adoptive parent shall obtain a favorable preplacement evaluation.

2 (2) A placing parent must be provided with a copy of the preplacement evaluation prior to
3 execution of a relinquishment and consent to adoption of the child.

4

5 **NEW SECTION. Section 97. Duty to promptly petition.** (1) Within 30 days after the filing of a
6 notice of parental placement or the execution of a relinquishment and consent to the adoption of the child,
7 whichever is later, a prospective adoptive parent shall promptly act to resolve the child's legal status by
8 filing:

9 (a) a petition for termination of parental rights for purposes of adoption, including a request for
10 custody, that includes:

11 (i) the relinquishment and consent to adopt executed by any legal parent other than the placing
12 parent who has filed the notice of parental placement;

13 (ii) a certified copy of any court order terminating the rights and duties of any parent or guardian
14 of the child; and

15 (iii) any other evidence supporting termination of the legal rights a person has with regard to the
16 child;

17 (b) a petition to adopt the child who is the subject of the proceedings;

18 (c) a copy of the preplacement evaluation pertaining to the adoptive parent;

19 (d) a copy of an agreement with the department or a licensed child-placing agency agreeing to
20 accept supervision over the postplacement evaluation period and to prepare the postplacement evaluation;

21 (e) a disclosure of all disbursements made with regard to the adoptive placement to date; and

22 (f) an affidavit from the department reporting on whether any individual has registered with the
23 putative father registry and claims an interest in the child.

24 (2) The prospective adoptive parent shall request that the court promptly notice the matters
25 provided for in subsection (1) for hearing in a timely manner.

26

27 **NEW SECTION. Section 98. Custody order.** (1) The court shall consider the petition to adopt and
28 shall make a determination as to whether temporary custody should be awarded to the petitioner. In
29 making that determination, the court shall consider:

30 (a) the preplacement evaluation that pertains specifically to placement of the child who is the

1 subject of the adoption petition with the petitioner; and

2 (b) if any significant change in the petitioner's or child's circumstances has occurred since
3 preparation of the preplacement evaluation.

4 (2) Upon a determination that it is in the best interests of the child, the court shall enter an order
5 granting temporary custody to the prospective adoptive parent.

6 (3) Upon a determination that it is not in the best interests of the child to place custody with the
7 prospective adoptive parent, the court shall deny the petition to terminate parental rights of the placing
8 parent and shall make any other order with regard to the custody of the child that is necessary to protect
9 the well-being of the child.

10

11 **NEW SECTION. Section 99. Period for postplacement supervision.** (1) In a direct parental
12 placement adoption, the court shall maintain jurisdiction over the placement during a postplacement
13 evaluation period and issue an order for postplacement supervision and a postplacement evaluation.

14 (2) The postplacement evaluation period must be supervised and evaluated by a qualified person
15 appointed, contracted with, or employed by:

16 (a) the department, if the department has accepted supervision of the placement; or

17 (b) a licensed child-placing agency.

18 (3) The court shall provide the evaluator with copies of the petition for adoption and the items filed
19 with the petition.

20 (4) A decree of adoption may not be entered for at least 6 months from the date an order is entered
21 granting temporary custody during the pendency of the proceedings.

22

23 **NEW SECTION. Section 100. Postplacement evaluation for direct parental placement adoption.**

24 (1) An evaluation must be based on a personal interview with the prospective adoptive parent in the
25 prospective parent's home and an observation of the relationship between the child and the prospective
26 adoptive parent.

27 (2) An evaluation must be in writing.

28 (3) At a minimum, the evaluation must include the following information:

29 (a) assessment of adaptation by the prospective adoptive parent to parenting the child;

30 (b) assessment of the health and well-being of the child in the prospective adoptive home;

1 (c) analysis of the level of incorporation by the child into the prospective adoptive parent's home,
2 extended family, and community;

3 (d) assessment of the level of incorporation of the child's previous history into the prospective
4 adoptive home, such as cultural or ethnic practices, or contact with former foster parents or biological
5 relatives; and

6 (e) an account of any change in the prospective adoptive parent's marital status or family history,
7 physical or mental health, home environment, property, income, or financial obligations since the filing of
8 the preplacement evaluation.

9 (4) The evaluation must contain a definite recommendation stating the reasons for or against the
10 proposed adoption.

11
12 **NEW SECTION. Section 101. Time and filing of evaluation.** (1) Unless the court for good cause
13 allows an earlier or later filing, the evaluator shall file a complete written evaluation with the court within
14 not less than 90 days and not more than 180 days after receipt of the court's order for an evaluation.

15 (2) If an evaluation raises a specific concern, as described in [section 87], the evaluation must be
16 filed immediately and must explain why the concern poses a significant risk of harm to the physical or
17 psychological well-being of the child.

18 (3) An evaluator shall give the prospective adoptive parent a copy of the evaluation when it is filed
19 with the court and shall permanently retain a copy of the evaluation and a list of every source for each item
20 of information in the evaluation. If the evaluator ceases to conduct business in Montana, all evaluations
21 in the evaluator's possession must be forwarded to the department for permanent retention.

22
23 **NEW SECTION. Section 102. Motion to enter adoption decree.** (1) The prospective adoptive
24 parent may file a motion for entry of an adoption decree no sooner than 6 months after the court has
25 granted temporary custody to the prospective adoptive parent.

26 (2) The motion must be supported by the following documents:

27 (a) the postplacement evaluation prepared pursuant to [section 100]; and

28 (b) an updated list of all disbursements made in connection with the adoption proceeding.

29 (3) A notice of hearing is not required for any party whose parental rights have been terminated
30 in prior proceedings.

1 (4) The court shall consider the petition and shall grant or deny the petition pursuant to the
2 provisions of [sections 125 through 134].

3 (5) If the petition to adopt is denied, the court shall provide notice to the placing parent that the
4 petition has been denied and shall take appropriate action for placement of the child pursuant to [section
5 131].

6 (6) Finality of the decree or the order denying the decree and the time for appeal are determined
7 pursuant to [section 137].

8

9 **NEW SECTION. Section 103. Records.** All records filed with the court in a direct parental
10 placement adoption must be permanently maintained by the court.

11

12 **NEW SECTION. Section 104. Factors to be considered -- best interests of child.** (1) All relevant
13 factors must be considered in determining the best interests of the child in an adoption proceeding. Factors
14 relevant to the determination of a prospective adoptive parent's parenting ability, the future security for a
15 child, and familial stability must be considered. In determining the best interests of the child, the following
16 factors with regard to a prospective adoptive parent may be considered:

17 (a) age, as it relates to health, earning capacity, provisions for the support of a child, or other
18 relevant circumstances;

19 (b) marital status, as it relates to the ability to serve as a parent in particularized circumstances;
20 and

21 (c) religion, as it relates to the ability to provide the child with an opportunity for religious or
22 spiritual and ethical development and as it relates to the express preference of a birth parent or a child to
23 be placed with an adoptive parent of a particular religious faith or denomination.

24 (2) For purposes of ensuring that the best interests of the child are met, the department or a
25 licensed child-placing agency is authorized to gather and use, in an appropriate, nonarbitrary manner,
26 information concerning the age, marital status, and religious beliefs of a prospective adoptive parent. The
27 authority granted by this subsection includes the authority to receive and to consider, consistent with the
28 best interests of the child, the preferences of birth parents relating to the age, marital status, or religious
29 beliefs of an adoptive parent.

30 (3) Consideration of religious factors by a licensed child-placing agency that is affiliated with a

1 particular religious faith is not arbitrary consideration of religion within the meaning of this section.

2
3 **NEW SECTION. Section 105. Parties to department or agency placement.** A parent of a child may
4 relinquish the child for adoption to the department or a licensed child-placing agency. The department or
5 agency shall agree in writing to accept the relinquishment of a placing parent as provided in [section 43]
6 before the relinquishment is valid.

7
8 **NEW SECTION. Section 106. Duties of placing parent.** (1) A parent who is placing a child for
9 adoption shall comply with the provisions for executing a voluntary relinquishment and consent to adopt.

10 (2) A parent placing a child for adoption shall identify and provide information on the location of:

11 (a) any other legal parent or guardian of the child **AND ANY OTHER PERSON REQUIRED TO**
12 **RECEIVE NOTICE UNDER [SECTION 67]**, including any current spouse; and

13 (b) any spouse who is the other birth parent and to whom the parent was married at the probable
14 time of conception or birth of the child.

15 (3) A parent placing a child for adoption shall identify and provide information pertaining to any
16 Indian heritage of the child that would bring the child within the jurisdiction of the Indian Child Welfare Act,
17 25 U.S.C. 1901, et seq.

18 (4) A parent placing a child for adoption shall provide:

19 (a) the disclosures of medical and social history;

20 (b) a certified copy of the child's birth certificate or other document certifying the place and date
21 of the child's birth; and

22 (c) a certified copy of any existing court orders pertaining to custody or visitation of the child.

23
24 **NEW SECTION. Section 107. Counseling requirements.** To the extent required by [sections 1
25 through 156] and the department's or agency's standards, the department or agency shall provide
26 counseling to the parties involved in the adoption.

27
28 **NEW SECTION. Section 108. Waiting period following placement of child.** (1) Once the
29 department or agency has received custody of the child and placed the child for adoption, the department
30 or agency shall supervise and evaluate the placement during a 6-month postplacement evaluation period.

1 (2) The department or agency may recommend in the postplacement evaluation filed with the
2 petition for adoption that the court issue a decree of adoption sooner than the 6-month postplacement
3 evaluation period if:

4 (a) (i) a period of at least 6 months has elapsed since the department or agency placed the child
5 in the prospective adoptive home; and

6 (ii) the department or agency has completed a postplacement evaluation during that period; or

7 (b) (i) a postplacement evaluation has been completed and filed with the court; and

8 (ii) there are detailed extenuating circumstances supporting a waiver of the 6-month postplacement
9 evaluation period.

10 (3) The department or an agency may recommend the waiver of the 6-month postplacement
11 evaluation period and the postplacement evaluation if the adoptee has been in the petitioner's home as a
12 foster child for at least 1 year.

13

14 **NEW SECTION. Section 109. Petition for adoption filed by prospective adoptive parent.** After the
15 child has been placed by the department or agency with the prospective adoptive parent, the parent shall
16 file a petition for adoption.

17

18 **NEW SECTION. Section 110. Postplacement department or agency evaluation.** (1) The
19 department or agency shall complete a written postplacement evaluation. The postplacement evaluation
20 must be conducted according to the department's or agency's standards for placement of a child and at
21 a minimum must include a personal interview with the prospective adoptive parent in that person's home
22 and observation of the relationship between the child and the prospective adoptive parent.

23 (2) Upon the filing of a petition for adoption by the prospective adoptive parent, the department
24 or agency shall file the postplacement evaluation.

25 (3) The evaluation must include the following information:

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

27 (b) whether the proposed home is suitable for the child;

28 (c) a statement that the medical and social histories of the birth parents and child have been
29 provided to the prospective adoptive parent;

30 (d) an assessment of adaptation by the prospective adoptive parent to parenting the child;

1 (e) a statement that the 6-month postplacement evaluation period has been complied with or
2 should be waived;

3 (f) any other circumstances and conditions that may have a bearing on the adoption and of which
4 the court should have knowledge;

5 (g) whether the agency waives notice of the proceeding;

6 (h) a statement that any applicable provision of law governing an interstate or intercountry
7 placement of the child has been complied with; and

8 (i) a statement of compliance with any applicable provisions of the Indian Child Welfare Act, 25
9 U.S.C. 1901, et seq.

10 (4) The evaluation must contain a definite recommendation stating the reasons for or against the
11 proposed adoption.

12

13 **NEW SECTION. Section 111. Consent to adoption.** (1) Upon the filing of the petition for adoption
14 by the prospective adoptive parent, the department or agency that has custody of the child shall file its
15 consent to adoption.

16 (2) Except as provided in subsection (3), the withdrawal of a consent for an adoption filed by the
17 department or an agency in connection with that petition for adoption is not permitted.

18 (3) Upon a motion to withdraw consent, notice and opportunity to be heard must be given to the
19 petitioner and to the person seeking to withdraw consent. The court may, if it finds that the best interests
20 of the child will be furthered, issue a written order permitting the withdrawal of the consent.

21 (4) The entry of a decree of adoption renders a consent irrevocable.

22

23 **NEW SECTION. Section 112. Relinquishment to stepparent.** (1) A parent may relinquish parental
24 rights for the purposes of adoption of a child by the child's stepparent or a member of the child's extended
25 family. The relinquishment must be executed in accordance with [sections 42 through 52]. The
26 relinquishment may be executed at any time after the child is 72 hours old.

27 (2) The stepparent or extended family member shall accept the relinquishment in writing.

28

29 **NEW SECTION. Section 113. Standing to adopt stepchild.** (1) A stepparent has standing to file
30 a petition for adoption of a minor stepchild of the stepparent's spouse if:

1 (a) the spouse has sole legal and physical custody of the child and the child has been in the
2 physical custody of the spouse and the stepparent during the 60 days preceding the filing of a petition for
3 adoption;

4 (b) the spouse is deceased or mentally incompetent but, before dying or being judicially declared
5 mentally incompetent, had legal and physical custody of the child, and the child has resided primarily with
6 the stepparent during the 12 months preceding the filing of the petition; or

7 (c) the department or an agency placed the child with the stepparent.

8 (2) For good cause shown, a court may allow an individual who is not the stepparent but who has
9 the consent of the custodial parent of a child to file a petition for adoption. The petition must be treated
10 as if the petitioner were a stepparent.

11 (3) A petition for adoption by a stepparent may be joined with a petition for termination of parental
12 rights.

13

14 **NEW SECTION. Section 114. Consent to adoption.** (1) Upon the filing of the petition for adoption
15 by the stepparent, the child's parent shall file consent to adoption executed pursuant to [section 115 or
16 116].

17 (2) If the child has attained 12 years of age the child must consent to the adoption.

18

19 **NEW SECTION. Section 115. Consent to adoption -- stepparent's spouse.** (1) A consent to
20 adoption executed by a parent who is the stepparent's spouse must be signed in the presence of an
21 individual authorized to take acknowledgements.

22 (2) A consent must be in writing and must state that:

23 (a) the parent executing the consent has legal and physical custody of the parent's child and
24 voluntarily and unequivocally consents to the adoption of the child by the stepparent;

25 (b) the adoption will not terminate the parental relationship between the parent executing the
26 consent and the child; and

27 (c) the parent executing the consent understands and agrees that:

28 (i) the adoption will terminate the relationship of parent and child between the child's other parent
29 and the child and will terminate any existing court order for custody, visitation, or communication with the
30 child;

1 (ii) the child and any descendant of the child will retain rights of inheritance from or through the
2 child's other parent; and

3 (iii) a court order for visitation or communication with the child by an individual related to the child
4 through the parent executing the consent or an agreement or order concerning another individual that is
5 approved by the court survives the decree of adoption, but that failure to comply with the terms of the
6 order or agreement is not a ground for revoking or setting aside the consent or the adoption.

7
8 **NEW SECTION. Section 116. Consent to adoption -- child's other parent.** A consent executed
9 by a child's parent who is not the stepparent's spouse must be in writing and must state that:

10 (1) the parent executing the consent voluntarily and unequivocally consents to the adoption of the
11 child by the stepparent and the transfer to the stepparent's spouse and the adoptive stepparent of any right
12 that the parent executing the consent has to legal or physical custody of the child;

13 (2) the parent executing the consent understands and agrees that:

14 (a) the adoption will terminate the parent's parental relationship with the child and will terminate
15 any existing court order for custody, visitation, or communication with the child;

16 (b) the child and any descendant of the child will retain rights of inheritance from or through the
17 parent executing the consent; and

18 (c) a court order for visitation or communication with the child by an individual related to the child
19 through the child's other parent or an agreement or order concerning another individual that is approved
20 by the court survives the decree of adoption, but that failure to comply with the terms of the order or
21 agreement is not a ground for revoking or setting aside the consent or the adoption.

22
23 **NEW SECTION. Section 117. Postplacement evaluation period -- waiver.** If the child is a stepchild
24 or a member of the extended family of the petitioner, the court may, if satisfied that the adoption is in the
25 best interests of the child, waive the 6-month postplacement evaluation period and the postplacement
26 evaluation and grant a decree of adoption.

27
28 **NEW SECTION. Section 118. Petition for adoption -- notice -- hearing.** A stepparent who desires
29 to adopt a stepchild must file a petition for adoption, any necessary consents, any required postplacement
30 evaluation, give notice of the hearing on the petition, and attend a hearing conducted by the court.

1 **NEW SECTION.** **Section 119. Legal consequences of adoption of stepchild.** (1) Except as
2 provided in subsections (2) and (3), the legal consequences of an adoption of a stepchild by a stepparent
3 are the same as the consequences under [section 136].

4 (2) An adoption by a stepparent does not affect:

5 (a) the relationship between the adoptee and the adoptee's parent who is the adoptive stepparent's
6 spouse or deceased spouse;

7 (b) an existing court order for visitation or communication with a child by an individual related to
8 the adoptee through either parent; or

9 (c) the right of the adoptee or a descendant of the adoptee to inheritance or intestate succession
10 through or from the adoptee's former parent.

11 (3) Failure to comply with an agreement or order is not a ground for challenging the validity of an
12 adoption by a stepparent.

13
14 **NEW SECTION.** **Section 120. Arrearages of child support.** A termination of a parent's rights and
15 responsibilities toward a child does not cancel any responsibility to pay arrearages of child support unless
16 the party to whom the arrearages are owed agrees in writing to waive payment.

17
18 **NEW SECTION.** **Section 121. Adoption of adult.** A person who has attained the age of legal
19 majority may be adopted without the consent of the person's parents.

20
21 **NEW SECTION.** **Section 122. Who may adopt adult or emancipated minor.** (1) An adult may
22 adopt another adult or an emancipated minor pursuant to this section. However, an adult may not adopt
23 the adult's spouse. An adoption of an incompetent individual of any age must comply with all requirements
24 set by law for the adoption of a child.

25 (2) An individual who has adopted an adult or emancipated minor may not adopt another adult or
26 emancipated minor within 1 year after the adoption unless the prospective adoptee is a sibling of the
27 adoptee.

28
29 **NEW SECTION.** **Section 123. Consent to adoption.** (1) Consent to the adoption of an adult or
30 emancipated minor is required only of:

- 1 (a) the adoptee;
- 2 (b) the prospective adoptive parent; and
- 3 (c) the spouse of the prospective adoptive parent unless:
- 4 (i) the spouse and the prospective adoptive parent are legally separated; or
- 5 (ii) the court finds that the spouse is not capable of giving consent or is withholding consent
- 6 contrary to the best interests of the adoptee and the prospective adoptive parent.
- 7 (2) The consent of the adoptee and the prospective adoptive parent must:
- 8 (a) be in writing and be signed in the presence of the court or an individual authorized to take
- 9 acknowledgments;
- 10 (b) state that the parties agree to assume toward each other the legal relationship of parent and
- 11 child and to have all of the rights and be subject to all of the duties of that relationship; and
- 12 (c) state that the parties understand the consequences that the adoption may have for any right
- 13 of inheritance, property, or support.
- 14 (3) The consent of the spouse of the prospective adoptive parent:
- 15 (a) must be in writing and be signed in the presence of the court or an individual authorized to take
- 16 acknowledgments;
- 17 (b) must state that the spouse:
- 18 (i) consents to the proposed adoption; and
- 19 (ii) understands the consequences that the adoption may have for any right of inheritance,
- 20 property, or support that the spouse has; and
- 21 (c) may contain a waiver OF NOTICE of any proceeding for adoption.

22

23 **NEW SECTION. Section 124. Jurisdiction and venue.** (1) The court has jurisdiction over a

24 proceeding for the adoption of an adult or emancipated minor if the petitioner has lived in Montana for at

25 least 90 days immediately preceding the filing of a petition for adoption.

26 (2) A petition for adoption ~~may~~ **MUST** be filed in the court in the county in which a petitioner lives.

27

28 **NEW SECTION. Section 125. Procedure.** Except as otherwise provided in [sections 121 through

29 125], the procedure and law for adoption of a child set forth in [sections 1 through 156] is applicable in

30 proceedings for the adoption of an adult. The provisions concerning the counseling requirement,

1 preplacement evaluation, postplacement supervision period, and postplacement evaluation are not applicable
2 to the adoption of an adult.

3

4 **NEW SECTION. Section 126. Petition for adoption.** (1) A petition for adoption must be filed in
5 triplicate, must be notarized by the petitioners, and must specify:

6 (a) the full names, ages, and place and duration of residence of the petitioners;

7 (b) the current marital status of petitioners and, if married, the place and date of the marriage;

8 (c) the circumstances under which the petitioners obtained physical custody of the child and the
9 name of the individual or agency who placed the child;

10 (d) the date and place of birth of the child, if known;

11 (e) the name used for the child in the proceeding and, if a change in name is desired, the full name
12 by which the child is to be known;

13 (f) that it is the desire of the petitioners that the relationship of parent and child be established
14 between the petitioners and the child and to have all the rights and be subject to all the duties of that
15 relationship;

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

17 (h) the facts, if any, that excuse consent on the part of a person whose consent is required for the
18 adoption;

19 (i) that any applicable law governing interstate or intercountry placement was complied with;

20 (j) that, if applicable, the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., was complied with;

21 (k) whether a previous petition has been filed by petitioner to adopt the child at issue or any other
22 child in any court and the disposition of the petitions; and

23 (l) the name and address, if known, of any person who is entitled to receive notice of the petition
24 for adoption.

25 (2) There must be attached to or accompanying the petition:

26 (a) any written consent required by [sections 125 through 134];

27 (b) a certified copy of any court order terminating the rights of the child's parents;

28 (c) a certified copy of any existing court order in any pending proceeding concerning custody of
29 or visitation with the child;

30 (d) a copy of any agreement with a public agency to provide a subsidy for the benefit of the child

1 with a special need;

2 (e) the postplacement evaluation prepared pursuant to [section 100 or 110];

3 (f) a disclosure of any disbursements made in connection with the adoption proceeding.

4 (3) One copy of the petition must be retained by the court. A copy must be sent to:

5 (a) the department or to the agency participating in the adoption proceeding; ~~and~~ OR

6 (b) the parent placing the child for adoption in a direct parental placement adoption.

7

8 **NEW SECTION. Section 127. Time for action on petition for adoption -- waiver.** Not less than 6
9 months from the date the child has been placed with the prospective adoptive parent, the prospective
10 adoptive parent may apply to the court for a decree of adoption. If the best interests of the adoptee are
11 served, THEN PURSUANT TO [SECTIONS 108 AND 117], the court may waive the 6-month postplacement
12 evaluation period and summarily consider an adoption petition.

13

14 **NEW SECTION. Section 128. Notice of hearing.** (1) Upon the filing of a petition for adoption,
15 notice of hearing must be served on:

16 (a) a person whose consent to adoption is required under [section 39];

17 (b) the department or agency whose consent to adoption is required;

18 (c) the spouse of the petitioner if the spouse has not joined in the petition;

19 (d) a person who has revoked a consent or relinquishment or is attempting to have a consent or
20 relinquishment set aside; and

21 (e) any other person named by the court to receive notice.

22 (2) The notice must direct the person to appear in court at the time specified and to show cause
23 why the petition should not be granted.

24 (3) The notice of hearing must be served in a manner appropriate under the Montana Rules of Civil
25 Procedure.

26 (4) A notice of hearing is not required to be served on any party:

27 (a) whose parental rights have been terminated in prior proceedings;

28 (b) who waives notice in a relinquishment, consent, or other document signed by the party;

29 (c) who has consented in writing to an adoption; or

30 (d) whose consent to adoption is not required under [section 40].

1 **NEW SECTION. Section 129. Content of notice.** The notice required by [section 128] must
2 contain:

3 (1) the caption of the petition;

4 (2) the address and telephone number of the court in which the petition is pending;

5 (3) a concise summary of the relief requested in the petition;

6 (4) the name, mailing address, and telephone number of the petitioner or the petitioner's attorney;

7 and

8 (5) a statement of the method of responding to the notice and the consequences of failure to
9 respond.

10

11 **NEW SECTION. Section 130. Hearing on petition for adoption.** (1) The petitioners and the child
12 shall appear at the hearing unless the presence of the child is waived by the court.

13 (2) The court shall examine the petition, the documents accompanying the petition, and the
14 petitioners and shall receive evidence in support of the petition.

15

16 **NEW SECTION. Section 131. Granting petition for adoption -- denial of petition.** (1) The court
17 shall issue a decree of adoption awarding custody of the child to the petitioners based on the evidence
18 received if it determines that:

19 (a) the child has been in the physical custody of the petitioners for at least 6 months, unless the
20 court for good cause shown waives this requirement pursuant to [section 108 or 117];

21 (b) notice of hearing on the petition for adoption was properly served or dispensed with;

22 (c) every necessary consent, relinquishment, waiver, disclaimer, or judicial order terminating
23 parental rights has been obtained and filed with the court;

24 (d) any evaluation required by [sections 1 through 156] has been filed with and considered by the
25 court; and

26 (e) the adoption is in the best interests of the child.

27 (2) If the petition for adoption is denied, the court shall dismiss the petition and enter an
28 appropriate order as to the future custody of the child according to the best interests of the child.

29

30 **NEW SECTION. Section 132. Best interests of child.** (1) In determining whether to grant a

1 petition to adopt, the court shall consider all relevant factors in determining the best interests of the child.
 2 The court shall consider factors relevant to the determination of a prospective adoptive parent's parenting
 3 ability, the future security for a child, and familial stability.

4 (2) In a contested adoption proceeding involving a child, the court shall consider the factors set
 5 out in subsection (1) and shall also consider:

6 (a) the nature and length of any relationship already established between a child and any person
 7 seeking to adopt the child;

8 (b) the nature of any family relationship between the child and any person seeking to adopt the
 9 child and whether that person has established a positive emotional relationship with the child;

10 (c) the harm that could result to the child from a change in placement;

11 (d) whether any person seeking to adopt the child has adopted a sibling or half-sibling of the child;

12 (e) which, if any, of the persons seeking to adopt the child were selected by the placing parent or
 13 the department or agency whose consent to the adoption is required.

14 (3) In an Indian child placement, the court shall determine if the requirements of the Indian Child
 15 Welfare Act, 25 U.S.C. 1901, et seq., have been met.

16
 17 **NEW SECTION. Section 133. Removal of child from state.** Before a decree of adoption is issued,
 18 a petitioner may not remove the child from the state for more than 30 consecutive days without the
 19 permission of:

20 (1) the court if the child was placed directly for adoption; or

21 (2) the department or the agency that placed the child for adoption.

22
 23 **NEW SECTION. Section 134. Decree of adoption.** A decree of adoption must state:

24 (1) the original name of the child;

25 (2) the name of the petitioner for adoption;

26 (3) whether the petitioner is married or unmarried;

27 (4) whether the petitioner is a stepparent of the child;

28 (5) the name by which the child is to be known;

29 (6) **FOR A CHILD BORN IN MONTANA,** a direction to the vital statistics bureau to issue a new birth
 30 certificate unless the adoptee is 12 years of age or older and requests that a new certificate not be issued;

- 1 (7) the child's date and place of birth, if known;
 2 (8) the effect of the decree of adoption as stated in [section 136];
 3 (9) that the adoption is in the best interests of the child; and
 4 (10) whether the birth mother objects to the release of the original birth certificate information upon
 5 the adoptee reaching 18 years of age.

6

7 **NEW SECTION. Section 135. Communication of decree to department.** (1) Within 30 days after
 8 a decree of adoption becomes final, the clerk of court shall send a report of the adoption to the department.

9 (2) If petitioners have requested it, the court shall order the vital statistics bureau to issue a new
 10 birth certificate to the child.

11

12 **NEW SECTION. Section 136. Effect of decree.** (1) After the decree of adoption is entered:

13 (a) the relationship of parent and child and all the rights, duties, and other legal consequences of
 14 the relation of parent and child exist between the adoptee and the adoptive parent and the kindred of the
 15 adoptive parent;

16 (b) the former parents and the kindred of the former parents of the adoptee, unless they are the
 17 adoptive parents or the spouse of an adoptive parent, are relieved of all parental responsibilities for the
 18 adoptee and have no rights over the adoptee except for a former parent's duty to pay arrearages for child
 19 support.

20 ~~(2) A decree of adoption is not subject to a challenge after the decree is issued.~~

21 ~~(3)~~(2) A decree of adoption should include a notice to the vital statistics bureau as to the birth
 22 mother's consent to release of the information on the original birth certificate upon the adoptee reaching
 23 18 years of age.

24 ~~(4)~~(3) The relationship of parent and child for the purposes of intestate succession is governed by
 25 Title 72.

26

27 **NEW SECTION. Section 137. Finality of decree -- expediency.** (1) For purposes of appeal, the
 28 decree of adoption is a final order when it is issued.

29 (2) A person may appeal from the order in the manner and form provided for appeals from a
 30 judgment in civil actions.

1 (3) An appeal from a decree of adoption must be heard expeditiously pursuant to the provisions
2 of [section 78].

3
4 **NEW SECTION. Section 138. Rights of adoptee.** A decree of adoption does not affect any right
5 or benefit vested in the adoptee before the decree became final.

6
7 **NEW SECTION. Section 139. Foreign adoption decrees.** When the relationship of parent and child
8 has been created by a decree of adoption of a court of any other state or country, the rights and obligations
9 of the parties as to matters within the jurisdiction of this state must be determined pursuant to [sections
10 1 through 156].

11
12 **NEW SECTION. Section 140. Visitation and communication agreements.** (1) Except as otherwise
13 provided in [sections 1 through 156], a decree of adoption terminates any existing order or written or oral
14 agreement for contact or communication between the adoptee and the birth parents or family.

15 (2) Any express written agreement entered into between the placing parent and the prospective
16 adoptive parent after the execution of a relinquishment and consent to adoption is independent of the
17 adoption proceedings, and any relinquishment and consent to adopt remains valid whether or not the
18 agreement for contact or communication is later performed. Failure to perform an agreement is not grounds
19 for setting aside an adoption decree.

20 (3) A court may order that an agreement for contact or communication entered into under this
21 section may not be enforced upon a finding that:

22 (a) enforcement is detrimental to the child;

23 (b) enforcement undermines the adoptive parent's parental authority; or

24 (c) due to a change in circumstances, compliance with the agreement would be unduly burdensome
25 to one or more of the parties.

26
27 **NEW SECTION. Section 141. Confidentiality of records and proceedings.** (1) Unless the court
28 orders otherwise, all hearings held in proceedings under [sections 1 through 156] are confidential and must
29 be held in closed court without admittance of any person other than interested parties and their counsel.

30 (2) All papers and records pertaining to the adoption must be kept as a permanent record of the

1 court and must be withheld from inspection. A person may not have access to the records, except:

2 (a) for good cause shown on order of the judge of the court in which the decree of adoption was
3 entered;

4 (b) as provided in [sections 141 through 146];

5 (c) as provided in 50-15-121 and 50-15-122-; OR

6 (D) THE DEPARTMENT'S CHILD SUPPORT ENFORCEMENT DIVISION PROVIDING SERVICES
7 UNDER 42 U.S.C. 651, ET SEQ.

8 (3) All files and records pertaining to adoption proceedings retained by the department, a licensed
9 child-placing agency, a lawyer, or any authorized agency are confidential and must be withheld from
10 inspection, except as provided in 50-15-121, 50-15-122, and [sections 141 through 146].

11

12 NEW SECTION. Section 142. Disclosure of records -- nonidentifying information -- consensual
13 release. (1) The department or authorized person or agency may disclose:

14 (a) nonidentifying information to an adoptee, an adoptive or birth parent, or an extended family
15 member of an adoptee or birth parent; and

16 (b) identifying information to a court-appointed confidential intermediary upon order of the court
17 or as provided in 50-15-121 and 50-15-122.

18 (2) Information may be disclosed to any person who consents in writing to the release of
19 confidential information to other interested persons who have also consented. Identifying information
20 pertaining to an adoption involving an adoptee who is still a child may not be disclosed based upon a
21 consensual exchange of information unless the adoptee's adoptive parent consents in writing.

22

23 NEW SECTION. Section 143. Petition for appointment of confidential intermediary. (1) An adult
24 adoptee, an adoptive or birth parent, or an adult extended family member of the adoptee or birth parent
25 may petition the court for disclosure of identifying information regarding the adoptee, a birth child, a birth
26 parent, or an extended family member.

27 (2) A petition for disclosure must contain:

28 (a) as much of the following information as is known by the petitioner:

29 (i) the name, address, and identification of the petitioner;

30 (ii) the date of the adoptee's birth;

- 1 (iii) the county and state where the adoption occurred;
- 2 (iv) the date of the adoption; and
- 3 (v) any other information known to the petitioner concerning the birth parents, the adoptive parent,
4 and the adoptee that could assist in locating the person being sought;
- 5 (b) written documentation from a certified confidential intermediary agreeing to conduct the search;
6 and
- 7 (c) if the petitioner is not the adoptee or birth parent, the reason the petitioner is requesting the
8 appointment of a confidential intermediary.

9

10 **NEW SECTION. Section 144. Appointment of confidential intermediary -- duties -- payment.** (1)

11 After a petition for disclosure has been filed under [section 143], the court shall appoint a confidential
12 intermediary who shall:

- 13 (a) conduct a confidential search for the person sought as requested in the petition for disclosure;
- 14 (b) refrain from disclosing directly or indirectly any identifying information to the petitioner, unless
15 ordered to do so by the court; and
- 16 (c) make a written report of the results of the search to the court not later than 6 months after
17 appointment.

18 (2) Upon appointment, a confidential intermediary is entitled to be paid a reasonable fee plus actual
19 expenses incurred in conducting the search. The fee and expenses must be paid by the petitioner.

20 (3) A confidential intermediary may inspect otherwise confidential records of the court, the
21 department, or an authorized agency for use in the search. The confidential intermediary may not disclose
22 identifying information from the records or any results of a search unless authorized by the court or unless
23 the parties have executed written consent to the confidential intermediary. Nonidentifying information from
24 any source may be disclosed without further order from the court.

25 (4) If a confidential intermediary locates the person being sought, a confidential inquiry must be
26 made as to whether the located person consents to having that person's present identity disclosed to the
27 petitioner. The court may request that the confidential intermediary assist in arranging contact between the
28 petitioner and the located person.

29 (5) If a confidential intermediary locates the person being sought and the located person does not
30 consent to having that person's identity disclosed, identifying information regarding that person may be

1 disclosed only upon order of the court for good cause shown.

2 (6) If the person being sought is found to be deceased, the court may order disclosure of identifying
3 information regarding the deceased to the petitioner.

4

5 **NEW SECTION. Section 145. Disclosure authorized in course of employment.** [Sections 1 through
6 156] do not preclude an employee or agent of a court, department, or agency from:

7 (1) inspecting permanent, confidential, or sealed records for the purpose of discharging any
8 obligation under [sections 1 through 156];

9 (2) disclosing the name of the court in which a proceeding for adoption occurred or the name of
10 an agency that placed an adoptee to an individual described in [section 143(1)] who can verify the
11 individual's identity; or

12 (3) disclosing nonidentifying information contained in confidential or sealed records in accordance
13 with any other applicable state or federal law.

14

15 **NEW SECTION. Section 146. Release of original birth certificate -- certificate of adoption.** (1) For
16 a person adopted on or before July 1, 1967, in addition to any copy of an adoptee's original birth certificate
17 authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall
18 furnish a copy of the original birth certificate upon the written request of an adoptee.

19 (2) For a person adopted between July 1, 1967, and September 30, 1997, in addition to any copy
20 of an adoptee's original birth certificate authorized for release by a court order issued pursuant to
21 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate upon a court
22 order.

23 (3) For a person adopted on or after [the effective date of this section], in addition to any copy of
24 an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121
25 or 50-15-122, the department shall furnish a copy of the original birth certificate upon:

26 (a) the written request of an adoptee who has attained 18 years of age unless the birth parent has
27 requested in writing that the original birth certificate not be automatically released; or

28 (b) a court order.

29 (4) For a person adopted on or after [the effective date of this section] and subject to subsection
30 (5), upon the request of an adoptive parent or an adoptee who has attained 18 years of age, ~~the clerk of~~

1 ~~the court that entered a decree of adoption~~ THE DEPARTMENT shall issue a certificate of adoption that
2 states the date and place of adoption, the date of birth of the adoptee, the name of each adoptive parent,
3 and the name of the adoptee as provided in the decree.

4 (5) A birth parent may request in writing to the vital statistics bureau that the birth certificate for
5 an adoptee not be released without a court order.

6
7 NEW SECTION. Section 147. Fees related to placement for adoption by parent. (1) Reasonable
8 adoption fees may be paid by the adoptive parent for the actual cost of services. The cost of services must
9 relate to:

- 10 (a) a petition for adoption;
- 11 (b) placement of a child;
- 12 (c) medical care or services;
- 13 (d) prenatal care;
- 14 (e) foster care;
- 15 (f) a preplacement evaluation;
- 16 (g) counseling related to providing information necessary to make an informed decision to
17 voluntarily relinquish a child;
- 18 (h) travel or temporary living costs for the birth mother;
- 19 (i) legal fees incurred for services on behalf of the placing parent;
- 20 (j) the reasonable costs incurred by a placing parent in a direct parental placement adoption to
21 document the disclosures of medical and social history required by [section 81]; and
- 22 (k) other reasonable costs related to adoption that do not include education, vehicles, salary or
23 wages, vacations, or permanent housing for the birth parent.

24 (2) A birth parent or a provider of a service listed in subsection (1) may receive or accept a
25 payment authorized by subsection (1). The payment may not be made contingent on the placement of a
26 child for adoption or upon relinquishment of and consent to adoption of the child. If the adoption is not
27 completed, a person who is authorized by subsection (1) to make a specific payment is not liable for that
28 payment unless the person has agreed in a signed writing with a birth parent or a provider of a service to
29 make the payment regardless of the outcome of the proceeding for adoption.

30

1 **NEW SECTION. Section 148. Limitations on payment of counseling and legal fees.** (1) A
2 prospective adoptive parent may pay counseling expenses for a maximum of 10 hours of counseling.

3 (2) A prospective adoptive parent may pay for legal costs entailed for providing legal counsel for
4 one birth parent unless the birth parents elect joint representation. The right of a relinquishing parent to
5 legal counsel paid by the prospective adoptive parent continues only until the relinquishment becomes
6 irrevocable. An attorney may not represent both a birth parent and a prospective adoptive parent.

7

8 **NEW SECTION. Section 149. Prohibited activities -- violations -- penalties.** (1) A person, other
9 than the department or a licensed child-placing agency, may not:

10 (a) advertise in any public medium that the person:

11 (i) knows of a child who is available for adoption; or

12 (ii) is willing to accept a child for adoption or knows of prospective adoptive parents for a child;

13 or

14 (b) engage in placement activities as defined in [section 151].

15 (2) An individual other than an extended family member or stepparent of a child may not obtain
16 legal or physical custody of a child for purposes of adoption unless the individual has a favorable
17 preplacement evaluation or a court-ordered waiver of the evaluation.

18 (3) A person who, as a condition for placement, relinquishment, or consent to the adoption of a
19 child, knowingly offers, gives, agrees to give, solicits, accepts, or agrees to accept from another person,
20 either directly or indirectly, anything other than the fees allowed under [section 147] commits the offense
21 of paying or charging excessive adoption process fees.

22 (4) It is illegal to require repayment or reimbursement of anything provided to a birth parent under
23 [section 147]. All payments by the adoptive parent made on behalf of a birth parent pursuant to this
24 section are considered a gift to the birth parent.

25 (5) A person convicted of the offense of paying or charging excessive adoption process fees,
26 attempting to recover expenses incurred from an adoption process, or otherwise violating [sections 1
27 through 156] may be fined an amount not to exceed \$10,000 in an action brought by the appropriate city
28 or county attorney. The court may also enjoin from further violations any person who violates [sections
29 1 through 156].

30

1 **NEW SECTION. Section 150. Action by department.** The department may review and investigate
2 compliance with [sections 1 through 156] and may maintain an action in court to compel compliance.

3
4 **NEW SECTION. Section 151. Definitions.** As used in [sections 151 through 156], the following
5 definitions apply:

6 (1) "Person" includes any individual, partnership, voluntary association, or corporation.

7 (2) "Placement activities" means any of the following:

8 (a) placement of a child for adoption;

9 (b) arranging or providing short-term foster care for a child pending an adoptive placement; or

10 (c) facilitating placement of a child by maintaining a list in any form of birth parents or prospective
11 adoptive parents.

12 (3) "Soliciting" means to request, offer, promote, refer, or entice, either directly or indirectly
13 through correspondence, advertising, or other method, a potential adoptive parent or couple, birth parent
14 or parents, or placement of a child by a birth parent.

15
16 **NEW SECTION. Section 152. General duties of department.** The department shall:

17 (1) issue licenses to entities engaged in child placement activities on [the effective date of this
18 section] if the licensed applicant has met the requirements established by the department by rule;

19 (2) prescribe the conditions upon which child-placing licenses are issued and revoked; and

20 (3) adopt rules for the conduct of the affairs of child-placing agencies that are consistent with the
21 welfare of children.

22
23 **NEW SECTION. Section 153. License required -- term of license -- no fee charged.** (1) Only an

24 entity holding a current child-placing agency license issued by the department may act as an agency for
25 the purpose of:

26 (a) procuring or selecting proposed adoptive homes;

27 (b) placing children in proposed adoptive homes;

28 (c) soliciting persons to adopt children or arranging for persons to adopt children;

29 (d) soliciting persons to relinquish children or place children in potential adoptive homes; or

30 (e) engaging in placement activities.

1 (2) Licenses are valid for 1 year after issuance. A fee may not be charged for a license.

2

3 **NEW SECTION. Section 154. Requirements for licensure.** The department may issue licenses to
4 agencies meeting the following minimum requirements:

5 (1) The chief function of the agency or a specific program within the agency must be the care and
6 placement of children.

7 (2) The agency operates on a nonprofit basis and is financially responsible in and for its operation.

8 (3) The agency meets the requirements as designated by the department by rule.

9 (4) The directing or managing personnel of the agency must be qualified both on the basis of
10 professional educational experience and character.

11 (5) Complete records must be kept of both the children and adopting parents with which the
12 agency deals, and the records must be maintained in accordance with [section 141].

13 (6) The agency shall maintain and use an in-state office for making a social study of the child and
14 proposed adoptive parent before placement of the child, particularly with regard to:

15 (a) the physical and mental health, emotional stability, and personal integrity of the adoptive parent
16 and the parent's ability to promote the child's welfare; and

17 (b) the physical and mental condition of the child and the child's family background.

18 (7) The agency must have the ability to provide education for adoptive parents and counseling for
19 placing parents as required in [section 48] and department rules.

20 (8) The agency shall agree to cooperate with courts having jurisdiction in adoptive matters and with
21 other public agencies having to deal with the welfare of children.

22 (9) The agency shall, annually, submit a full, complete, and true financial statement to the
23 department, and the statement must contain a full accounting of the operations of the agency during the
24 preceding year.

25

26 **NEW SECTION. Section 155. Investigation of agencies -- cancellation of licenses.** (1) The
27 department may, through its authorized representative, investigate the operations of licensed agencies and
28 may cancel licenses for failure to observe prescribed rules or to maintain minimum requirements. An
29 agency shall give to representatives of the department all information requested and allow them to observe
30 the operation of the agency.

1 (2) When the department finds, upon the basis of the statement required by [section 154(9)] or
2 upon its own investigation, that an agency has not conducted or is financially incapable of conducting its
3 operations according to the established standards, the department may suspend, revoke, or deny a license
4 for the agency.

5
6 **NEW SECTION. Section 156. Violation a misdemeanor -- penalty.** (1) Any person who maintains
7 or conducts an agency for procuring the adoption of children or assists in the maintaining or conducting
8 of an agency without first obtaining a child-placing license is guilty of a misdemeanor and upon conviction
9 of a first offense shall be punished by a fine not exceeding \$1,000 or imprisonment for up to 1 year in jail
10 and shall be enjoined from further engaging in agency activities.

11 (2) Upon the second conviction of a person for violation of [sections 153 through 155], the person
12 is guilty of a felony and may be punished by a fine not exceeding \$10,000 or imprisonment for up to 5
13 years in prison and shall be enjoined from further engaging in agency activities.

14
15 **Section 157.** Section 2-6-104, MCA, is amended to read:

16 **"2-6-104. Records of officers open to public inspection.** Except as provided in ~~40-8-126 and~~
17 ~~27-18-111~~ and [section 141], the public records and other matters in the office of any officer are at all
18 times during office hours open to the inspection of any person."

19
20 **Section 158.** Section 2-18-606, MCA, is amended to read:

21 **"2-18-606. Parental leave for state employees.** (1) The department of administration shall develop
22 a parental leave policy for permanent state employees. The policy must permit an employee to take a
23 reasonable leave of absence and permit the employee to use sick leave, immediately following the birth or
24 placement of a child, for a period not to exceed 15 working days if:

- 25 (a) the employee is adopting a child; or
26 (b) the employee is a birth father.

27 (2) As used in this section, "placement" means placement for adoption as defined in ~~40-8-103~~
28 33-22-130."

29
30 **Section 159.** Section 17-7-502, MCA, is amended to read:

1 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
2 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
3 without the need for a biennial legislative appropriation or budget amendment.

4 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply
5 with both of the following provisions:

6 (a) The law containing the statutory authority must be listed in subsection (3).

7 (b) The law or portion of the law making a statutory appropriation must specifically state that a
8 statutory appropriation is made as provided in this section.

9 (3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;
10 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;
11 15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;
12 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304;
13 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205;
14 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306; 23-5-409;
15 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503;
16 39-71-907; 39-71-2321; 39-71-2504; [section 16]; 44-12-206; 44-13-102; 50-4-623; 50-5-232;
17 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214;
18 75-11-313; 76-12-123; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220;
19 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

20 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
21 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
22 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
23 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as
24 determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the
25 bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec.
26 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for
27 supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates
28 July 1, 2001.)"

29
30 **Section 160.** Section 25-1-201, MCA, is amended to read:

1 **"25-1-201. Fees of clerk of district court.** (1) The clerk of the district court shall collect the
2 following fees:

3 (a) at the commencement of each action or proceeding, except a petition for dissolution of
4 marriage, from the plaintiff or petitioner, \$80; for filing a complaint in intervention, from the intervenor,
5 \$80; for filing a petition for dissolution of marriage, a fee of \$120; and for filing a petition for legal
6 separation, a fee of \$120;

7 (b) from each defendant or respondent, on appearance, \$60;

8 (c) on the entry of judgment, from the prevailing party, \$45;

9 (d) for preparing copies of papers on file in the clerk's office, 50 cents per page for the first five
10 pages of each file, per request, and 25 cents per additional page;

11 (e) for each certificate, with seal, \$2;

12 (f) for oath and jurat, with seal, \$1;

13 (g) for search of court records, 50 cents for each year searched, not to exceed a total of \$25;

14 (h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts,
15 the fee for entry of judgment provided for in subsection (1)(c);

16 (i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;

17 (j) for transmission of records or files or transfer of a case to another court, \$5;

18 (k) for filing and entering papers received by transfer from other courts, \$10;

19 (l) for issuing a marriage license, \$30;

20 (m) on the filing of an application for informal, formal, or supervised probate or for the appointment
21 of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from
22 the applicant or petitioner, \$70, which includes the fee for filing a will for probate;

23 (n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative
24 of the estate of a nonresident decedent, \$55;

25 (o) for filing a declaration of marriage without solemnization, \$30;

26 (p) for filing a motion for substitution of a judge, \$100;

27 (q) for filing a petition for adoption, \$75.

28 (2) Except as provided in subsections (3) through (8), 32% of all fees collected by the clerk of the
29 district court must be deposited in and credited to the district court fund. If no district court fund exists,
30 that portion of the fees must be deposited in the general fund for district court operations. The remaining

1 portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

2 (3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage
3 without solemnization, \$14 must be deposited in and credited to the state general fund, \$6.40 must be
4 deposited in and credited to the county general fund, and \$9.60 must be remitted to the state to be
5 deposited as provided in 19-5-404.

6 (4) Of the fee for filing a petition for dissolution of marriage or legal separation, \$40 must be
7 deposited in the state general fund, \$35 must be remitted to the state to be deposited as provided in
8 19-5-404, \$5 must be deposited in the children's trust fund account established by 41-3-702, and \$20
9 must be deposited in and credited to the district court fund. If no district court fund exists, the \$20 must
10 be deposited in the general fund for district court operations.

11 (5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the
12 district court fund or the county general fund or remitted to the state, the clerk of the district court shall
13 deduct from the following fees the amounts indicated:

14 (i) at the commencement of each action or proceeding and for filing a complaint in intervention as
15 provided in subsection (1)(a), \$35;

16 (ii) from each defendant or respondent, on appearance, as provided in subsection (1)(b), \$25;

17 (iii) on the entry of judgment as provided in subsection (1)(c), \$15; and

18 (iv) from the applicant or petitioner, on the filing of an application for probate or for the appointment
19 of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as
20 provided in subsection (1)(m), \$15.

21 (b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the
22 county general fund for district court operations unless the county has a district court fund. If the county
23 has a district court fund, the money must be deposited in that fund.

24 (6) The fee for filing a motion for substitution of a judge as provided in subsection (1)(p) must be
25 remitted to the state to be deposited as provided in 19-5-404.

26 (7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court
27 fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

28 (8) The clerk of the district court shall remit to the credit of the state general fund \$20 of each fee
29 collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion of
30 judicial salaries.

1 (9) The clerk of district court shall remit to the credit of the special revenue account established
 2 in [section 16] §70 of the filing fee required in subsection (1)(g), AND \$5 OF THE FILING FEE MUST BE
 3 DEPOSITED IN THE DISTRICT COURT FUND. IF NO DISTRICT COURT FUND EXISTS, FEES MUST BE
 4 DEPOSITED IN THE GENERAL FUND FOR DISTRICT COURT OPERATIONS."

5
 6 **Section 161.** Section 33-22-130, MCA, is amended to read:

7 **"33-22-130. Coverage for adopted children from time of placement -- preexisting conditions. (1)**

8 Each group and individual disability policy, certificate of insurance, or membership contract that is delivered,
 9 issued for delivery, renewed, extended, or modified in this state must provide coverage for an adopted child
 10 of the insured or subscriber to the same extent as for natural children of the insured or subscriber.

11 (2) The coverage required by this section must be effective from the date of placement for the
 12 purpose of adoption and must continue unless the placement is disrupted prior to legal adoption and the
 13 child is removed from placement. Coverage at the time of placement must include the necessary care and
 14 treatment of medical conditions existing prior to the date of placement.

15 (3) As used in this section, "placement" means ~~placement for adoption as defined in 40-8-103~~ the
 16 transfer of physical custody of a child who is legally free for adoption to a person who intends to adopt the
 17 child."

18
 19 **Section 162.** Section 33-30-1016, MCA, is amended to read:

20 **"33-30-1016. Coverage for adopted children from time of placement -- preexisting conditions. (1)**

21 Each individual or group membership contract issued or amended by a health service corporation in this
 22 state that provides coverage of dependent children of a member must provide coverage for an adopted child
 23 of the member to the same extent as for natural children of the member.

24 (2) The coverage required by this section must be effective from the date of placement for the
 25 purpose of adoption and must continue unless the placement is disrupted prior to legal adoption and the
 26 child is removed from placement. Coverage at the time of placement must include the necessary care and
 27 treatment of medical conditions existing prior to the date of placement.

28 (3) As used in this section, "placement" ~~means placement for adoption~~ has the meaning as defined
 29 in 40-8-103 33-22-130."

1 **Section 163.** Section 33-31-114, MCA, is amended to read:

2 "**33-31-114. Coverage for adopted children from time of placement -- preexisting conditions.** (1)

3 Each health maintenance contract regulated under this chapter must provide coverage for an adopted child
4 of the enrollee to the same extent as for natural children of the enrollee.

5 (2) The coverage required by this section must be effective from the date of placement for the
6 purpose of adoption and must continue unless the placement is disrupted prior to legal adoption and the
7 child is removed from placement. Coverage at the time of placement must include the necessary care and
8 treatment of medical conditions existing prior to the date of placement.

9 (3) As used in this section, "placement" ~~means placement for adoption~~ has the meaning as defined
10 in ~~40-8-103~~ 33-22-130."

11

12 **Section 164.** Section 37-60-301, MCA, is amended to read:

13 "**37-60-301. License required.** (1) Except as provided in 37-60-105, it is unlawful for any person
14 to act as or perform the duties as defined in 37-60-101 of a contract security company or proprietary
15 security organization, a private investigator, or a private security guard without having first obtained a
16 license from the board. Those persons licensed on April 18, 1983, shall retain their current licensure status
17 and shall renew their licenses on the renewal date as prescribed by the department.

18 (2) It is unlawful for any unlicensed person to act as, pretend to be, or represent to the public that
19 the person is licensed as a private investigator, a contract security company, a proprietary security
20 organization, or a private security guard.

21 (3) A person appointed by the court as a confidential intermediary under [section 144] is not
22 required to be licensed under this chapter. A person who is licensed under this chapter is not authorized
23 to act as a confidential intermediary, as defined in [section 3], without meeting the requirements of [section
24 144].

25 ~~(3)(4)~~ A person who knowingly engages an unlicensed private investigator, private security guard,
26 or contract security company is guilty of a misdemeanor punishable under 37-60-411."

27

28 **Section 165.** Section 40-6-108, MCA, is amended to read:

29 "**40-6-108. Statute of limitations.** (1) An action may be commenced at any time for the purpose
30 of declaring the existence or nonexistence of the father and child relationship presumed under ~~subsection~~

1 ~~(a), (b), or (c)~~ of 40-6-105(1)(a), (1)(b), or (1)(c).

2 (2) After the presumption has been rebutted, paternity of the child by another ~~man~~ individual may
3 be determined in the same action if the other ~~man~~ individual has been made a party.

4 (3) An action to determine the existence or nonexistence of the father and child relationship as to
5 a child who has no presumed father under 40-6-105:

6 (a) may not be brought by the child later than 2 years after the child attains the age of majority;

7 (b) may be brought by a state agency at any time after the first application is made under Title IV-D
8 of the Social Security Act for services to the child and before the child attains the age of majority. This
9 subsection is intended to apply retroactively, within the meaning of 1-2-109, to any child for whom a
10 paternity action was barred or could have been barred by a shorter limitation period. However, in previously
11 barred actions that are revived by this subsection, the father is not liable to the state agency for support
12 of the child.

13 (4) The father's liability for a statutory debt created by the payment of public assistance is limited
14 to the amount of assistance paid during the 2-year period preceding commencement of the action. This
15 subsection does not limit the subsequent accrual of a statutory debt.

16 (5) Section 40-6-107 and this section do not extend the time within which a right of inheritance
17 or a right to a succession may be asserted beyond the time provided by law relating to distribution and
18 closing of decedents' estates or to the determination of heirship or otherwise.

19 (6) After the conclusion of an adoption proceeding under ~~Title 40, chapter 8~~ sections 1 through
20 156, a further action to declare the existence or nonexistence of the father and child relationship of the
21 adopted child may not be commenced, except as provided in 40-8-112."

22

23 **Section 166.** Section 41-3-609, MCA, is amended to read:

24 **"41-3-609. Criteria for termination.** (1) The court may order a termination of the parent-child legal
25 relationship upon a finding that any of the following circumstances exist:

26 (a) the parents have relinquished the child pursuant to ~~40-6-135~~ sections 43 and 51];

27 (b) the child has been abandoned by the parents as set forth in 41-3-102(7)(e);

28 (c) the child is an adjudicated youth in need of care and both of the following exist:

29 (i) an appropriate treatment plan that has been approved by the court has not been complied with
30 by the parents or has not been successful; and

1 (ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a
2 reasonable time; or

3 (d) the parent has failed to successfully complete a treatment plan approved by the court within
4 the time periods allowed for the child to be in foster care under 41-3-410 unless it orders other permanent
5 legal custody under 41-3-410.

6 (2) In determining whether the conduct or condition of the parents is unlikely to change within a
7 reasonable time, the court ~~must~~ shall enter a finding that continuation of the parent-child legal relationship
8 will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders
9 the parents unfit, unable, or unwilling to give the child adequate parental care. In making the
10 determinations, the court shall consider but is not limited to the following:

11 (a) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature
12 as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child
13 within a reasonable time;

14 (b) a history of violent behavior by the parent;

15 (c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child
16 caused by the parent;

17 (d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's
18 ability to care and provide for the child;

19 (e) present judicially ordered long-term confinement of the parent;

20 (f) the injury or death of a sibling due to proven parental abuse or neglect; and

21 (g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the
22 parent.

23 (3) In considering any of the factors in subsection (2) in terminating the parent-child relationship,
24 the court shall give primary consideration to the physical, mental, and emotional conditions and needs of
25 the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's
26 physical, mental, and emotional conditions.

27 (4) A treatment plan is not required under this part upon a finding by the court following hearing
28 if:

29 (a) two medical doctors submit testimony that the parent is so severely mentally ill that the parent
30 cannot assume the role of parent;

1 (b) the parent is incarcerated for more than 1 year and a treatment plan is not practical considering
2 the incarceration; or

3 (c) the death of a sibling caused by abuse or neglect by the parent has occurred.

4 (5) If a person is convicted of a felony in which sexual intercourse occurred or if a minor is
5 adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which
6 sexual intercourse occurred and, as a result of the sexual intercourse, a child is born, the court may
7 terminate the offender's parental rights to the child at any time after the conviction or adjudication."

8

9 **Section 167.** Section 41-5-603, MCA, is amended to read:

10 **"41-5-603. Youth court and department records.** (1) Except as provided in subsection (2), all
11 youth court records on file with the clerk of court, including reports of preliminary inquiries, petitions,
12 motions, other filed pleadings, court findings, verdicts, orders, and decrees, are open to public inspection
13 until the records are sealed under 41-5-604.

14 (2) Social, medical, and psychological records, predispositional studies, supervision records of
15 probationers, and any report, charge, or allegation that is not adjudicated pursuant to this chapter are open
16 only to the following:

17 (a) the youth court and its professional staff;

18 (b) representatives of any agency providing supervision and having legal custody of a youth;

19 (c) any other person, by order of the court, having a legitimate interest in the case or in the work
20 of the court;

21 (d) any court and its probation and other professional staff or the attorney for a convicted party
22 who had been a party to proceedings in the youth court when considering the sentence to be imposed upon
23 the party;

24 (e) the county attorney;

25 (f) the youth who is the subject of the report or record, after emancipation or reaching the age of
26 majority;

27 (g) a member of a county interdisciplinary child information team formed under 52-2-211 who is
28 not listed in this subsection (2);

29 (h) members of a local interagency staffing group provided for in 52-2-203; ~~and~~

30 (i) persons allowed access to the records under 45-5-624(7); and

1 (j) persons allowed access under [section 85].

2 (3) Any part of records information secured from records listed in subsection (2), when presented
3 to and used by the court in a proceeding under this chapter, must also be made available to the counsel
4 for the parties to the proceedings.

5 (4) After youth court and department records, reports of preliminary inquiries, predispositional
6 studies, and supervision records of probationers are sealed, they are not open to inspection except, upon
7 order of the youth court, for good cause to:

8 (a) those persons and agencies listed in subsection (2); and

9 (b) adult probation professional staff preparing a presentence report on a youth who has reached
10 the age of majority."

11

12 **Section 168.** Section 41-5-604, MCA, is amended to read:

13 **"41-5-604. Disposition of records.** (1) Except as provided in subsections (2) and (5), youth court
14 records and law enforcement records pertaining to a youth covered by this chapter must be physically
15 sealed 3 years after supervision for an offense ends. The records may be unsealed if a new offense is
16 committed.

17 (2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's
18 18th birthday, the records and files not exempt from sealing under subsection (5) must be physically sealed
19 upon termination of the extended jurisdiction.

20 (3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, an
21 agency or department that has in its possession copies of the sealed records shall also seal or destroy the
22 copies of the records. Anyone violating the provisions of this subsection is subject to contempt of court.

23 (4) This section does not prohibit the destruction of records with the consent of the youth court
24 judge or county attorney after 10 years from the date of sealing.

25 (5) The requirements for sealed records in this section do not apply to fingerprints, DNA records,
26 photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements
27 of the court's judgment or disposition, or records referred to in 45-5-624(7) or [section 85]."

28

29 **Section 169.** Section 50-15-223, MCA, is amended to read:

30 **"50-15-223. Certificates of birth following adoption, legitimation, or determination or**

1 **acknowledgment of paternity.** (1) The department shall establish a new certificate of birth for a person born
2 in this state when the department receives the following:

3 (a) a certificate of adoption, as provided in 50-15-311, a certificate of adoption prepared and filed
4 in accordance with the laws of another state or foreign country, or a certified copy of the decree of
5 adoption, together with the information necessary to identify the original certificate of birth and to establish
6 a new certificate of birth; or

7 (b) a request that a new certificate be established if the request shows that:

8 (i) a district court has determined the paternity of the person; or

9 (ii) both parents have acknowledged the paternity of the person and request that the surname be
10 changed from that shown on the original certificate.

11 (2) The date of birth and the city and county of birth must be stated in the newly established
12 certificate of birth. The department shall substitute the new certificate of birth for the original certificate
13 of birth in the files. The original certificate of birth and the evidence of adoption, legitimation, court
14 determination of paternity, or paternity acknowledgment ~~may not be~~ are only subject to inspection, except
15 upon order of a district court, as provided by rule, as provided in [sections 141 through 146], or as
16 otherwise provided by state law.

17 (3) Upon receipt of a report of an amended decree of adoption, the department shall amend the
18 certificate of birth as provided in rules adopted by the department.

19 (4) Upon receipt of a report or decree of annulment of adoption, the department shall restore the
20 original certificate of birth issued before the adoption to its place in the files and the certificate of birth
21 issued upon adoption and evidence pertaining to the adoption proceeding may not be open to inspection,
22 except upon order of a district court or as provided by rule adopted by the department.

23 (5) Upon written request of both parents and receipt of a sworn acknowledgment and other
24 credible evidence of paternity signed by both parents of a child born outside of marriage, the department
25 shall reflect the paternity on the child's certificate of birth if paternity is not already shown on the certificate
26 of birth.

27 (6) If a certificate of birth is not on file for the adopted child for whom a new certificate of birth
28 is to be established under this section and the date and place of birth have not been determined in the
29 adoption or paternity proceedings pertaining to the child, a delayed certificate of birth must be filed with
30 the department, as provided in 50-15-204, before a new certificate of birth may be established. The new

1 certificate of birth must be prepared on a form prescribed by the department.

2 (7) When a new certificate of birth is established by the department, the department may direct
3 that all copies of the original certificate of birth in the custody of any other custodian of vital records in this
4 state either be sealed from inspection or be forwarded to the department for sealing from inspection.

5 (8) (a) The department shall, upon request of the adopting parents, prepare and register a
6 certificate of birth in this state for a person born in a foreign country who is not a citizen of the United
7 States and who was adopted through a district court in this state.

8 (b) The certificate of birth must be established by the department upon receipt of a certificate of
9 adoption, conforming to the requirements of 50-15-311, from the court that reflects entry of an order of
10 adoption, proof of the date and place of the child's birth, and a request for the establishment of a certificate
11 of birth from the court, the adopting parents, or the adopted person, if the person is 18 years of age or
12 older.

13 (c) The certificate of birth must be labeled "Certificate of Foreign Birth" and must contain the actual
14 country of birth. A statement must be included on the certificate indicating that it is not evidence of United
15 States citizenship for the child for whom it is issued.

16 (d) After registration of the certificate of birth in the new name of the adopted person, the
17 department shall seal and file the certificate of adoption, which is not subject to inspection, except upon
18 order of the district court, as provided by rule, or as otherwise provided by state law.

19 (9) The department may promulgate rules necessary to implement this section."
20

21 **Section 170.** Section 52-2-505, MCA, is amended to read:

22 "**52-2-505. Records to be confidential.** All records regarding subsidized adoption are confidential
23 and may be disclosed only in accordance with the provisions of ~~40-8-126~~ [section 141]."
24

25 **NEW SECTION. Section 171. Repealer.** Sections 40-6-125, 40-6-126, 40-6-127, 40-6-128,
26 40-6-129, 40-6-130, 40-6-135, 40-8-101, 40-8-102, 40-8-103, 40-8-104, 40-8-105, 40-8-106, 40-8-107,
27 40-8-108, 40-8-109, 40-8-110, 40-8-111, 40-8-112, 40-8-113, 40-8-114, 40-8-115, 40-8-116, 40-8-117,
28 40-8-121, 40-8-122, 40-8-123, 40-8-124, 40-8-125, 40-8-126, 40-8-127, 40-8-128, 40-8-135, 40-8-136,
29 40-8-201, ~~and 40-8-202,~~ 52-2-401, 52-2-402, 52-2-403, 52-2-404, 52-2-405, 52-2-406, AND 52-2-407,
30 MCA, are repealed.

1 **NEW SECTION. Section 172. Severability.** If a part of [this act] is invalid, all valid parts that are
2 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
3 applications, the part remains in effect in all valid applications that are severable from the invalid
4 applications.

5
6 **NEW SECTION. Section 173. Applicability.** (1) [Sections 1 through 156] apply to proceedings
7 commenced on or after October 1, 1997.

8 (2) A petition for adoption filed prior to October 1, 1997, is governed by the law in effect at the
9 time the petition was filed.

10 (3) The putative father registry requirements apply to children born on or after October 1, 1997.
11

12 **NEW SECTION. Section 174. Code commissioner instructions.** The code commissioner shall
13 renumber ~~Title 41, chapter 4, and Title 52, chapter 2, parts 4 and PART 5~~, as an integral part of [sections
14 1 through 156] and make any changes necessary to reflect the renumbering. The entire body of material
15 must be codified as Title 42.
16

17 **NEW SECTION. Section 175. Termination.** [Sections 27, 59, 64, 66, ~~68~~ 69, and 74] terminate
18 October 1, 1998.
19

20 **NEW SECTION. Section 176. Notification to tribal governments.** The secretary of state shall send
21 a copy of [this act] to each tribal government located on the seven Montana reservations.
22

23 **NEW SECTION. Section 177. Effective dates.** (1) Except as provided in subsection (2), [this act]
24 is effective October 1, 1997.

25 (2) [Sections 19 through 26, 28 through 38, 60, 65, 67, 69, and 75] are effective October 1, 1998.
26

-END-

1 HOUSE BILL NO. 163

2 INTRODUCED BY J. JOHNSON, MENAHAN

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE LAWS
6 GOVERNING ADOPTION; PROVIDING PROCEDURES FOR VARIOUS TYPES OF ADOPTIONS; PROVIDING
7 FOR A PUTATIVE FATHER REGISTRY; PROVIDING FOR THE RELINQUISHMENT AND TERMINATION OF
8 PARENTAL RIGHTS; PROVIDING FOR DEGREES OF ACCESS TO RECORDS; PRESCRIBING A FEE FOR
9 FILING A PETITION FOR ADOPTION; STATUTORILY APPROPRIATING FEES; AMENDING SECTIONS
10 2-6-104, 2-18-606, 17-7-502, 25-1-201, 33-22-130, 33-30-1016, 33-31-114, 37-60-301, 40-6-108,
11 41-3-609, 41-5-603, 41-5-604, 50-15-223, AND 52-2-505, MCA; REPEALING SECTIONS 40-6-125,
12 40-6-126, 40-6-127, 40-6-128, 40-6-129, 40-6-130, 40-6-135, 40-8-101, 40-8-102, 40-8-103, 40-8-104,
13 40-8-105, 40-8-106, 40-8-107, 40-8-108, 40-8-109, 40-8-110, 40-8-111, 40-8-112, 40-8-113, 40-8-114,
14 40-8-115, 40-8-116, 40-8-117, 40-8-121, 40-8-122, 40-8-123, 40-8-124, 40-8-125, 40-8-126, 40-8-127,
15 40-8-128, 40-8-135, 40-8-136, 40-8-201, ~~AND 40-8-202, 52-2-401, 52-2-402, 52-2-403, 52-2-404,~~
16 ~~52-2-405, 52-2-406, AND 52-2-407,~~ MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES,
17 AND A TERMINATION DATE."

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE
REPRINTED. PLEASE REFER TO SECOND READING COPY
(YELLOW) FOR COMPLETE TEXT.**

HOUSE BILL NO. 163

INTRODUCED BY J. JOHNSON, MENAHAN

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE LAWS GOVERNING ADOPTION; PROVIDING PROCEDURES FOR VARIOUS TYPES OF ADOPTIONS; PROVIDING FOR A PUTATIVE FATHER REGISTRY; PROVIDING FOR THE RELINQUISHMENT AND TERMINATION OF PARENTAL RIGHTS; PROVIDING FOR DEGREES OF ACCESS TO RECORDS; PRESCRIBING A FEE FOR FILING A PETITION FOR ADOPTION; STATUTORILY APPROPRIATING FEES; AMENDING SECTIONS 2-6-104, 2-18-606, 17-7-502, 25-1-201, 33-22-130, 33-30-1016, 33-31-114, 37-60-301, 40-6-108, 41-3-609, 41-5-603, 41-5-604, 50-15-223, AND 52-2-505, MCA; REPEALING SECTIONS 40-6-125, 40-6-126, 40-6-127, 40-6-128, 40-6-129, 40-6-130, 40-6-135, 40-8-101, 40-8-102, 40-8-103, 40-8-104, 40-8-105, 40-8-106, 40-8-107, 40-8-108, 40-8-109, 40-8-110, 40-8-111, 40-8-112, 40-8-113, 40-8-114, 40-8-115, 40-8-116, 40-8-117, 40-8-121, 40-8-122, 40-8-123, 40-8-124, 40-8-125, 40-8-126, 40-8-127, 40-8-128, 40-8-135, 40-8-136, 40-8-201, ~~AND 40-8-202, 52-2-401, 52-2-402, 52-2-403, 52-2-404, 52-2-405, 52-2-406, AND 52-2-407~~, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE."

THE ONLY CHANGE ON HB 163 WAS ON PAGE 83. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.

1 HOUSE BILL NO. 163

2 INTRODUCED BY J. JOHNSON, MENAHAN

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE LAWS
6 GOVERNING ADOPTION; PROVIDING PROCEDURES FOR VARIOUS TYPES OF ADOPTIONS; PROVIDING
7 FOR A PUTATIVE FATHER REGISTRY; PROVIDING FOR THE RELINQUISHMENT AND TERMINATION OF
8 PARENTAL RIGHTS; PROVIDING FOR DEGREES OF ACCESS TO RECORDS; PRESCRIBING A FEE FOR
9 FILING A PETITION FOR ADOPTION; STATUTORILY APPROPRIATING FEES; AMENDING SECTIONS
10 2-6-104, 2-18-606, 17-7-502, 25-1-201, 33-22-130, 33-30-1016, 33-31-114, 37-60-301, 40-6-108,
11 41-3-609, 41-5-603, 41-5-604, 50-15-223, AND 52-2-505, MCA; REPEALING SECTIONS 40-6-125,
12 40-6-126, 40-6-127, 40-6-128, 40-6-129, 40-6-130, 40-6-135, 40-8-101, 40-8-102, 40-8-103, 40-8-104,
13 40-8-105, 40-8-106, 40-8-107, 40-8-108, 40-8-109, 40-8-110, 40-8-111, 40-8-112, 40-8-113, 40-8-114,
14 40-8-115, 40-8-116, 40-8-117, 40-8-121, 40-8-122, 40-8-123, 40-8-124, 40-8-125, 40-8-126, 40-8-127,
15 40-8-128, 40-8-135, 40-8-136, 40-8-201, ~~AND 40-8-202, 52-2-401, 52-2-402, 52-2-403, 52-2-404,~~
16 52-2-405, 52-2-406, AND 52-2-407, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES,
17 AND A TERMINATION DATE."

18
19 STATEMENT OF INTENT

20 A statement of intent is required for this bill because the bill gives the department of public health
21 and human services authority to adopt administrative rules. The rules must provide procedures for the
22 putative father registry, including methods of notification, filing, and accessing information. The
23 department shall adopt rules for licensing child-placing agencies. To the extent feasible, the rules should
24 incorporate existing procedures. The needs of the child in the adoption proceeding must be the primary
25 focus of the rules.

26
27 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:28
29 NEW SECTION. **Section 1. Short title.** [Sections 1 through 156] may be cited as the "Montana
30 Adoption Act".

1 **NEW SECTION. Section 2. Adoption policy.** (1) It is the policy of the state of Montana to ensure
2 that the best interests of the child are met by adoption proceedings.

3 (2) The primary purpose of adoption is to help a child become a permanent member of a nurturing
4 family that can give the child the care, protection, and opportunities essential for healthy personal growth
5 and development.

6 (3) The well-being of the adopted child is the main objective in the placement of a child for
7 adoption. The needs of the child must be the primary focus of adoption proceedings, with full recognition
8 of the interdependent needs and interests of birth parents and adoptive parents.

9 (4) It is the policy of the state of Montana to support relationships between adoptees and their birth
10 families when desired by the affected parties.

11
12 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 156], unless the context
13 requires otherwise, the following definitions apply:

14 (1) "Adoptee" means an adopted person or a person who is the subject of adoption proceedings
15 that are intended to result in the adoptee becoming the legal child of another person.

16 (2) "Adoption" means the act of creating the legal relationship between parent and child when it
17 does not exist genetically.

18 (3) "Adoptive parent" means an adult who has become the mother or father of a child through the
19 legal process of adoption.

20 (4) "Agency" means a public or nonprofit entity that is licensed by any jurisdiction of the United
21 States and that is expressly empowered to place children preliminary to a possible adoption.

22 (5) "Birth parent" means the woman who gave birth to the child or the father of genetic origin of
23 the child.

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

25 (7) "Confidential intermediary" means a person certified by the department and under contract with
26 or employed by a nonprofit entity with expertise in adoption.

27 (8) "Court" means a court of record in a competent jurisdiction and in Montana means a district
28 court or a tribal court.

29 (9) "Department" means the department of public health and human services, provided for in
30 2-15-2201.

1 (10) "Direct parental placement adoption" means an adoption in which the parent of the child
2 places the child with a prospective adoptive parent personally known and selected by the parent
3 independent of an agency.

4 (11) "Extended family member" means a person who is or was the adoptee's parent, grandparent
5 aunt or uncle, brother or sister, or child.

6 (12) "Identifying information" means information that directly reveals or indirectly indicates the
7 identity of a person and includes the person's name or address.

8 (13) "Nonidentifying information" means information that does not directly reveal or indirectly
9 indicate the identity of a person, including:

10 (a) medical information and information related to general physical characteristics;

11 (b) family information, including marital status and the existence of siblings;

12 (c) religious affiliation;

13 (d) educational background information that does not reveal specific programs or institutions
14 attended;

15 (e) general occupation;

16 (f) hobbies; and

17 (g) photographs provided by any of the parties involved that were specifically intended to be
18 provided to another party.

19 (14) "Parent" means the birth or adoptive mother or the birth, adoptive, or legal father whose
20 parental rights have not been terminated.

21 (15) "Placing parent" means a parent who is voluntarily making a child available for adoption.

22 (16) "Preplacement evaluation" means the home study process conducted by the department or
23 a licensed child-placing agency that:

24 (a) assists a prospective adoptive parent or family to assess its own readiness to adopt; and

25 (b) assesses whether the prospective adoptive parent or family and home meet applicable standards.

26 (17) "Records" means all documents, exhibits, and data pertaining to an adoption.

27 (18) "Relinquishment" means the informed and voluntary release in writing of all parental rights
28 with respect to a child by a parent to an agency or individual.

29
30 **NEW SECTION. Section 4. Venue.** (1) Proceedings for adoption must be brought in the district

1 court of the county where the petitioners reside.

2 (2) Petitions for appointment of a confidential intermediary may be filed:

3 (a) in the county where the decree of adoption was issued;

4 (b) in the county of residence of the petitioner; or

5 (c) if the petitioner resides out of state, in any county.

6
7 **NEW SECTION. Section 5. Who may be adopted.** (1) A child is legally free for adoption if:

8 (a) the child does not have a living parent;

9 (b) the parental rights of the living parents of the child have been terminated according to the laws
10 of this state or of another jurisdiction; or

11 (c) the living parents, guardian authorized by the court, or department or agency with custody of
12 the child consent to the adoption.

13 (2) An adult may be adopted as provided in [sections 121 through 125].

14 (3) A stepchild may be adopted as provided in [sections 112 through 120].

15
16 **NEW SECTION. Section 6. Who may adopt.** The following individuals who otherwise meet the
17 requirements of [sections 1 through 156] are eligible to adopt a child:

18 (1) a husband and wife jointly or either the husband or wife if the other spouse is a parent of the
19 child;

20 (2) an unmarried individual who is at least 18 years of age; or

21 (3) a married individual at least 18 years of age who is legally separated from the other spouse or
22 whose spouse has judicially been declared incompetent.

23
24 **NEW SECTION. Section 7. Adoption prohibited if child not legally free.** (1) An adoption decree
25 may not be entered if the child who is the subject of an adoption proceeding is not legally free for adoption.

26 (2) A child may be placed for adoption only by:

27 (a) the department or another agency to which the child has been relinquished for purposes of
28 adoption;

29 (b) the department or another agency expressly authorized to place the child for adoption by a
30 court order terminating the relationship between the child and the child's parent or guardian;

1 (c) the child's parents; or

2 (d) a guardian expressly authorized by the court to place the child for adoption.

3

4 **NEW SECTION. Section 8. Rights and responsibilities of parties in adoption proceedings.** (1) The
5 legislature finds that the rights and interests of all parties affected by an adoption proceeding must be
6 considered and balanced in determining the necessary constitutional protection and appropriate processes.

7 (2) The legislature finds that:

8 (a) every child deserves to be raised by a family in which support and care are promptly provided
9 by one or more parents in a nurturing environment on a regular and ongoing basis;

10 (b) the state has a compelling interest in providing stable and permanent homes for adoptive
11 children in a prompt manner, in preventing the disruption of adoptive placements, and in holding parents
12 accountable for meeting the needs of children;

13 (c) an unmarried mother, faced with the responsibility of making crucial decisions about the future
14 of a newborn child, is entitled to privacy, has the right to make timely and appropriate decisions regarding
15 the mother's future and the future of the child, and is entitled to assurance regarding the permanence of
16 an adoptive placement;

17 (d) adoptive children have a right to permanence and stability in adoptive placements;

18 (e) adoptive parents have a constitutionally protected liberty and privacy interest in retaining
19 custody of an adopted child; and

20 (f) a birth father who is not married to the child's mother has the primary responsibility to protect
21 the father's rights. The father's inchoate interest in the child requires constitutional protection only when
22 the father has demonstrated a timely ~~and full~~ commitment to the responsibilities of parenthood, both during
23 pregnancy and upon the child's birth. The state has a compelling interest in requiring a birth father to
24 demonstrate that commitment by:

25 (i) timely and consistently providing financial support;

26 (ii) complying with the requirements of the putative father registry; and

27 (iii) demonstrating the establishment of a substantial relationship with the child as described in
28 [section 73].

29 (3) If a birth father who is not married to the child's mother fails to grasp the opportunities that
30 are available to the father to establish a relationship with the child, the father's parental rights will be lost

1 entirely by the failure to timely exercise it or by the failure to ~~strictly~~ comply with the available legal steps
2 to substantiate the parental interest.

3

4 NEW SECTION. Section 9. Need for finality -- balancing of interests. Finality is necessary in order
5 to facilitate the state's compelling interest. The legislature finds that the INTERESTS OF THE CHILD
6 OUTWEIGH THE interests of the state, the mother, ~~the child, and the adoptive parents outweigh the interest~~
7 ~~of, AND~~ a birth father who is not married to the child's mother ~~and who does not timely grasp the~~
8 ~~opportunities available to establish and demonstrate a relationship with the father's child in accordance with~~
9 ~~the requirements of the putative father registry.~~

10

11 NEW SECTION. Section 10. Presumed knowledge that child may be adopted without notice. A
12 birth father who is not married to the mother of the child is presumed to know that the child may be
13 adopted without the father's consent and ~~without notice to THAT~~ the father ~~unless the father strictly~~
14 ~~complies~~ IS REQUIRED TO COMPLY with the provisions of [sections 1 through 156] and ~~manifests~~
15 MANIFEST a ~~prompt and full~~ commitment to the father's parental responsibilities.

16

17 NEW SECTION. Section 11. Unmarried birth mother's right of privacy. An unmarried birth mother
18 has a right of privacy with regard to the mother's pregnancy and adoption plan ~~and therefore has no legal~~
19 ~~obligation to disclose the identity of the birth father of the child prior to or during an adoption proceeding.~~
20 ~~The mother does not have an obligation to volunteer information to the court with respect to a potential~~
21 ~~birth father who is not married to the mother.~~ BIRTH MOTHERS ARE ENCOURAGED TO PROVIDE ALL
22 KNOWN INFORMATION ABOUT THE BIRTH FATHER OF ANY CHILD FOR WHOM AN ADOPTION IS
23 PLANNED.

24

25 NEW SECTION. Section 12. Recognition of adoption in another jurisdiction. (1) A decree or order
26 of adoption has the same effect as a decree or order of adoption issued by a court of this state if the decree
27 or order is:

- 28 (a) issued by a court of any other state that is entitled to full faith and credit in this state; or
29 (b) entered by a court or administrative entity in another country acting pursuant to:
30 (i) that country's law; or

1 (ii) to any convention or treaty on intercountry adoption that the United States has ratified.

2 (2) The rights and obligations of the parties as to matters within the jurisdiction of this state must
3 be determined as though the decree or order were issued by a court of this state.

4
5 **NEW SECTION. Section 13. Proceedings subject to Indian Child Welfare Act.** A proceeding under
6 [sections 1 through 156] that pertains to an Indian child, as defined in the Indian Child Welfare Act of
7 1978, 25 U.S.C. 1901, et seq., is subject to that act.

8
9 **NEW SECTION. Section 14. Interstate placement.** The Interstate Compact on the Placement of
10 Children, Title 41, chapter 4, governs:

11 (1) an adoption in this state of a child brought into this state from another state by a prospective
12 adoptive parent;

13 (2) a person residing in or an agency doing business from another state who places the child for
14 adoption in this state; and

15 (3) the placement of a Montana child in another state.

16
17 **NEW SECTION. Section 15. International placement.** An adoption in this state of a child brought
18 into this state from another country by a prospective adoptive parent or by a person who places the child
19 for adoption in this state is governed by [sections 1 through 156] and is subject to any convention or treaty
20 governing adoption that the United States has ratified and to any relevant federal law.

21
22 **NEW SECTION. Section 16. Fees for services -- special revenue account -- statutory appropriation.**

23 (1) The department shall establish fees that it may charge and that are reasonably related to the cost
24 incurred by the department in completing or contracting for adoption services.

25 (2) The department may contract with licensed social workers or licensed child-placing agencies
26 for the purposes of completing the preplacement or postplacement evaluation or for providing
27 postplacement supervision.

28 (3) An agency contracting to perform the services may set and charge a reasonable fee
29 commensurate with the services provided.

30 (4) There is an adoption services account in the state special revenue fund. The fees collected by

1 the department under [sections 1 through 156] AND FROM THE DISTRICT COURT FILING FEE PURSUANT
 2 TO 25-1-201(1)(Q) must be deposited into this account and may be used by the department for adoption
 3 services. The money in the account is statutorily appropriated, as provided in 17-7-502, to the department.
 4

5 NEW SECTION. Section 17. Rulemaking authority. The department may adopt rules to implement
 6 the administration and purposes of [sections 1 through 156].
 7

8 NEW SECTION. Section 18. Definitions. As used in [sections 18 through 38], unless the context
 9 requires otherwise, the following definitions apply:

10 (1) "Child" includes an unborn child.

11 (2) (a) "Putative father" means an individual who may be a child's birth father but who:

12 (i) is not married to the child's mother on or before the date that the child is born; or

13 (ii) has not established paternity of the child ~~in a court proceeding~~ prior to the filing of a petition for
 14 termination of parental rights to the child for purposes of adoption.

15 (b) The term includes an individual who is:

16 (i) less than 18 years of age; and

17 (ii) not married to the child's mother even though the individual is a presumed father within the
 18 meaning of 40-6-105.

19 (3) "Registry" means the putative father registry established under [section 19].
 20

21 NEW SECTION. Section 19. Putative father registry. The putative father registry is established
 22 within the vital statistics bureau of the department. The department shall adopt rules to administer the
 23 registry.
 24

25 NEW SECTION. Section 20. Purpose of registry. (1) The purpose of the putative father registry
 26 is to provide notice of ~~adoption proceedings~~ TERMINATION OF PARENTAL RIGHTS to a putative father who
 27 asserts a parental interest in a child so that the putative father may appear in ~~an adoption~~ A proceeding and
 28 have an opportunity to establish that the putative father's inchoate rights in the child have vested because
 29 a substantial relationship with the child has been established as provided in [section 73].

30 (2) A IN ADDITION TO ANY OTHER NOTICE TO WHICH THE PUTATIVE FATHER IS ENTITLED,

1 A putative father of a child who complies with the requirements of the putative father registry is entitled
 2 to notice of any ~~adoption~~ proceedings involving TERMINATION OF PARENTAL RIGHTS TO the child.

3
 4 NEW SECTION. Section 21. Presumed knowledge of pregnancy -- duty to register to be afforded
 5 notice -- putative and presumed fathers. (1) A person who engages in sexual relations with a member of
 6 the opposite sex is presumed to know that a pregnancy could result.

7 (2) A IN ADDITION TO ANY OTHER NOTICE TO WHICH THE PUTATIVE FATHER IS ENTITLED,
 8 A putative father is ~~not~~ entitled to notice of termination of parental rights proceedings for the purposes of
 9 adoption ~~unless~~ IF the putative father has ~~strictly~~ complied with the requirements of the putative father
 10 registry.

11 (3) An individual who is not married to the mother but who is presumed to be a father under
 12 40-6-105 ~~is not relieved from the obligation of registering~~ AND REGISTERS in accordance with [sections
 13 18 through 38] ~~in order~~ IS ENTITLED to receive notice of a termination of parental rights proceeding ~~for a~~
 14 ~~child for whom the individual may be the presumed father.~~

15
 16 NEW SECTION. Section 22. Registration. (1) A IN ADDITION TO ANY OTHER NOTICE TO
 17 WHICH THE PUTATIVE FATHER IS ENTITLED, A putative father is entitled to notice of any ~~adoption~~
 18 proceedings TO TERMINATE PARENTAL RIGHTS involving a child whom the putative father might have
 19 fathered if the putative father timely files the following information with the department:

20 (a) the putative father's:

21 (i) full name;

22 (ii) address at which the putative father may be served by certified mail, return receipt requested,
 23 with notice of a proceeding to terminate parental rights;

24 (iii) social security number;

25 (iv) date of birth; and

26 (v) tribal affiliation if applicable;

27 (b) the mother's:

28 (i) name, including all other names known to the putative father that the mother uses; and

29 (ii) address, social security number, and date of birth, if known;

30 (c) the child's:

- 1 (i) name and place of birth, if known; or
 2 (ii) the approximate date and location of A POSSIBLE conception and the approximate expected
 3 date of delivery.

4 (2) If a putative father does not have an address where the putative father can receive notice of
 5 a termination of parental rights proceeding, the putative father may designate another person as an agent
 6 for the purpose of receiving notice. The putative father shall provide the department with the agent's name
 7 and the address at which the agent may be served. Service of notice by certified mail, return receipt
 8 requested, constitutes service of notice upon the putative father.

9 (3) A putative father shall register under this section on a registration form prescribed by the
 10 department or with a legibly typed or handwritten statement that provides the required information and that
 11 is submitted to the department pursuant to [section 24]. The registration must be signed by the putative
 12 father and notarized.

13 (4) A putative father who registers under this section is responsible for providing written updates
 14 regarding any change of the putative father's name or address.

15

16 **NEW SECTION. Section 23. When putative father to register -- actual knowledge of pregnancy**
 17 **not required.** (1) In order to be entitled, **BECAUSE OF REGISTRATION,** to receive notice of a termination
 18 of parental rights proceeding, a putative father's registration form complying with the requirements of
 19 [section 22] must be received by the department not later than ~~close of business on the date of the child's~~
 20 ~~birth~~ **5 DAYS PRIOR TO A HEARING TO TERMINATE PARENTAL RIGHTS.**

21 (2) A putative father may file all information required by [section 22] before a child's birth even
 22 though the putative father has no actual knowledge that a pregnancy has occurred or that a pregnancy has
 23 continued through gestation.

24

25 **NEW SECTION. Section 24. How registration submitted.** A putative father shall submit a
 26 registration form:

27 (1) in person; or

28 (2) by facsimile transmission, mail, private courier, or express delivery service.

29

30 **NEW SECTION. Section 25. Burden of putative father to preserve rights upon receipt of notice.**

1 When a putative father receives notice that a child in whom the putative father claims a parental interest
 2 is the subject of a termination of parental rights proceeding, the putative father must appear at the hearing
 3 held on the petition to terminate parental rights and demonstrate, at a minimum, that the criteria set out
 4 in [section 73] for determining whether the putative father has made reasonable efforts to establish a
 5 substantial relationship with the child who is the subject of the proceedings have been met.

6
 7 **NEW SECTION. Section 26. Presumption created -- admissibility in other proceedings.** A person
 8 filing a registration form is presumed to be the father of the child for purposes of adoption unless the
 9 mother denies that the registrant is the father. The registration or any revocation that is filed is admissible
 10 in a paternity proceeding ~~under 40-6-107~~ and creates a rebuttable presumption as to the paternity of the
 11 child ~~for purposes of 40-6-107~~. The registration creates a rebuttable presumption as to paternity of the
 12 child for purposes of an abuse or neglect proceeding under Title 41, chapter 3, or a child support
 13 enforcement action under Title 40, chapter 5.

14
 15 **NEW SECTION. Section 27. Duties of department.** (1) The department shall:

16 (a) prescribe a registration form for the information that a putative father submits under [section
 17 22]; and

18 (b) make the registration forms available through:

- 19 (i) the department;
- 20 (ii) each clerk of a district court;
- 21 (iii) each local health department; and
- 22 (iv) each county clerk and recorder.

23 (2) A notice provided by the department that informs the public about the purpose and operation
 24 of the registry must be posted in a conspicuous place by each:

- 25 (a) clerk of a district court;
- 26 (b) driver's examination station of the motor vehicle division of the department of justice;
- 27 (c) local health department; and
- 28 (d) county clerk and recorder.

29 (3) The title and registration bureau of the motor vehicle division of the department of justice and
 30 the county treasurer of each county shall deliver a copy of the notice described in subsection (4) with the

1 registration tags for every vehicle registered in Montana between July 1, 1997, and October 1, 1998. The
2 department shall provide the copies of the notices to the title and registration bureau and the county
3 treasurers.

4 (4) The notice under subsection (2) must include information regarding:

5 (a) where to obtain a registration form;

6 (b) where to register;

7 (c) the circumstances under which a putative father is required to register;

8 (d) the period under [section 23] during which a putative father is required to register in order to
9 entitle the putative father to receive notice of a proceeding to terminate parental rights;

10 (e) the information that must be provided for the registry and what other actions the putative father
11 is required to take to preserve a right to notice;

12 (f) the consequences of not submitting a timely registration; and

13 (g) the penalties for filing a false claim with the putative father registry.

14

15 **NEW SECTION. Section 28. Duties of department.** (1) The department shall:

16 (a) prescribe a registration form for the information that a putative father submits under [section
17 22]; and

18 (b) make the registration forms available through:

19 (i) the department;

20 (ii) each clerk of a district court; and

21 (iii) each local health department.

22 (2) A notice provided by the department that informs the public about the purpose and operation
23 of the registry must be posted in a conspicuous place by each:

24 (a) clerk of a district court;

25 (b) driver’s examination station of the motor vehicle division of the department of justice;

26 (c) local health department; and

27 (d) county clerk and recorder.

28 (3) The notice under subsection (2) must include information regarding:

29 (a) where to obtain a registration form;

30 (b) where to register;

- 1 (c) the circumstances under which a putative father is required to register;
- 2 (d) the period under [section 23] during which a putative father is required to register in order to
- 3 entitle the putative father to receive notice of an adoption;
- 4 (e) the information that must be provided for the registry and what other actions the putative father
- 5 is required to take to preserve a right to notice;
- 6 (f) the consequences of not submitting a timely registration; and
- 7 (g) the penalties for filing a false claim with the putative father registry.

8

9 **NEW SECTION. Section 29. Information maintained in registry.** The department shall maintain the

10 following information in the registry:

- 11 (1) the registration information provided by the putative father under [section 22];
- 12 (2) the date that the department receives a putative father's registration;
- 13 (3) the name and affiliation of any person who requests that the department search the registry
- 14 to determine whether a putative father is registered in relation to a mother whose child is or may be the
- 15 subject of a termination proceeding and the date the request is submitted; and
- 16 (4) any other information that the department determines is necessary to access the information
- 17 in the registry.

18

19 **NEW SECTION. Section 30. Storage of data.** The department shall store the registry's data in a

20 manner so that the data is accessible through:

- 21 (1) the putative father's name;
- 22 (2) the mother's name, INCLUDING HER MAIDEN NAME, IF KNOWN;
- 23 (3) the date of birth of the putative father, the mother, and the child, if known;
- 24 (4) the child's name, if known; and
- 25 (5) the social security number for the putative father, the mother, and the child, if known.

26

27 **NEW SECTION. Section 31. Registry search -- request -- affidavit.** (1) The following persons may

28 at any time request that the department search the registry to determine whether a putative father is

29 registered in relation to a child who is or may be the subject of a proceeding to terminate parental rights:

- 30 (a) a representative of the department;

1 (b) a representative of an agency when the agency is or may be arranging an adoption;

2 (c) a prospective adoptive parent or an attorney representing a prospective adoptive parent in a
3 direct parental placement adoption who has the notarized consent of the birth mother; or

4 (d) any woman who is the subject of a registration.

5 (2) When a petition to terminate parental rights for purposes of an adoption is filed, the petitioner
6 shall:

7 (a) request that the department search the registry at least 1 day after the expiration of the period
8 specified under [section 23]; and

9 (b) file an affidavit prepared by the department in response to a request under subsection (2)(a)
10 with the court presiding over the termination of parental rights proceeding under [section 63]. The affidavit
11 must meet the requirements of subsections (4) and (5).

12 (3) A request for information about a registration from the department must be in writing.

13 (4) Not later than 5 days after receiving a request under subsection (2)(a), the department shall
14 submit an affidavit to the requestor verifying whether a putative father has registered within the period
15 allowed under [section 23] in relation to a mother whose child or expected child is the subject of the
16 termination proceeding.

17 (5) Whenever the department finds that one or more putative fathers are registered, the department
18 shall:

19 (a) submit a copy of each registration form with the department's affidavit; and

20 (b) include in the affidavit the date that the department representative, agency, or attorney
21 submitted the request for the search.

22 (6) A court may not issue an order terminating parental rights unless the department's affidavit
23 under subsection (5) is filed with the court.

24

25 **NEW SECTION. Section 32. Duties of department upon receipt of request.** (1) Whenever the
26 department receives a request, the department shall:

27 (a) search its records of putative father registrations and search its records for any
28 acknowledgement of paternity filed pursuant to 40-6-105; and

29 (b) notify the requestor as to whether a paternity action has been filed and a paternity order issued
30 to the department pursuant to ~~40-6-116~~ requiring the issuance of a new birth certificate concerning a child

1 who is or may be the subject of an adoption that the attorney or agency is arranging.

2 (2) The department may charge a reasonable fee for responding to a request under this section.

3
4 NEW SECTION. Section 33. Failure to register — irrevocable implied consent — fraud OF AGENCY
5 TO POST NOTICE. ~~(1) A putative father who fails to register within the period specified under [section~~
6 ~~23] waives notice of a termination proceeding.~~

7 ~~(2) The putative father's waiver under subsection (1) constitutes an irrevocable implied consent~~
8 ~~to the child's adoption.~~

9 ~~(3) Failure of an agency to post a proper notice under [section 27] does not relieve a putative father~~
10 ~~of the obligation to register with the department in accordance with the putative father registry in order to~~
11 ~~entitle the putative father, BECAUSE OF REGISTRATION, to notice of proceedings involving a child who~~
12 ~~may have been fathered by the putative father.~~

13
14 NEW SECTION. Section 34. Revocation of registration. A UNLESS A SUPPORT ORDER HAS BEEN
15 ISSUED, A putative father may revoke a registration at any time by submitting to the department a signed,
16 notarized statement revoking the registration.

17
18 NEW SECTION. Section 35. Certified copy of registration form to be furnished upon request. The
19 department shall furnish a certified copy of the putative father's registration form upon written request by:

- 20 (1) a putative father whose name appears on the registration form being requested;
21 (2) a mother whose name appears on the registration form being requested;
22 (3) upon reaching majority, a person who was the subject of a registration;
23 (4) a prospective adoptive parent or an attorney representing a prospective adoptive parent in a
24 direct parental placement adoption who has the notarized consent of the birth mother;
25 (5) a licensed child-placing agency;
26 (6) a court that presides over a pending adoption;
27 (7) the child support enforcement division of the department; or
28 (8) a representative of the department involved in an adoption or a neglect and dependency
29 proceeding under Title 41, chapter 3.

30

1 **NEW SECTION. Section 36. Information confidential.** Except as otherwise provided in [sections
2 18 through 38], information contained within the registry is confidential.

3
4 **NEW SECTION. Section 37. Registration of false information -- criminal and civil penalties.** A
5 person who purposely or knowingly registers false information or requests confidential information in
6 violation of a putative father registry commits a misdemeanor and may be civilly liable for damages.

7
8 **NEW SECTION. Section 38. Responsibility of each party to protect interests -- putative fathers --
9 fraud no defense.** (1) The legislature finds no practical way to remove all risk of fraud or misrepresentation
10 in adoption proceedings and has provided ~~a method for absolute~~ protection of a putative father's rights by
11 ~~compliance with the provisions of the putative father registry.~~ In balancing the rights and interests of the
12 state and of all parties affected by fraud, specifically the child, the adoptive parents, and the putative
13 father, the legislature determines that the putative father is in the best position to prevent or ameliorate the
14 effects of fraud and that, therefore, the burden of establishing fraud **AGAINST THE PUTATIVE FATHER** by
15 clear and convincing evidence must be born by the putative father.

16 (2) Each parent of a child conceived or born outside of marriage to the other parent is responsible
17 for that parent's own actions and assertion of their parental rights notwithstanding any action, statement,
18 or omission of the other parent or third parties.

19 (3) A person injured by fraudulent representations or actions in connection with an adoption is
20 entitled to pursue civil or criminal penalties. A fraudulent representation is not a defense for failure to
21 ~~strictly~~ comply with the requirements of the putative father registry and is not a basis for dismissal of a
22 petition for adoption, vacation of an adoption decree, or an automatic grant of custody to the injured party.

23 (4) A putative father who resides in another state may contest an adoption prior to issuance of a
24 decree of adoption and may assert the putative father's interest in the child. If the adoption is contested,
25 the court shall hold an evidentiary hearing to determine if:

26 (a) the putative father resides and has resided in another state where the unmarried mother lived
27 or resided either at the time of conception or through a portion of the pregnancy;

28 (b) the mother left that state, concealing the location from the putative father regarding where the
29 mother could be contacted or located;

30 (c) the father has, through every reasonable means, attempted to locate the mother but has been

1 unable to do so; and

2 (d) the putative father has complied with the ~~most stringent and complete~~ requirements of the state
3 where the mother previously resided or was located in order to protect and preserve the putative father's
4 parental interest and rights concerning the child in cases of adoption.

5
6 **NEW SECTION. Section 39. Consent required.** An adoption of a child may be decreed when
7 written consents to adoption have been executed by:

8 (1) the birth mother;

9 (2) the husband of the birth mother if the husband is the presumed father of the child under
10 40-6-105;

11 (3) any other person whose parental rights have been established by a court;

12 (4) the department or an agency that has custody of the child and the authority to place the child
13 for adoption;

14 (5) the legal guardian of the child if both parents are dead or their rights have been judicially
15 terminated and the guardian has authority by order of the court appointing the guardian to consent to the
16 adoption;

17 (6) the child, either in writing or in court, if the child is 12 years of age or older unless the child
18 does not have the mental capacity to consent.

19
20 **NEW SECTION. Section 40. Persons whose consent not required.** Consent to adoption of a child
21 is not required from:

22 (1) an individual whose parental relationship to the child has been judicially terminated for unfitness
23 or has been determined not to exist or who has waived parental rights;

24 (2) a parent who has been judicially declared incompetent;

25 (3) an individual who has not been married to the mother of the child and who, after the
26 conception of the child, executes a notarized statement denying paternity or a notarized statement
27 acknowledging paternity and denying any interest in the child; or

28 (4) the personal representative of a deceased parent's estate.

29
30 **NEW SECTION. Section 41. Form of consent.** The consents required by [section 39] must be

1 acknowledged before an officer authorized to take acknowledgments or witnessed by a representative of
 2 the department, an agency, or the court.

3
 4 **NEW SECTION. Section 42. Child available for adoption -- voluntary acts of parents.** A parent may
 5 voluntarily make a child available for adoption by:

- 6 (1) executing a voluntary relinquishment and consent to adoption;
 7 (2) executing a denial of paternity; or
 8 (3) submitting a notarized acknowledgment of paternity and a denial of any interest in custody of
 9 the child.

10
 11 **NEW SECTION. Section 43. Voluntary relinquishment -- validity.** (1) A voluntary relinquishment
 12 is not valid unless the parent specifically relinquishes custody of the child to the department, a licensed
 13 child-placing agency, or a specifically identified prospective adoptive parent and:

- 14 (a) the department or agency to whom the child is being relinquished has agreed in writing to
 15 accept custody of the child until the child is adopted; or
 16 (b) the identified prospective adoptive parent has agreed in writing to accept temporary custody
 17 and to provide support and care to the child until that person's adoption petition is granted or denied.

18 (2) A voluntary relinquishment of a parent's rights solely to the child's other parent does not relieve
 19 the parent executing the relinquishment of any duty owed to the child OR FOR THE CHILD'S SUPPORT.

20
 21 **NEW SECTION. Section 44. Arrearages of child support -- responsibility to child.** (1) A voluntary
 22 relinquishment of a parent's rights and responsibilities toward a child ~~do~~ DOES not cancel any responsibility
 23 to pay arrearages of child support unless the party to whom the arrearages are owed agrees in writing to
 24 waive the payment of the arrearages.

25 (2) A parent who executes a voluntary relinquishment of rights and responsibilities toward a child
 26 remains financially responsible for the child until a court actually terminates parental rights to the child.

27
 28 **NEW SECTION. Section 45. Who may relinquish -- to whom.** (1) A parent or guardian whose
 29 consent to the adoption of a child is required may relinquish to the department or an agency all rights with
 30 respect to the child, including legal and physical custody and the right to consent to the child's adoption.

1 (2) A parent or guardian whose consent to the adoption of a child is required and who has filed
2 a notice of parental placement under [section 95] for a direct parental placement adoption may:

3 (a) relinquish to the prospective adoptive parent all rights with respect to the child, including legal
4 and physical custody; and

5 (b) consent to the child's adoption by the prospective adoptive parents.

6
7 **NEW SECTION. Section 46. Relinquishment by minor parent -- separate legal counsel in direct**
8 **parental placement adoption.** (1) A parent who is a minor has the right to relinquish all rights to that minor
9 parent's child and to consent to the child's adoption. The relinquishment is not subject to revocation by
10 reason of minority.

11 (2) In a direct parental placement adoption, a relinquishment and consent to adopt executed by a
12 parent who is a minor is not valid unless the minor parent has been advised by an attorney who does not
13 represent the prospective adoptive parent. Legal fees charged by the minor parent's attorney are an
14 allowable expense that may be paid by prospective adoptive parents under [section 147], subject to the
15 limitations in [section 148].

16
17 **NEW SECTION. Section 47. Time and prerequisites for execution of relinquishment and consent**
18 **to adoption -- copy of preplacement evaluation -- notarization.** (1) A parent whose consent to the adoption
19 of a child is required may execute a relinquishment and consent to adoption only after the following criteria
20 have been met:

21 (a) the child has been born;

22 (b) not less than 72 hours have elapsed since the birth of the child ~~if the person relinquishing~~
23 ~~parental rights is the child's birth mother;~~

24 (c) the parent has received counseling in accordance with [section 48]; and

25 (d) in a direct parental placement adoption:

26 (i) the parent has been informed that fees for any required counseling and legal fees are allowable
27 expenses that may be paid by a prospective adoptive parent under [section 147], subject to the limitations
28 set in [section 148];

29 (ii) if the parent is a minor, the parent has been represented by separate legal counsel; and

30 (iii) prior to the execution of the relinquishment, the parent has been provided a copy of the

1 preplacement evaluation prepared pursuant to [section 86] pertaining to the prospective adoptive parent.

2 (2) A guardian may execute a relinquishment and consent to adopt at any time after being
3 authorized by a court.

4 (3) The department or a licensed child-placing agency may execute a consent for the adoption at
5 any time before or during the hearing on the petition for adoption.

6 (4) A child whose consent is required may execute a consent at any time before or during the
7 hearing on the petition to adopt.

8 (5) Except as provided in this section, a relinquishment and consent to adopt must be a separate
9 instrument executed before a notary public.

10 (6) If the person from whom a relinquishment and consent to adopt is required is a member of the
11 armed services or is in prison, the relinquishment may be executed and acknowledged before any person
12 authorized by law to administer oaths.

13

14 **NEW SECTION. Section 48. Counseling requirements.** (1) Counseling of the birth mother is
15 required in department, agency, and direct parental placement adoptions. If any other parent is involved
16 in an adoptive placement, counseling of that parent is encouraged.

17 (2) Counseling must be performed by a person employed by the department or by a staff person
18 of a licensed child-placing agency designated to provide this type of counseling. Unless the counseling
19 requirement is waived for good cause by a court, a minimum of 3 hours of counseling must be completed
20 prior to execution of a relinquishment of parental rights and consent to adopt. A relinquishment and
21 consent to adopt executed prior to completion of required counseling is void.

22 (3) During counseling, the counselor shall offer an explanation of:

23 (a) adoption procedures and options that are available to a parent through the department or
24 licensed child-placing agencies;

25 (b) adoption procedures and options that are available to a parent through direct parental placement
26 adoptions, including the right to an attorney and that legal expenses are an allowable expense that may be
27 paid by a prospective adoptive parent as provided in [sections 147 and 148];

28 (c) the alternative of parenting rather than relinquishing the child for adoption;

29 (d) the resources that are available to provide assistance or support for the parent and the child
30 if the parent chooses not to relinquish the child;

- 1 (e) the legal and personal effect and impact of terminating parental rights and of adoption;
- 2 (f) the options for contact and communication between the birth family and the adoptive family;
- 3 (g) postadoptive issues, including grief and loss;
- 4 (h) the reasons for and importance of providing accurate medical and social history information
- 5 under [section 81];
- 6 (i) the operation of the confidential intermediary program; and
- 7 (j) the fact that the adoptee may be provided with a copy of the original birth certificate upon
- 8 request after reaching 18 years of age, unless the birth parent has specifically requested in writing that the
- 9 vital statistics bureau withhold release of the original birth certificate.

10 (4) The counselor shall prepare a written report containing a description of the topics covered and

11 the number of hours of counseling. The report must specifically include the counselor’s opinion of whether

12 or not the parent understood all of the issues and was capable of informed consent. The report ~~may~~ MUST,

13 ON REQUEST, be released to the person counseled, to the department, to an agency, or with the consent

14 of the person counseled, to an attorney for the prospective adoptive parents.

15

16 **NEW SECTION. Section 49. Revocation of relinquishment and consent.** (1) The parent who

17 executed the relinquishment and consent to adopt and the department, agency, or prospective adoptive

18 parent named or described in the relinquishment and consent to adopt may mutually agree to its revocation

19 prior to the issuance of an order terminating parental rights.

20 (2) A relinquishment may not be revoked if an order has been issued terminating parental rights.

21

22 **NEW SECTION. Section 50. Conditional relinquishment and consent.** (1) A relinquishment and

23 consent to adopt may provide that it not take effect only if:

- 24 (a) the other parent does not execute a relinquishment and consent to adopt within a specified
- 25 period; or
- 26 (b) a court decides to not terminate another individual’s parental relationship to the child.

27 (2) A relinquishment and consent to adopt may not be conditioned on whether or not existing

28 agreements for matters, including but not limited to visitation and ongoing communication with the child,

29 are later performed.

30

1 NEW SECTION. **Section 51. Content of relinquishment and consent to adopt.** (1) A

2 relinquishment and consent to adopt must be in writing and must contain:

3 (a) the date, place, and time of the execution of relinquishment and consent to adopt;

4 (b) the name, date of birth, and current mailing address of the individual executing the
5 relinquishment and consent to adopt;

6 (c) the date of birth and the name of the child to be adopted; and

7 (d) the name, address, and telephone numbers of the department or agency to which the child is
8 being relinquished or the name, address, and telephone numbers of the prospective adoptive parent or the
9 lawyer representing the prospective adoptive parent with whom the individual executing the relinquishment
10 and consent has placed or intends to place the child for adoption.

11 (2) A relinquishment and consent to adopt executed by a parent or guardian must state that the
12 parent or guardian executing the document is voluntarily and unequivocally consenting to the:

13 (a) permanent transfer of legal and physical custody of the child to the department or agency for
14 the purposes of adoption; or

15 (b) transfer of permanent legal and physical custody to, and the adoption of the child by, a specific
16 identified adoptive parent whom the parent or guardian has selected.

17 (3) A relinquishment and consent to adopt must state:

18 (a) that after the document is signed or confirmed in substantial compliance with this section, it
19 is final and, except under a circumstance stated in [section 50], may not be revoked or set aside for any
20 reason, including the failure of an adoptive parent to permit the individual executing the relinquishment and
21 consent to adopt to visit or communicate with the child;

22 (b) that the adoption will extinguish all parental rights and obligations that the individual executing
23 the relinquishment and consent to adopt has with respect to the child, except for arrearages of child
24 support unless the arrearages are waived by the person to whom they are owed, and that the
25 relinquishment will remain valid whether or not any agreement for visitation or communication with the child
26 is later performed;

27 (c) that the individual executing the relinquishment and consent to adoption has:

28 (i) received a copy of the relinquishment and consent to adoption;

29 (ii) received a copy of a written agreement by the department, agency, or prospective adoptive
30 parent to accept temporary custody and to provide support and care to the child until an adoption petition

1 is granted or denied;

2 (iii) if required, received counseling services and information about adoption pursuant to [section
3 48] explaining the meaning and consequences of an adoption;

4 (d) in direct parental placement adoptions, that the individual has:

5 (i) been advised if the individual is:

6 (A) a minor parent, by a lawyer who is not representing an adoptive parent or the agency to which
7 the child is being relinquished; or

8 (B) an adult, of the right to have a lawyer who is not representing an adoptive parent or the agency
9 and whose fees are allowable expenses that can be paid by the prospective adoptive parents;

10 (ii) been provided with a copy of the prospective adoptive parent's preplacement evaluation;

11 (e) in agency and direct parental placement adoptions, that the individual has:

12 (i) been advised of the obligation to provide the medical and social history information required
13 under [section 81] pertaining to disclosures; and

14 (ii) not received or been promised any money or anything of value for execution of the
15 relinquishment and consent to adopt, except for payments authorized by [sections 147 and 148].

16 (4) A relinquishment and consent to adopt ~~must~~ MAY provide that the individual who is
17 relinquishing waives notice of any proceeding for adoption.

18
19 **NEW SECTION. Section 52. Consequences of relinquishment and consent to adopt.** Except under
20 a circumstance stated in [section 50] a relinquishment and consent to the adoption of a child that is
21 executed by a parent or guardian in substantial compliance with [section 51] is final and irrevocable. The
22 relinquishment and consent to adopt:

23 (1) unless a court orders otherwise to protect the welfare of the child, entitles the department,
24 agency, or prospective adoptive parent named or described to the legal and physical custody of the child
25 and imposes on that department, agency, or prospective adoptive parent responsibility for the support and
26 medical and other care of the child;

27 (2) terminates, AS PROVIDED IN [SECTION 44], any duty of the parent who executed the
28 document with respect to the child except for arrearages of child support; and

29 (3) terminates any right of the parent or guardian who executed the document to:

30 (a) object to the placement of the child for adoption by the department or agency; AND

- 1 (b) object to the child's adoption by the prospective adoptive parent; ~~and~~
2 ~~(c) notice of the proceeding for adoption.~~

3

4 **NEW SECTION. Section 53. Grounds for court to set aside relinquishment and consent.** (1) The
5 court shall set aside a relinquishment and consent to adopt if the individual who executed the
6 relinquishment and consent establishes:

7 (a) by clear and convincing evidence, before a decree of adoption is issued, that the consent was
8 obtained by fraud or duress; or

9 (b) by a preponderance of the evidence, that a condition permitting revocation has occurred, as
10 expressly provided for in [section 50].

11 (2) A verbatim record of testimony must be made.

12

13 **NEW SECTION. Section 54. Remedy when relinquishment and consent to adopt revoked or set**
14 **aside -- expediency.** (1) If a relinquishment and consent to adopt that was executed by an individual is
15 revoked or set aside, the department, agency, or prospective adoptive parent shall immediately return the
16 child to the individual's custody and move to dismiss a proceeding for adoption or termination of the
17 individual's parental rights to the child unless:

18 (a) the department has legal custody pursuant to a court order;

19 (b) there are grounds for the department to seek a court order under the provisions of Title 41,
20 chapter 3; or

21 (c) the individual did not have legal custody of the child at the time the relinquishment and consent
22 to adopt was executed.

23 (2) In the circumstances described in subsections (1)(a) through (1)(c) and when there is no
24 existing court order providing for care and custody, the court shall issue an order providing for the care and
25 custody of the child according to the best interests of the child under any law applicable to the
26 circumstances of the case.

27 (3) Except as provided in subsection (1), if after revocation or the setting aside of a relinquishment
28 or consent a child is not returned immediately by the department, agency, or prospective adoptive parent,
29 the individual may petition the court for appropriate relief. The action must take precedence over other
30 cases and matters in the court. The court shall examine the petition, hear the case, and render a decision

1 as soon as possible.

2

3 **NEW SECTION. Section 55. Notarized denial of paternity -- no entitlement to notice.** (1) Execution
4 of a notarized denial of paternity of a child is a voluntary act that constitutes a waiver of all parental rights
5 to the child, EXCEPT FOR THE DUTY TO PAY SUPPORT IF PATERNITY IS ESTABLISHED OR PRESUMED.

6 (2) A notarized denial of paternity is irrevocable when executed. An individual who has executed
7 a denial of paternity toward a child who is the subject of adoption proceedings is not entitled to notice of
8 either the hearing to terminate parental rights or the hearing on an adoption petition.

9

10 **NEW SECTION. Section 56. Notarized acknowledgment of paternity and denial of interest in**
11 **custody -- no entitlement to notice.** (1) Submission of a notarized acknowledgment of paternity and a
12 denial of any interest in the custody of the child is a voluntary act that constitutes a waiver of all parental
13 rights to the child BUT DOES NOT ABSOLVE THE PERSON OF THE DUTY TO PAY SUPPORT.

14 (2) An individual who has executed an acknowledgment of paternity and denial of interest in the
15 custody in a child who is the subject of adoption proceedings is not entitled to notice of either the hearing
16 to terminate parental rights or the hearing on an adoption petition unless, subsequent to execution of the
17 acknowledgment of paternity and denial of interest in custody, the individual has ~~strictly~~ complied with all
18 of the requirements of [section 22] and has done so within the time limits established in [section 23].

19

20 **NEW SECTION. Section 57. Timing of proceedings to terminate.** (1) In order to provide notice
21 to a putative father at the earliest possible time of an expectant mother's intent to release an expected child
22 for adoption and in order to facilitate early placement of a child for adoption, an expectant mother may
23 initiate proceedings to terminate paternal rights by filing a petition of intent to place a child for adoption
24 prior to the birth of the child.

25 (2) A petition to terminate parental rights may also be filed after a child is born.

26

27 **NEW SECTION. Section 58. Expected child -- filing of petition indicating intent to release or**
28 **consent to adoption.** (1) A pregnant individual may file a petition with the court indicating the intention to
29 place an expected child for adoption.

30 (2) The petition must include the following information:

- 1 (a) the individual's intent to release the expected child for adoption;
- 2 (b) the approximate date and location of conception;
- 3 (c) the expected date of delivery;
- 4 (d) any information concerning the identity and whereabouts of any putative or presumed father
- 5 of the expected child ~~unless the birth mother relies on the right to privacy~~; and
- 6 (e) in a situation in which there is a presumed father, the grounds upon which the individual relies
- 7 in contending that the nonexistence of the father and child relationship can be established in an action
- 8 brought under 40-6-107.
- 9 (3) The petition may allege more than one putative or presumed father.
- 10 (4) The petition must be signed by the petitioner and notarized.

11

12 **NEW SECTION. Section 59. Notice to any named father of intent to release child for adoption.**

13 (1) Upon the filing of the petition under [section 58], the court shall issue a notice of intent to release a

14 child for adoption.

15 (2) The notice must be served by the petitioner, in the manner provided by the Montana Rules of

16 Civil Procedure, upon each putative or presumed father at least 20 days prior to the expected date of birth

17 of the child. Proof of service must be filed with the court.

18 (3) A notice of intent to release directed to a putative father must indicate the approximate date

19 and location of conception of the child and the expected date of birth and must inform the putative father

20 that:

21 (a) in order to protect the putative father's rights to the child, the putative father is required to file

22 notice of intent to claim paternity before the expected date of birth;

23 (b) the putative father is required to appear at the hearing at the time and date set by the court;

24 (c) the failure to file notice of intent to claim paternity before the expected date of birth:

25 (i) constitutes a waiver of the right to receive the notice provided for in [section ~~22~~ 66];

26 (ii) constitutes an irrevocable denial of the putative father's interest in the custody of the child; and

27 (iii) will result in the court's termination of the putative father's rights to the child.

28 (4) In addition to the information contained in subsection (3), a notice of intent to release directed

29 to an individual presumed to be the father under 40-6-105 must also indicate the intention of the mother

30 to ask for a declaration establishing the nonexistence of the father and child relationship and the grounds

1 for seeking the declaration.

2
3 **NEW SECTION. Section 60. Notice to any named father of intent to release child for adoption.**

4 (1) Upon the filing of the petition under [section 58], the court shall issue a notice of intent to release a
5 child for adoption.

6 (2) The notice must be served by the petitioner, in the manner provided by the Montana Rules of
7 Civil Procedure, upon each putative or presumed father at least 20 days prior to the expected date of birth
8 of the child. Proof of service must be filed with the court.

9 (3) A notice of intent to release directed to a putative father must indicate the approximate date
10 and location of conception of the child and the expected date of birth and must inform the putative father:

11 ~~(a) that in order to protect the putative father's rights to the child, the putative father is required~~
12 ~~to register with the putative father registry as of the close of business on the expected date of birth of the~~
13 ~~child;~~

14 ~~(b)(A)~~ that the putative father is required to appear at the hearing at the time and date set by the
15 court;

16 ~~(b)(B)~~ of the rights and responsibilities to which the putative father will be entitled upon registering
17 with the putative father registry; and

18 ~~(b)(C)~~ that the failure to TIMELY comply with all requirements of filing with the putative father
19 registry ~~before the expected date of birth:~~

20 (i) constitutes a waiver of the right to receive the notice provided for in [section 22]; AND

21 ~~(ii) constitutes an irrevocable denial of the putative father's interest in the custody of the child; and~~

22 ~~(iii)(II)~~ will MAY result in the court's termination of the putative father's rights to the child.

23 (4) In addition to the information contained in subsection (3), a notice of intent to release directed
24 to an individual presumed to be the father under 40-6-105 must also indicate the intention of the mother
25 to ask for a declaration establishing the nonexistence of the father and child relationship and the grounds
26 for seeking the declaration.

27
28 **NEW SECTION. Section 61. Venue.** Proceedings to terminate parental rights may be filed in the
29 court in the county in which a petitioner resides, the child resides, or an office of the agency that is placing
30 the child is located.

1 **NEW SECTION. Section 62. Necessity for parental rights to be terminated.** A child is not legally
2 free for adoption until the parental rights of the birth parent or parents have been terminated by a court:

- 3 (1) as provided in [sections 1 through 156];
4 (2) pursuant to Title 41, chapter 3; or
5 (3) of competent jurisdiction in another state or country.

6

7 **NEW SECTION. Section 63. Petition for termination of parental rights.** (1) Pending the termination
8 or other disposition of the rights of the father of the child, the birth mother may execute a relinquishment
9 and consent to adoption.

10 (2) The department, a licensed child-placing agency, the prospective adoptive parent to whom the
11 relinquishment is issued, or a guardian with custody of the child shall file with the court a signed and
12 notarized petition for termination of parental rights pursuant to [sections 1 through 156] or pursuant to Title
13 41, chapter 3.

14 (3) At the request of the relinquishing parent, the execution of a relinquishment may be conditioned
15 as set forth in [section 50].

16 (4) Pending disposition of the petition, the court may enter an order authorizing temporary care of
17 the child.

18

19 **NEW SECTION. Section 64. Contents of petition for termination of parental rights.** (1) The
20 petition for termination of parental rights must state:

- 21 (a) the identity of the petitioner;
22 (b) the date and location of the birth of the child;
23 (c) the date of the relinquishment by the birth mother or relinquishing parent;
24 (d) the current location of the child;
25 (e) the names and locations, if known, of any putative or presumed father of the child;
26 (f) efforts and inquiries made to locate any parent whose identity is known but whose whereabouts
27 are unknown;
28 (g) the grounds on which the parental rights of any ~~putative or presumed father~~ PARENT to the
29 child should be terminated;
30 (h) whether a putative or presumed father is one from whom consent is not required;

1 (i) whether court orders from any other proceeding have been issued terminating parental rights
2 to the child who is the subject of the petition;

3 (j) any other evidence supporting termination of the legal rights that a person has with regard to
4 the child; and

5 (k) a request for custody of the child prior to the adoption.

6 (2) The petitioner shall file with the petition for termination of parental rights the following
7 documents received in support of the petition:

8 (a) any relinquishments and consents to adoption;

9 (b) any denials of paternity;

10 (c) any acknowledgments of paternity and denial of parental rights;

11 (d) any response from the department to a request of whether any notice of intent to claim
12 paternity has been filed;

13 (e) a counseling report required under [section 48]; ~~and~~

14 (f) proof of PRIOR service of any notice or acknowledgement of service or waiver of service
15 received; AND

16 (G) PROOF OF COMPLIANCE WITH THE INDIAN CHILD WELFARE ACT OF 1978 AND INTERSTATE
17 COMPACT ON THE PLACEMENT OF CHILDREN, IF APPLICABLE.

18
19 NEW SECTION. Section 65. Contents of petition for termination of parental rights. (1) The
20 petition for termination of parental rights must state:

21 (a) the identity of the petitioner;

22 (b) the date and location of the birth of the child;

23 (c) the date of the relinquishment by the birth mother or relinquishing parent;

24 (d) the current location of the child;

25 (e) the names and locations, if known, of any putative or presumed father of the child;

26 (f) whether a parent is one from whom consent is not required;

27 (g) whether court orders from any other proceeding have been issued terminating parental rights
28 to the child that is the subject of the petition;

29 (h) any other evidence supporting termination of the legal rights that a person has with regard to
30 the child; and

- 1 (i) a request for temporary custody of the child prior to the adoption.
- 2 (2) The petitioner shall file with the petition for termination of parental rights the following
- 3 documents received in support of the petition:
- 4 (a) any relinquishments and consents to adoption;
- 5 (b) any denials of paternity;
- 6 (c) any acknowledgments of paternity and denial of parental rights;
- 7 (d) any affidavits from the putative father registry that have been executed by the department;
- 8 (e) a counseling report required under [section 48]; ~~and~~
- 9 (f) proof of PRIOR service of any notice or acknowledgement of service or waiver of service
- 10 received; AND

11 (G) PROOF OF COMPLIANCE WITH THE INDIAN CHILD WELFARE ACT OF 1978 AND INTERSTATE
 12 COMPACT ON THE PLACEMENT OF CHILDREN, IF APPLICABLE.

13

14 NEW SECTION. Section 66. Notice of hearing -- service. (1) Notice of a hearing to be held on
 15 the petition for termination of parental rights must be served in any manner appropriate under the Montana
 16 Rules of Civil Procedure or in any manner that the court may direct on:

- 17 (a) a putative or presumed father;
- 18 (b) a putative father who was not served with a notice of intent to release at least 20 days before
- 19 the expected date of birth as specified in the notice of intent to release;
- 20 (c) a spouse, if the parent relinquishing the child for adoption was married to that person at the
- 21 time of conception of the child or at any time after conception but prior to birth;
- 22 (d) a parent or legal guardian of the child in question who has not waived notice; or
- 23 (e) any other person who is reasonably believed to be the father.

24 (2) The notice of hearing must inform the putative or presumed father that failure to appear at the
 25 hearing constitutes a denial of the individual's interest in custody of the child and will result in the court's
 26 termination of the individual's rights to the child.

27 (3) Proof of service of the notice of hearing must be filed with the court. A notarized
 28 acknowledgement of service by the party to be served is proof of personal service. Proof of service is not
 29 required if the putative father is present at the hearing. A waiver of notice of the hearing by an individual
 30 entitled to receive notice is sufficient.

1 (4) If a person has not been identified as the father or putative father of the child, the court, on
 2 the basis of all information available, shall determine whether publication of notice of the proceeding is
 3 likely to lead to identification. If so, the court shall order publication in the manner that it considers
 4 appropriate. The name of the birth mother may be included in the publication only with the mother's
 5 written consent.

6 (5) If the court finds that the father of the child is a person who did not receive either a timely
 7 notice of intent to release pursuant to [section 22] or a notice required pursuant to this section and who
 8 has not waived the right to notice of hearing and that person is not present at the hearing, the court shall
 9 adjourn further proceedings until that person is served with a notice of hearing.

10
 11 **NEW SECTION. Section 67. Notice of hearing -- service.** (1) Notice of a hearing to be held on
 12 the petition for termination of parental rights must be served in any manner appropriate under the Montana
 13 Rules of Civil Procedure or in any manner that the court may direct on:

14 (a) a putative or presumed father who has timely and properly complied with the putative father
 15 registry;

16 (b) a putative father who was not served with a notice of intent to release at least 20 days before
 17 the expected date of birth as specified in the notice of intent to release;

18 (C) A PERSON ADJUDICATED, IN MONTANA, TO BE THE FATHER OF THE CHILD FOR THE
 19 PURPOSE OF CHILD SUPPORT;

20 (D) A PERSON WHO IS RECORDED ON THE CHILD'S BIRTH CERTIFICATE AS THE CHILD'S
 21 FATHER;

22 (E) A PERSON WHO IS OPENLY LIVING WITH THE CHILD AND THE CHILD'S MOTHER AT THE
 23 TIME THAT THE PROCEEDING IS INITIATED OR AT THE TIME THE CHILD WAS PLACED IN THE CARE OF
 24 AN AUTHORIZED AGENCY AND WHO IS REPRESENTING TO THE PUBLIC THAT THE PERSON IS THE
 25 CHILD'S FATHER;

26 ~~(F)~~ (F) a spouse, if the parent relinquishing the child for adoption was married to that person at the
 27 time of conception of the child or at any time after conception but prior to birth; or

28 ~~(G)~~ (G) a parent or legal guardian of the child in question who has not waived notice.

29 (2) The notice of hearing must inform the putative or presumed father or other parent that failure
 30 to appear at the hearing constitutes a ~~denial~~ WAIVER of the individual's interest in custody of the child and

1 will result in the court's termination of the individual's rights to the child.

2 (3) Proof of service of the notice of hearing must be filed with the court. A notarized
3 acknowledgement of service by the party to be served is proof of personal service. Proof of service is not
4 required if the putative father is present at the hearing. A waiver of notice of the hearing by an individual
5 entitled to receive notice is sufficient.

6 (4) If the court finds that the father of the child is a person who did not receive either a timely
7 notice of intent to release pursuant to [section 22] or a notice required pursuant to this section and who
8 has not waived the right to notice of hearing and that person is not present at the hearing, the court shall
9 adjourn further proceedings until that person is served with a notice of hearing.

10

11 **NEW SECTION. Section 68. Hearing on petition to terminate parental rights.** (1) The court shall
12 hold a hearing as soon as practical to determine the identity of and terminate the parental rights of the
13 ~~father~~ PARENTS of the child.

14 (2) If ~~the mother has failed to name~~ a putative father HAS NOT BEEN NAMED and no one has ~~filed~~
15 ~~notice of intent to claim paternity~~ REGISTERED WITH THE PUTATIVE FATHER REGISTRY, the court shall
16 cause inquiry to be made in an effort to identify the ANY LEGAL father. The inquiry must include whether
17 the mother was married at the time of conception of the child or at any time after conception AND PRIOR
18 TO BIRTH.

19 (3) Based on the evidence received and the court's inquiry, the court shall enter a finding
20 identifying the father or declaring that the identity of the father could not be determined.

21 (4) Based on the grounds set forth in [section 70] and the evidence received at the hearing, the
22 court shall enter an order concerning the parental rights to the child.

23 (5) If the court terminates the parental rights to the child and the department, agency, or
24 prospective adoptive parent has agreed to accept custody of the child until the child is adopted, the court
25 shall issue an order awarding custody of the child to the petitioner.

26

27 **NEW SECTION. Section 69. Hearing on petition to terminate parental rights.** (1) The court shall
28 hold a hearing as soon as practical to determine the identity of and terminate the parental rights of the
29 ~~father~~ PARENT of the child.

30 (2) If ~~the mother has failed to name~~ a putative father HAS NOT BEEN NAMED and no one has

1 ~~registered with the putative father registry~~ FILED NOTICE OF INTENT TO CLAIM PATERNITY, the court shall
 2 cause inquiry to be made in an effort to identify the father. The inquiry must include:

3 (a) whether the mother:

4 (i) was married at the time of conception of the child or at any time after conception AND PRIOR
 5 TO BIRTH;

6 (ii) was cohabiting with an individual of the opposite sex at the time of conception or birth of the
 7 child; and

8 (iii) has received support payments or promises of support payments for the child or in connection
 9 with the pregnancy; and

10 (b) whether any person formally or informally acknowledged possible paternity to the child.

11 (3) PROOF OF SERVICE OF NOTICE OR PROOF OF ACKNOWLEDGEMENT OF SERVICE ON ANY
 12 PERSON OR PROOF OF WAIVER BY A PERSON LEGALLY REQUIRED TO BE GIVEN NOTICE MUST BE
 13 FILED WITH THE COURT.

14 ~~(3)(4)~~ Based on the evidence received and the court's inquiry, the court shall enter a finding
 15 identifying the father or declaring that the identity of the father could not be determined.

16 ~~(4)(5)~~ Based on the grounds set forth in [section 70] and the evidence received at the hearing, the
 17 court shall enter an order concerning the parental rights to the child.

18 ~~(5)(6)~~ If the court terminates the parental rights to the child and the department, agency, or
 19 prospective adoptive parent has agreed to accept custody of the child until the child is adopted, the court
 20 shall issue an order awarding custody of the child to the petitioner.

21
 22 NEW SECTION. Section 70. Grounds for termination of parental rights. The court may terminate
 23 a parent's rights to a child who is the subject of an adoption proceeding based upon:

24 (1) the voluntary acts of the parent in:

25 (a) executing a voluntary relinquishment and consent to adopt;

26 (b) submitting a notarized denial of paternity executed pursuant to [section 55]; or

27 (c) submitting a notarized acknowledgment of paternity and denial of interest in custody of the
 28 child executed pursuant to [section 56];

29 (2) a determination under [section 71] that the parent is unfit;

30 (3) a determination under [section 72] that the relationship of parent and child does not exist; or

1 (4) a determination that the parent has irrevocably waived parental rights by failing to timely act
2 to protect the rights.

3

4 **NEW SECTION. Section 71. Finding of unfitness.** (1) The court may terminate parental rights for
5 purposes of making a child available for adoption on the grounds of unfitness if:

6 (a) the court makes a determination that the parent has been judicially deprived of custody of the
7 child on account of abuse or neglect toward the child;

8 (b) the parent has in the state of Montana or in any other jurisdiction of the United States willfully
9 abandoned the child, as defined in 41-3-102(7)(e), in Montana or in any other jurisdiction of the United
10 States;

11 (c) it is proven, to the satisfaction of the court, that the parent, if able, has not contributed to the
12 support of the child for an aggregate period of 1 year before the filing of a petition for adoption;

13 (d) it is proven, to the satisfaction of the court, that the parent is in violation of a court order to
14 support either the child that is the subject of the adoption proceedings or other children with the same birth
15 mother;

16 (e) the parent has been found guilty by a court of competent jurisdiction of:

17 (i) aggravated assault on the adoptee, as provided in 45-5-202;

18 (ii) sexual assault on a child, as provided in 45-5-502;

19 (iii) sexual intercourse without consent, as provided in 45-5-503, if the victim was a child;

20 (iv) incest, as provided in 45-5-507, if the victim was a child;

21 (v) homicide of a child, as provided in 45-5-102 or 45-5-103;

22 (vi) sexual abuse of a child, as provided in 45-5-625; or

23 (vii) ritual abuse of a minor, as provided in 45-5-627;

24 (f) the child has been maintained by a public or private children's institution, a charitable agency,
25 a licensed child-placing agency, or the department for a period of 1 year without the parent contributing
26 to the support of the child during that period, if able;

27 (g) a finding is made for a parent who is given proper notice of hearing:

28 (i) that the parent has been convicted of a crime of violence or of violating a restraining or
29 protective order; and

30 (ii) the facts of the crime or violation and the parent's behavior indicate that the parent is unfit to

1 maintain a relationship of parent and child with the child;

2 (h) a finding is made for a parent who is given proper notice of hearing and is a respondent to the
3 petition to terminate parental rights and:

4 (i) by a preponderance of the evidence, it is found that termination is in the best interests of the
5 child; and

6 (ii) upon clear and convincing evidence, it is found that one of the following grounds exists:

7 (A) if the child is not in the legal and physical custody of the other parent, that the respondent is
8 not able or willing to promptly assume legal and physical custody of the child and to pay for the child's
9 support in accordance with the respondent's financial means;

10 (B) if the child is in the legal and physical custody of the other parent and a stepparent who is the
11 prospective adoptive parent, that the respondent is not able or willing to promptly establish and maintain
12 contact with the child and to pay for the child's support in accordance with the respondent's financial
13 means;

14 (C) placing the child in the respondent's legal and physical custody would pose a risk of substantial
15 harm to the physical or psychological well-being of the child because the circumstances of the child's
16 conception, the respondent's behavior during the mother's pregnancy or since the child's birth, or the
17 respondent's behavior with respect to other children indicates that the respondent is unfit to maintain a
18 relationship of parent and child with the child; or

19 (D) failure to terminate the relationship of parent and child would be detrimental to the child.

20 (2) In making a determination under subsection (1)(h)(ii)(D), the court shall consider any relevant
21 factor, including the respondent's efforts to obtain or maintain legal and physical custody of the child, the
22 role of other persons in thwarting the respondent's efforts to assert parental rights, the respondent's ability
23 to care for the child, the age of the child, the quality of any previous relationship between the respondent
24 and the child and between the respondent and any other children, the duration and suitability of the child's
25 present custodial environment, and the effect of a change of physical custody on the child.

26
27 **NEW SECTION. Section 72. Determination that no parent and child relationship exists.** For
28 purposes of making a child available for adoption, the court may terminate the parental rights of a putative
29 father on the grounds that the parent and child relationship does not exist if:

30 (1) a judicial determination is made under 40-6-107 that the parent and child relationship does not

1 exist. This includes the termination of the parental rights of the husband of the mother who is placing the
2 child for adoption or the parental rights of an individual who is a presumed father of the child.

3 (2) a determination is made that:

4 (a) an individual has not timely registered with the putative father registry; ~~and~~

5 (B) A PERSON HAS NOT BEEN ADJUDICATED, IN MONTANA, TO BE THE FATHER OF THE CHILD
6 FOR THE PURPOSE OF CHILD SUPPORT;

7 (C) A PERSON HAS NOT BEEN RECORDED ON THE CHILD'S BIRTH CERTIFICATE AS THE CHILD'S
8 FATHER;

9 (D) A PERSON IS NOT OPENLY LIVING WITH THE CHILD AND THE CHILD'S MOTHER AT THE
10 TIME THAT THE PROCEEDING IS INITIATED OR AT THE TIME THE CHILD WAS PLACED IN THE CARE OF
11 AN AUTHORIZED AGENCY AND A PERSON IS NOT REPRESENTING TO THE PUBLIC THAT THE PERSON
12 IS THE CHILD'S FATHER; OR

13 ~~(b)~~(E) the child's mother was not married at the probable time of the child's conception or at the
14 time the child was born; or

15 (3) a putative father who ~~timely registered with the putative father registry~~ appears at the hearing
16 but is unable to establish by a preponderance of the evidence the minimum requirements provided in
17 [section 73] for demonstrating the establishment of a substantial relationship with the child.

18
19 NEW SECTION. Section 73. Putative father -- termination based upon failure to establish
20 substantial relationship. (1) The parental rights of a putative father may be terminated by the court if the
21 putative father has failed to timely establish and maintain a substantial relationship with the child.

22 (2) A putative father who is not married to the child's mother but who has openly lived with the
23 child SINCE THE CHILD'S BIRTH OR for a period of 6 months immediately preceding placement of the child
24 with adoptive parents and has openly claimed to be the father of the child during that period is considered
25 to have developed a substantial relationship with the child and to have otherwise met the requirements of
26 this section.

27 (3) In order to meet the minimal showing of having established a substantial relationship with
28 regard to a child who is the subject of an adoption proceeding ~~occurring more than 6 months after the~~
29 ~~child's birth~~, a putative father has the burden of showing that the putative father has:

30 (a) demonstrated a full commitment to the responsibilities of parenthood, ~~when not prevented from~~

1 ~~doing so by the person or authorized agency having lawful custody of the child,~~ by providing financial
2 support for the child in a fair and reasonable sum and in accordance with the putative father's ability and
3 either:

4 (i) visiting the child at least monthly when physically and financially able to do so; or
5 (ii) having regular contact with the child or with the person or agency having the care and custody
6 of the child when physically and financially ~~unable~~ ABLE to do so; and

7 (b) manifested an ability and willingness to assume legal and physical custody of the child if the
8 child was not in the physical custody of the other parent.

9 (4) In order to meet the minimal showing of having established a substantial relationship with
10 regard to a child who is the subject of an adoption proceeding involving a child who is under 6 months of
11 age at the time the child becomes the subject of adoption proceedings, a putative father has the burden
12 to show that:

13 (a) the putative father has manifested a full commitment to parental responsibilities by performing
14 all of the acts described in this subsection (4) prior to the time the mother executed a relinquishment and
15 consent for adoption, including registering with the putative father registry; and

16 (b) if the putative father had actual knowledge of the pregnancy, paying a fair and reasonable
17 amount of the expenses incurred in connection with the pregnancy and the child's birth in accordance with
18 the putative father's means when not prevented from doing so by the person or authorized agency having
19 lawful custody of the child;

20 (c) making reasonable and consistent payments, in accordance with the putative father's means,
21 for the support of the child since birth;

22 (d) visiting regularly with the child; and

23 (e) manifesting an ability and willingness to assume legal and physical custody of the child if,
24 during this time, the child was not in the physical custody of the mother.

25 (5) The subjective intent of a putative father, whether expressed or otherwise, unsupported by
26 evidence of acts specified in this section does not preclude a determination that the father failed to meet
27 the requirements of this section.

28
29 **NEW SECTION. Section 74. Irrevocable waiver of parental rights.** (1) The court may find an
30 irrevocable waiver of parental rights of:

1 (a) a putative father who was timely served with notice of intent to release if the court is provided
2 with proof of service and proof that the putative father failed to timely file a notice of intent to claim
3 paternity;

4 (b) a parent or putative father who is served with notice of proceedings and fails to appear at the
5 hearing; or

6 (c) a parent or putative father who is served with notice of proceedings and appears and denies
7 any interest in custody of the child.

8 (2) The court may terminate parental rights under this section upon a finding of irrevocable waiver
9 of all rights to the child.

10

11 **NEW SECTION. Section 75. Irrevocable waiver of parental rights.** (1) The court may find an
12 irrevocable waiver of parental rights of:

13 (a) a putative father who was timely served with notice of intent to release if the court is provided
14 with proof of service and proof that the putative father failed to timely comply with the requirements of the
15 putative father registry;

16 (b) a parent or putative father who is served with notice of proceedings and fails to appear at the
17 hearing; or

18 (c) a parent or putative father who is served with notice of proceedings and appears and denies
19 any interest in custody of the child.

20 (2) The court may terminate parental rights under this section upon a finding of irrevocable waiver
21 of all rights to the child.

22

23 **NEW SECTION. Section 76. Appearance of parent at hearing -- determination of custody.** (1) If
24 a parent appears at the hearing on the petition to terminate parental rights, objects to the termination of
25 rights, and requests custody of the child, the court shall set deadlines that allow the parties to complete
26 discovery and shall set a hearing on the determination of the parent's rights to the child.

27 (2) At the hearing, the court shall consider whether there is a basis for terminating parental rights
28 and whether the best interests of the child will be served by granting custody to the respondent parent,
29 the department, a licensed child-placing agency, or a prospective adoptive parent in a direct parental
30 placement adoption.

1 (3) If the petitioner has established that there are grounds for terminating parental rights and it is
2 in the best interests of the child for termination to occur, those rights must be terminated.

3
4 **NEW SECTION. Section 77. Effect of order terminating parental rights.** (1) An order granting the
5 petition for termination of parental rights:

6 ~~(1)~~(A) terminates the parent and child relationship except for an obligation for arrearages of child
7 support;

8 ~~(2)~~(B) terminates the jurisdiction of the court over the child in any dissolution or separate
9 maintenance action;

10 ~~(3)~~(C) extinguishes any right the parent had to withhold consent to a proposed adoption of the
11 child or to further notice of a proceeding for adoption; and

12 ~~(4)~~(D) awards custody of the child to the department, agency, or prospective adoptive parent to
13 whom the relinquishment was given if the department, agency, or prospective adoptive parent has agreed
14 in writing to accept custody of the child until the adoption is finalized.

15 **(2) A PERSON ACCEPTING CUSTODY IS RESPONSIBLE FOR THE SUPPORT OF THE CHILD.**

16
17 **NEW SECTION. Section 78. Appeal.** An order terminating parental rights is a final order for
18 purposes of appeal.

19
20 **NEW SECTION. Section 79. Expediency.** A contested termination of parental rights action must
21 take precedence over other cases and matters in the court or on appeal. The court shall examine any issues
22 raised in challenging termination of a parent's rights or regarding the validity of any interlocutory or final
23 adoption decree and shall render a decision as soon as possible.

24
25 **NEW SECTION. Section 80. Finality.** Subject to the disposition of a timely appeal, upon expiration
26 of 6 months after an order terminating parental rights has been issued, the order may not be questioned
27 by any person, in any manner, or upon any ground, including fraud, misrepresentation, failure to give any
28 required notice, or lack of jurisdiction of the parties or the subject matter.

29
30 **NEW SECTION. Section 81. Duty to disclose information -- form -- availability -- filing.** (1) Except

1 for an adoption proceeding by a stepparent, in any adoption under [sections 1 through 156], a birth parent,
2 the department, or an agency shall provide a prospective adoptive parent with social and medical histories
3 of the birth families, including tribal affiliation, if applicable.

4 (2) In a direct parental placement adoption, the birth family social and medical histories must be
5 completed on a form provided by the department and filed with the court when the adoption petition is
6 filed.

7 (3) The department shall make a form available to agencies and court administrators for public
8 distribution.

9

10 **NEW SECTION. Section 82. Retention of disclosures.** (1) In a direct parental placement adoption,
11 the disclosures required by [section 81] must be filed with the court in support of the notice of parental
12 placement filed pursuant to [section 95] and must be permanently maintained.

13 (2) In an adoption arranged by the department or an agency, the disclosures required by [section
14 81] must be permanently maintained in the files of the department or the agency.

15

16 **NEW SECTION. Section 83. Preplacement evaluation -- timing.** (1) A child may not be placed for
17 purposes of adoption unless the person with whom a child is proposed to be placed has had a preplacement
18 evaluation completed to determine fitness and readiness as an adoptive parent.

19 (2) In a direct parental placement adoption, the placing parent must be provided with a copy of the
20 preplacement evaluation prior to execution of a relinquishment and consent to adoption of the child.

21 (3) The required preplacement evaluation must provide all pertinent information pertaining to the
22 topics identified in [section 85].

23

24 **NEW SECTION. Section 84. Initiation of preplacement evaluation -- who conducts evaluation --**
25 **payment of fees.** (1) A prospective adoptive parent who wishes to adopt a child may initiate the process
26 by:

27 (a) establishing a client relationship with the department or a licensed child-placing agency; or

28 (b) requesting a preplacement evaluation from either the department or a licensed child-placing
29 agency.

30 (2) The department may contract with a licensed social worker or a licensed child-placing agency

1 to conduct the evaluation.

2 (3) The prospective adoptive parent and the home of the prospective adoptive parent must be
3 studied and evaluated according to the department's or licensed child-placing agency's standards for
4 placement of a child.

5 (4) A department or agency from which an individual is seeking to adopt a child may require the
6 individual to be evaluated by its own qualified employee or independent contractor even if the individual
7 has received a favorable preplacement evaluation from another evaluator.

8 (5) Fees for the study and report are set by the entity completing them and must be paid for by
9 the prospective adoptive parent.

10

11 **NEW SECTION. Section 85. Information to be reviewed in conducting preplacement evaluation.**

12 (1) A preplacement evaluation must include a review of the following information about the prospective
13 adoptive parent:

14 (a) a check of criminal conviction data, data on substantiated abuse or neglect of a child under Title
15 41, chapter 3, and data pertaining to any involvement in incidents of domestic violence by any person over
16 the age of 13 living in the prospective home;

17 (b) medical and social history and current health;

18 (c) assessment of potential parenting skills;

19 (d) assessment of ability to provide adequate financial support for a child; and

20 (e) assessment of the level of knowledge and awareness of adoption issues, including when
21 appropriate, matters relating to open, interracial, cross-cultural, and special needs adoptions.

22 (2) (a) The prospective adoptive parent, the department of justice, and other state, county, and
23 local agencies, after written notice to the subject of the study, shall give the department or agency
24 completing the adoption study substantiated data pertaining to criminal convictions and any reports
25 concerning domestic violence and substantiated abuse or neglect of children or vulnerable adults.

26 (b) The adoption study must also include a check of the youth court records of each person over
27 the age of 13 living in the prospective home. Pursuant to sections 41-5-603 and 41-5-604, the youth court
28 shall release the requested information to the agency or department completing the adoption study. The
29 study must include an evaluation of the effect of a conviction, adjudication, or finding of substantiated
30 abuse or neglect on the ability to care for a child.

1 (3) The preplacement evaluation must include at least one in-home visit with the prospective
2 adoptive parent and at least one interview with each family member.

3
4 **NEW SECTION. Section 86. Contents of preplacement evaluation.** (1) The preplacement
5 evaluation report must contain the following information if available:

6 (a) age and date of birth, nationality, racial or ethnic background, and any religious affiliation;

7 (b) marital status and family history, including the age and location of any child of the individual
8 and the identity of and relationship to anyone else living in the individual's household;

9 (c) physical and mental health and any history of abuse of alcohol or drugs;

10 (d) educational and employment history and any special skills;

11 (e) property and income, including outstanding financial obligations as indicated in a current credit
12 report or financial statement furnished by the individual;

13 (f) any previous request for an evaluation or involvement in an adoptive placement and the outcome
14 of the evaluation or placement;

15 (g) whether the individual has been charged with or convicted of domestic violence or has been
16 involved in a substantiated charge of child abuse or neglect or elder abuse or neglect and the disposition
17 of the charges;

18 (h) whether the individual is subject to a court order restricting the individual's right to custody or
19 visitation with a child;

20 (i) whether the individual has been convicted of a crime other than a minor traffic violation;

21 (j) whether the individual has located a parent interested in placing a child with the individual for
22 adoption and, if so, a brief description of the parent and the child; and

23 (k) any other fact or circumstance that may be relevant in determining whether the individual is
24 suited to be an adoptive parent, including the quality of the environment in the individual's home and the
25 functioning of other children in the individual's household.

26 (2) The report must contain recommendations regarding the suitability of the subject of the study
27 to be an adoptive parent.

28 (3) A preplacement evaluation is valid for 1 year following its date of completion and must be
29 updated if there is a significant change in circumstances.

30 (4) Prior to accepting physical custody of a child for purposes of adoption, a prospective adoptive

1 parent must have the preplacement evaluation completed by the evaluator, and the evaluation must
 2 specifically address the appropriateness of placing the specifically identified child or children who will be
 3 the subject of the adoption proceedings with the prospective adoptive parent.

4
 5 NEW SECTION. Section 87. Recommendation. (1) An evaluator shall assess the information
 6 required by [section 85] to determine if it raises a specific concern that placement of any child or a
 7 particular child in the home of the individual would pose a significant risk of harm to the physical or
 8 psychological well-being of the child.

9 (2) If an evaluator determines that the information assessed does not raise a specific concern, the
 10 evaluator shall find that the individual is suited to be an adoptive parent. The evaluator may comment
 11 about any factor that in the evaluator's opinion makes the individual suited in general or for a particular
 12 child.

13 (3) If an evaluator determines that the information assessed raises a specific concern, the
 14 evaluator, on the basis of the original or any further investigation, shall find that the individual is or is not
 15 suited to be an adoptive parent. The evaluator shall support the finding with a written explanation.

16
 17 NEW SECTION. Section 88. Distribution of evaluation -- retention -- immunity for evaluator. (1)
 18 ~~If a preplacement evaluation contains a finding that an individual is suited to be an adoptive parent, the~~
 19 ~~evaluator shall give the individual a signed copy of the evaluation.~~ The evaluator shall furnish a copy of
 20 the evaluation to a department, agency, or other person authorized to place a child for adoption AND,
 21 UPON PAYMENT BY THE PERSON EVALUATED OF THE COST OF THE EVALUATION SERVICES, TO THE
 22 PERSON EVALUATED.

23 ~~(2) The evaluator shall provide a signed copy of the evaluation to the individual and to the~~
 24 ~~department. The department shall permanently retain the copy of the evaluation.~~

25 ~~(3)~~(2) An evaluator shall retain the original of a completed or incomplete preplacement evaluation
 26 and a list of each source for each item of information in the evaluation ~~for 2 years.~~ AN EVALUATOR WHO
 27 CEASES TO DO BUSINESS IN MONTANA SHALL GIVE THE EVALUATOR'S RECORDS TO THE
 28 DEPARTMENT FOR RETENTION.

29 ~~(4)~~(3) An evaluator, EXCEPT A DEPARTMENT EVALUATOR, who conducted an evaluation in good
 30 faith is not subject to civil liability for anything contained in the evaluation.

1 **NEW SECTION. Section 89. Action by department.** If, before a decree of adoption is issued, the
2 department learns from an evaluator or another person that a child has been placed for adoption with an
3 individual who is the subject of a preplacement evaluation on file with the department containing a finding
4 of unsuitability, the department shall immediately review the evaluation and make a determination of
5 whether the department has authority pursuant to Title 41, chapter 3, to intervene.

6
7 **NEW SECTION. Section 90. Court waiver for relatives.** The court may waive the requirement of
8 a preplacement evaluation when a parent or guardian places a child for adoption directly with an extended
9 family member of the child. A postplacement evaluation must be conducted during the pendency of a
10 proceeding for adoption.

11
12 **NEW SECTION. Section 91. Filing of evaluation in adoption proceedings.** (1) In a direct parental
13 placement adoption, the preplacement evaluation must be filed with the court in support of the petition to
14 terminate parental rights for purposes of adoption.

15 (2) In an adoption arranged by the department or a licensed child-placing agency, the preplacement
16 evaluation must be permanently maintained in the files of the department or the licensed child-placing
17 agency.

18
19 **NEW SECTION. Section 92. Requirement for preplacement evaluation.** (1) Before the department
20 or licensed child-placing agency may place a child for purposes of adoption, the prospective adoptive parent
21 and the home of the prospective adoptive parent must be studied and evaluated as provided in [section 84].

22 (2) The department or agency shall prepare a written report containing the results of its evaluation.

23
24 **NEW SECTION. Section 93. Parties to direct parental placement adoption.** A parent of a child may
25 directly place the child for adoption with a specifically identified prospective adoptive parent who:

26 (1) resides in Montana or in another state that allows direct parental placement;

27 (2) is known to and has been personally selected by the parent; and

28 (3) has previously obtained a favorable preplacement evaluation.

29
30 **NEW SECTION. Section 94. Duties of placing parent.** (1) A parent who is directly placing a child

1 for adoption shall execute a voluntary relinquishment and consent to adopt, including:

2 (a) receiving the counseling required by [section 48]; and

3 (b) if the parent is a minor, being advised by legal counsel other than the attorney representing the
4 prospective adoptive parent.

5 (2) ~~Unless a birth mother relies on the right to privacy, a~~ A placing parent shall identify and provide
6 information on the location of any other legal parent or guardian of the child AND ANY OTHER PERSON
7 REQUIRED TO RECEIVE NOTICE UNDER [SECTION 67], including:

8 (a) any current spouse;

9 (b) any spouse who is the other birth parent and to whom the parent was married at the probable
10 time of conception or birth of the child; and

11 (c) any adoptive parent.

12 (3) A placing parent shall identify and provide information pertaining to any Indian heritage of the
13 child that would bring the child within the jurisdiction of the Indian Child Welfare Act, 25 U.S.C. 1901, et
14 seq.

15 (4) A parent placing a child for adoption in a direct parental placement adoption shall provide:

16 (a) the disclosures of medical and social history required pursuant to [section 81];

17 (b) a certified copy of the child's birth certificate or other document certifying the place and date
18 of the child's birth; and

19 (c) a certified copy of any existing court orders pertaining to custody or visitation of the child.

20 (5) A parent placing a child for adoption in a direct parental placement adoption shall file a notice
21 of parental placement.

22 (6) A parent placing a child for adoption in a direct parental placement adoption shall file a
23 disclosure of all disbursements made to or for the benefit of the parent by the prospective adoptive parent
24 or any person acting on behalf of the prospective adoptive parent.

25 (7) Subject to the limitations set in [section 148], counseling expenses, legal fees, and the
26 reasonable costs of preparing reports documenting the required disclosures of medical and social history
27 and the disclosures documenting disbursements are allowable expenses that can be paid for by the
28 prospective adoptive parent.

29
30 NEW SECTION. Section 95. Direct parental placement -- information to be filed. (1) A parent who

1 proposes to place a child for adoption with a prospective adoptive parent who resides in Montana and who
 2 is not the child's stepparent or an extended family member shall file with the court of the county in which
 3 the prospective adoptive parent or the parent making the placement resides the following:

4 (a) a notice of parental placement containing the following information:

5 (i) the name and address of the placing parent;

6 (ii) the name and address of each prospective adoptive parent;

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

8 (iv) the identity and information on the location of any other legal parent or guardian of the child

9 AND ANY OTHER PERSON REQUIRED TO RECEIVE NOTICE UNDER [SECTION 67], including any current
 10 spouse, any spouse who is the other birth parent and to whom the parent was married at the probable time
 11 of conception or birth of the child, and any adoptive parent;

12 (v) all relevant information pertaining to any Indian heritage of the child that would bring the child
 13 within the jurisdiction of the Indian Child Welfare Act, 25 U.S.C. 1901, et seq.; and

14 (vi) the name and address of counsel, a guardian ad litem, or other representative, if any, of each
 15 of the parties mentioned in subsections (1)(a)(i) through (1)(a)(iii);

16 (b) a relinquishment and consent to adoption of the child by the adoptive parent;

17 (c) the counseling report required by [section 48];

18 (d) the medical and social history disclosures required by [section 81];

19 (e) a report of disbursements identifying all payments made to or to the benefit of the placing
 20 parent by the prospective adoptive parent or anyone acting on the parent's behalf that contains a statement
 21 by each person furnishing information in the report attesting to the truthfulness of the information furnished
 22 by that person;

23 (f) a certified copy of the child's birth certificate or other document certifying the place and date
 24 of the child's birth;

25 (g) a certified copy of any existing court orders pertaining to custody or visitation of the child; and

26 (h) the preplacement evaluation.

27 (2) The notice of parental placement must be signed by the parent making the placement.
 28

29 NEW SECTION. **Section 96. Duty of prospective adoptive parent to provide preplacement**
 30 **evaluation.** (1) Prior to taking custody of a child whom the prospective adoptive parent intends to adopt,

1 the prospective adoptive parent shall obtain a favorable preplacement evaluation.

2 (2) A placing parent must be provided with a copy of the preplacement evaluation prior to
3 execution of a relinquishment and consent to adoption of the child.

4
5 **NEW SECTION. Section 97. Duty to promptly petition.** (1) Within 30 days after the filing of a
6 notice of parental placement or the execution of a relinquishment and consent to the adoption of the child,
7 whichever is later, a prospective adoptive parent shall promptly act to resolve the child's legal status by
8 filing:

9 (a) a petition for termination of parental rights for purposes of adoption, including a request for
10 custody, that includes:

11 (i) the relinquishment and consent to adopt executed by any legal parent other than the placing
12 parent who has filed the notice of parental placement;

13 (ii) a certified copy of any court order terminating the rights and duties of any parent or guardian
14 of the child; and

15 (iii) any other evidence supporting termination of the legal rights a person has with regard to the
16 child;

17 (b) a petition to adopt the child who is the subject of the proceedings;

18 (c) a copy of the preplacement evaluation pertaining to the adoptive parent;

19 (d) a copy of an agreement with the department or a licensed child-placing agency agreeing to
20 accept supervision over the postplacement evaluation period and to prepare the postplacement evaluation;

21 (e) a disclosure of all disbursements made with regard to the adoptive placement to date; and

22 (f) an affidavit from the department reporting on whether any individual has registered with the
23 putative father registry and claims an interest in the child.

24 (2) The prospective adoptive parent shall request that the court promptly notice the matters
25 provided for in subsection (1) for hearing in a timely manner.

26
27 **NEW SECTION. Section 98. Custody order.** (1) The court shall consider the petition to adopt and
28 shall make a determination as to whether temporary custody should be awarded to the petitioner. In
29 making that determination, the court shall consider:

30 (a) the preplacement evaluation that pertains specifically to placement of the child who is the

1 subject of the adoption petition with the petitioner; and

2 (b) if any significant change in the petitioner's or child's circumstances has occurred since
3 preparation of the preplacement evaluation.

4 (2) Upon a determination that it is in the best interests of the child, the court shall enter an order
5 granting temporary custody to the prospective adoptive parent.

6 (3) Upon a determination that it is not in the best interests of the child to place custody with the
7 prospective adoptive parent, the court shall deny the petition to terminate parental rights of the placing
8 parent and shall make any other order with regard to the custody of the child that is necessary to protect
9 the well-being of the child.

10

11 **NEW SECTION. Section 99. Period for postplacement supervision.** (1) In a direct parental
12 placement adoption, the court shall maintain jurisdiction over the placement during a postplacement
13 evaluation period and issue an order for postplacement supervision and a postplacement evaluation.

14 (2) The postplacement evaluation period must be supervised and evaluated by a qualified person
15 appointed, contracted with, or employed by:

16 (a) the department, if the department has accepted supervision of the placement; or

17 (b) a licensed child-placing agency.

18 (3) The court shall provide the evaluator with copies of the petition for adoption and the items filed
19 with the petition.

20 (4) A decree of adoption may not be entered for at least 6 months from the date an order is entered
21 granting temporary custody during the pendency of the proceedings.

22

23 **NEW SECTION. Section 100. Postplacement evaluation for direct parental placement adoption.**

24 (1) An evaluation must be based on a personal interview with the prospective adoptive parent in the
25 prospective parent's home and an observation of the relationship between the child and the prospective
26 adoptive parent.

27 (2) An evaluation must be in writing.

28 (3) At a minimum, the evaluation must include the following information:

29 (a) assessment of adaptation by the prospective adoptive parent to parenting the child;

30 (b) assessment of the health and well-being of the child in the prospective adoptive home;

1 (c) analysis of the level of incorporation by the child into the prospective adoptive parent's home,
2 extended family, and community;

3 (d) assessment of the level of incorporation of the child's previous history into the prospective
4 adoptive home, such as cultural or ethnic practices, or contact with former foster parents or biological
5 relatives; and

6 (e) an account of any change in the prospective adoptive parent's marital status or family history,
7 physical or mental health, home environment, property, income, or financial obligations since the filing of
8 the preplacement evaluation.

9 (4) The evaluation must contain a definite recommendation stating the reasons for or against the
10 proposed adoption.

11

12 **NEW SECTION. Section 101. Time and filing of evaluation.** (1) Unless the court for good cause
13 allows an earlier or later filing, the evaluator shall file a complete written evaluation with the court within
14 not less than 90 days and not more than 180 days after receipt of the court's order for an evaluation.

15 (2) If an evaluation raises a specific concern, as described in [section 87], the evaluation must be
16 filed immediately and must explain why the concern poses a significant risk of harm to the physical or
17 psychological well-being of the child.

18 (3) An evaluator shall give the prospective adoptive parent a copy of the evaluation when it is filed
19 with the court and shall permanently retain a copy of the evaluation and a list of every source for each item
20 of information in the evaluation. If the evaluator ceases to conduct business in Montana, all evaluations
21 in the evaluator's possession must be forwarded to the department for permanent retention.

22

23 **NEW SECTION. Section 102. Motion to enter adoption decree.** (1) The prospective adoptive
24 parent may file a motion for entry of an adoption decree no sooner than 6 months after the court has
25 granted temporary custody to the prospective adoptive parent.

26 (2) The motion must be supported by the following documents:

27 (a) the postplacement evaluation prepared pursuant to [section 100]; and

28 (b) an updated list of all disbursements made in connection with the adoption proceeding.

29 (3) A notice of hearing is not required for any party whose parental rights have been terminated
30 in prior proceedings.

1 (4) The court shall consider the petition and shall grant or deny the petition pursuant to the
2 provisions of [sections 125 through 134].

3 (5) If the petition to adopt is denied, the court shall provide notice to the placing parent that the
4 petition has been denied and shall take appropriate action for placement of the child pursuant to [section
5 131].

6 (6) Finality of the decree or the order denying the decree and the time for appeal are determined
7 pursuant to [section 137].

8
9 **NEW SECTION. Section 103. Records.** All records filed with the court in a direct parental
10 placement adoption must be permanently maintained by the court.

11
12 **NEW SECTION. Section 104. Factors to be considered -- best interests of child.** (1) All relevant
13 factors must be considered in determining the best interests of the child in an adoption proceeding. Factors
14 relevant to the determination of a prospective adoptive parent's parenting ability, the future security for a
15 child, and familial stability must be considered. In determining the best interests of the child, the following
16 factors with regard to a prospective adoptive parent may be considered:

17 (a) age, as it relates to health, earning capacity, provisions for the support of a child, or other
18 relevant circumstances;

19 (b) marital status, as it relates to the ability to serve as a parent in particularized circumstances;
20 and

21 (c) religion, as it relates to the ability to provide the child with an opportunity for religious or
22 spiritual and ethical development and as it relates to the express preference of a birth parent or a child to
23 be placed with an adoptive parent of a particular religious faith or denomination.

24 (2) For purposes of ensuring that the best interests of the child are met, the department or a
25 licensed child-placing agency is authorized to gather and use, in an appropriate, nonarbitrary manner,
26 information concerning the age, marital status, and religious beliefs of a prospective adoptive parent. The
27 authority granted by this subsection includes the authority to receive and to consider, consistent with the
28 best interests of the child, the preferences of birth parents relating to the age, marital status, or religious
29 beliefs of an adoptive parent.

30 (3) Consideration of religious factors by a licensed child-placing agency that is affiliated with a

1 particular religious faith is not arbitrary consideration of religion within the meaning of this section.

2

3 **NEW SECTION. Section 105. Parties to department or agency placement.** A parent of a child may
4 relinquish the child for adoption to the department or a licensed child-placing agency. The department or
5 agency shall agree in writing to accept the relinquishment of a placing parent as provided in [section 43]
6 before the relinquishment is valid.

7

8 **NEW SECTION. Section 106. Duties of placing parent.** (1) A parent who is placing a child for
9 adoption shall comply with the provisions for executing a voluntary relinquishment and consent to adopt.

10 (2) A parent placing a child for adoption shall identify and provide information on the location of:

11 (a) any other legal parent or guardian of the child **AND ANY OTHER PERSON REQUIRED TO**
12 **RECEIVE NOTICE UNDER [SECTION 67]**, including any current spouse; and

13 (b) any spouse who is the other birth parent and to whom the parent was married at the probable
14 time of conception or birth of the child.

15 (3) A parent placing a child for adoption shall identify and provide information pertaining to any
16 Indian heritage of the child that would bring the child within the jurisdiction of the Indian Child Welfare Act,
17 25 U.S.C. 1901, et seq.

18 (4) A parent placing a child for adoption shall provide:

19 (a) the disclosures of medical and social history;

20 (b) a certified copy of the child's birth certificate or other document certifying the place and date
21 of the child's birth; and

22 (c) a certified copy of any existing court orders pertaining to custody or visitation of the child.

23

24 **NEW SECTION. Section 107. Counseling requirements.** To the extent required by [sections 1
25 through 156] and the department's or agency's standards, the department or agency shall provide
26 counseling to the parties involved in the adoption.

27

28 **NEW SECTION. Section 108. Waiting period following placement of child.** (1) Once the
29 department or agency has received custody of the child and placed the child for adoption, the department
30 or agency shall supervise and evaluate the placement during a 6-month postplacement evaluation period.

1 (2) The department or agency may recommend in the postplacement evaluation filed with the
2 petition for adoption that the court issue a decree of adoption sooner than the 6-month postplacement
3 evaluation period if:

4 (a) (i) a period of at least 6 months has elapsed since the department or agency placed the child
5 in the prospective adoptive home; and

6 (ii) the department or agency has completed a postplacement evaluation during that period; or

7 (b) (i) a postplacement evaluation has been completed and filed with the court; and

8 (ii) there are detailed extenuating circumstances supporting a waiver of the 6-month postplacement
9 evaluation period.

10 (3) The department or an agency may recommend the waiver of the 6-month postplacement
11 evaluation period and the postplacement evaluation if the adoptee has been in the petitioner's home as a
12 foster child for at least 1 year.

13
14 NEW SECTION. **Section 109. Petition for adoption filed by prospective adoptive parent.** After the
15 child has been placed by the department or agency with the prospective adoptive parent, the parent shall
16 file a petition for adoption.

17
18 NEW SECTION. **Section 110. Postplacement department or agency evaluation.** (1) The
19 department or agency shall complete a written postplacement evaluation. The postplacement evaluation
20 must be conducted according to the department's or agency's standards for placement of a child and at
21 a minimum must include a personal interview with the prospective adoptive parent in that person's home
22 and observation of the relationship between the child and the prospective adoptive parent.

23 (2) Upon the filing of a petition for adoption by the prospective adoptive parent, the department
24 or agency shall file the postplacement evaluation.

25 (3) The evaluation must include the following information:

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

27 (b) whether the proposed home is suitable for the child;

28 (c) a statement that the medical and social histories of the birth parents and child have been
29 provided to the prospective adoptive parent;

30 (d) an assessment of adaptation by the prospective adoptive parent to parenting the child;

1 (e) a statement that the 6-month postplacement evaluation period has been complied with or
2 should be waived;

3 (f) any other circumstances and conditions that may have a bearing on the adoption and of which
4 the court should have knowledge;

5 (g) whether the agency waives notice of the proceeding;

6 (h) a statement that any applicable provision of law governing an interstate or intercountry
7 placement of the child has been complied with; and

8 (i) a statement of compliance with any applicable provisions of the Indian Child Welfare Act, 25
9 U.S.C. 1901, et seq.

10 (4) The evaluation must contain a definite recommendation stating the reasons for or against the
11 proposed adoption.

12

13 **NEW SECTION. Section 111. Consent to adoption.** (1) Upon the filing of the petition for adoption
14 by the prospective adoptive parent, the department or agency that has custody of the child shall file its
15 consent to adoption.

16 (2) Except as provided in subsection (3), the withdrawal of a consent for an adoption filed by the
17 department or an agency in connection with that petition for adoption is not permitted.

18 (3) Upon a motion to withdraw consent, notice and opportunity to be heard must be given to the
19 petitioner and to the person seeking to withdraw consent. The court may, if it finds that the best interests
20 of the child will be furthered, issue a written order permitting the withdrawal of the consent.

21 (4) The entry of a decree of adoption renders a consent irrevocable.

22

23 **NEW SECTION. Section 112. Relinquishment to stepparent.** (1) A parent may relinquish parental
24 rights for the purposes of adoption of a child by the child's stepparent or a member of the child's extended
25 family. The relinquishment must be executed in accordance with [sections 42 through 52]. The
26 relinquishment may be executed at any time after the child is 72 hours old.

27 (2) The stepparent or extended family member shall accept the relinquishment in writing.

28

29 **NEW SECTION. Section 113. Standing to adopt stepchild.** (1) A stepparent has standing to file
30 a petition for adoption of a minor stepchild of the stepparent's spouse if:

1 (a) the spouse has sole legal and physical custody of the child and the child has been in the
2 physical custody of the spouse and the stepparent during the 60 days preceding the filing of a petition for
3 adoption;

4 (b) the spouse is deceased or mentally incompetent but, before dying or being judicially declared
5 mentally incompetent, had legal and physical custody of the child, and the child has resided primarily with
6 the stepparent during the 12 months preceding the filing of the petition; or

7 (c) the department or an agency placed the child with the stepparent.

8 (2) For good cause shown, a court may allow an individual who is not the stepparent but who has
9 the consent of the custodial parent of a child to file a petition for adoption. The petition must be treated
10 as if the petitioner were a stepparent.

11 (3) A petition for adoption by a stepparent may be joined with a petition for termination of parental
12 rights.

13
14 **NEW SECTION. Section 114. Consent to adoption.** (1) Upon the filing of the petition for adoption
15 by the stepparent, the child's parent shall file consent to adoption executed pursuant to [section 115 or
16 116].

17 (2) If the child has attained 12 years of age the child must consent to the adoption.

18
19 **NEW SECTION. Section 115. Consent to adoption -- stepparent's spouse.** (1) A consent to
20 adoption executed by a parent who is the stepparent's spouse must be signed in the presence of an
21 individual authorized to take acknowledgements.

22 (2) A consent must be in writing and must state that:

23 (a) the parent executing the consent has legal and physical custody of the parent's child and
24 voluntarily and unequivocally consents to the adoption of the child by the stepparent;

25 (b) the adoption will not terminate the parental relationship between the parent executing the
26 consent and the child; and

27 (c) the parent executing the consent understands and agrees that:

28 (i) the adoption will terminate the relationship of parent and child between the child's other parent
29 and the child and will terminate any existing court order for custody, visitation, or communication with the
30 child;

1 (ii) the child and any descendant of the child will retain rights of inheritance from or through the
2 child's other parent; and

3 (iii) a court order for visitation or communication with the child by an individual related to the child
4 through the parent executing the consent or an agreement or order concerning another individual that is
5 approved by the court survives the decree of adoption, but that failure to comply with the terms of the
6 order or agreement is not a ground for revoking or setting aside the consent or the adoption.

7
8 **NEW SECTION. Section 116. Consent to adoption -- child's other parent.** A consent executed
9 by a child's parent who is not the stepparent's spouse must be in writing and must state that:

10 (1) the parent executing the consent voluntarily and unequivocally consents to the adoption of the
11 child by the stepparent and the transfer to the stepparent's spouse and the adoptive stepparent of any right
12 that the parent executing the consent has to legal or physical custody of the child;

13 (2) the parent executing the consent understands and agrees that:

14 (a) the adoption will terminate the parent's parental relationship with the child and will terminate
15 any existing court order for custody, visitation, or communication with the child;

16 (b) the child and any descendant of the child will retain rights of inheritance from or through the
17 parent executing the consent; and

18 (c) a court order for visitation or communication with the child by an individual related to the child
19 through the child's other parent or an agreement or order concerning another individual that is approved
20 by the court survives the decree of adoption, but that failure to comply with the terms of the order or
21 agreement is not a ground for revoking or setting aside the consent or the adoption.

22
23 **NEW SECTION. Section 117. Postplacement evaluation period -- waiver.** If the child is a stepchild
24 or a member of the extended family of the petitioner, the court may, if satisfied that the adoption is in the
25 best interests of the child, waive the 6-month postplacement evaluation period and the postplacement
26 evaluation and grant a decree of adoption.

27
28 **NEW SECTION. Section 118. Petition for adoption -- notice -- hearing.** A stepparent who desires
29 to adopt a stepchild must file a petition for adoption, any necessary consents, any required postplacement
30 evaluation, give notice of the hearing on the petition, and attend a hearing conducted by the court.

1 **NEW SECTION. Section 119. Legal consequences of adoption of stepchild.** (1) Except as
 2 provided in subsections (2) and (3), the legal consequences of an adoption of a stepchild by a stepparent
 3 are the same as the consequences under [section 136].

4 (2) An adoption by a stepparent does not affect:

5 (a) the relationship between the adoptee and the adoptee’s parent who is the adoptive stepparent’s
 6 spouse or deceased spouse;

7 (b) an existing court order for visitation or communication with a child by an individual related to
 8 the adoptee through either parent; or

9 (c) the right of the adoptee or a descendant of the adoptee to inheritance or intestate succession
 10 through or from the adoptee’s former parent.

11 (3) Failure to comply with an agreement or order is not a ground for challenging the validity of an
 12 adoption by a stepparent.

13

14 **NEW SECTION. Section 120. Arrearages of child support.** A termination of a parent’s rights and
 15 responsibilities toward a child does not cancel any responsibility to pay arrearages of child support unless
 16 the party to whom the arrearages are owed agrees in writing to waive payment.

17

18 **NEW SECTION. Section 121. Adoption of adult.** A person who has attained the age of legal
 19 majority may be adopted without the consent of the person’s parents.

20

21 **NEW SECTION. Section 122. Who may adopt adult or emancipated minor.** (1) An adult may
 22 adopt another adult or an emancipated minor pursuant to this section. However, an adult may not adopt
 23 the adult’s spouse. An adoption of an incompetent individual of any age must comply with all requirements
 24 set by law for the adoption of a child.

25 (2) An individual who has adopted an adult or emancipated minor may not adopt another adult or
 26 emancipated minor within 1 year after the adoption unless the prospective adoptee is a sibling of the
 27 adoptee.

28

29 **NEW SECTION. Section 123. Consent to adoption.** (1) Consent to the adoption of an adult or
 30 emancipated minor is required only of:

- 1 (a) the adoptee;
- 2 (b) the prospective adoptive parent; and
- 3 (c) the spouse of the prospective adoptive parent unless:
- 4 (i) the spouse and the prospective adoptive parent are legally separated; or
- 5 (ii) the court finds that the spouse is not capable of giving consent or is withholding consent
- 6 contrary to the best interests of the adoptee and the prospective adoptive parent.
- 7 (2) The consent of the adoptee and the prospective adoptive parent must:
- 8 (a) be in writing and be signed in the presence of the court or an individual authorized to take
- 9 acknowledgments;
- 10 (b) state that the parties agree to assume toward each other the legal relationship of parent and
- 11 child and to have all of the rights and be subject to all of the duties of that relationship; and
- 12 (c) state that the parties understand the consequences that the adoption may have for any right
- 13 of inheritance, property, or support.
- 14 (3) The consent of the spouse of the prospective adoptive parent:
- 15 (a) must be in writing and be signed in the presence of the court or an individual authorized to take
- 16 acknowledgments;
- 17 (b) must state that the spouse:
- 18 (i) consents to the proposed adoption; and
- 19 (ii) understands the consequences that the adoption may have for any right of inheritance,
- 20 property, or support that the spouse has; and
- 21 (c) may contain a waiver OF NOTICE of any proceeding for adoption.
- 22

23 **NEW SECTION. Section 124. Jurisdiction and venue.** (1) The court has jurisdiction over a

24 proceeding for the adoption of an adult or emancipated minor if the petitioner has lived in Montana for at

25 least 90 days immediately preceding the filing of a petition for adoption.

26 (2) A petition for adoption ~~may~~ **MUST** be filed in the court in the county in which a petitioner lives.

27

28 **NEW SECTION. Section 125. Procedure.** Except as otherwise provided in [sections 121 through

29 125], the procedure and law for adoption of a child set forth in [sections 1 through 156] is applicable in

30 proceedings for the adoption of an adult. The provisions concerning the counseling requirement,

1 preplacement evaluation, postplacement supervision period, and postplacement evaluation are not applicable
2 to the adoption of an adult.

3

4 **NEW SECTION. Section 126. Petition for adoption.** (1) A petition for adoption must be filed in
5 triplicate, must be notarized by the petitioners, and must specify:

6 (a) the full names, ages, and place and duration of residence of the petitioners;

7 (b) the current marital status of petitioners and, if married, the place and date of the marriage;

8 (c) the circumstances under which the petitioners obtained physical custody of the child and the
9 name of the individual or agency who placed the child;

10 (d) the date and place of birth of the child, if known;

11 (e) the name used for the child in the proceeding and, if a change in name is desired, the full name
12 by which the child is to be known;

13 (f) that it is the desire of the petitioners that the relationship of parent and child be established
14 between the petitioners and the child and to have all the rights and be subject to all the duties of that
15 relationship;

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

17 (h) the facts, if any, that excuse consent on the part of a person whose consent is required for the
18 adoption;

19 (i) that any applicable law governing interstate or intercountry placement was complied with;

20 (j) that, if applicable, the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., was complied with;

21 (k) whether a previous petition has been filed by petitioner to adopt the child at issue or any other
22 child in any court and the disposition of the petitions; and

23 (l) the name and address, if known, of any person who is entitled to receive notice of the petition
24 for adoption.

25 (2) There must be attached to or accompanying the petition:

26 (a) any written consent required by [sections 125 through 134];

27 (b) a certified copy of any court order terminating the rights of the child's parents;

28 (c) a certified copy of any existing court order in any pending proceeding concerning custody of
29 or visitation with the child;

30 (d) a copy of any agreement with a public agency to provide a subsidy for the benefit of the child

- 1 with a special need;
- 2 (e) the postplacement evaluation prepared pursuant to [section 100 or 110];
- 3 (f) a disclosure of any disbursements made in connection with the adoption proceeding.
- 4 (3) One copy of the petition must be retained by the court. A copy must be sent to:
- 5 (a) the department or to the agency participating in the adoption proceeding; ~~and~~ OR
- 6 (b) the parent placing the child for adoption in a direct parental placement adoption.
- 7

8 **NEW SECTION. Section 127. Time for action on petition for adoption -- waiver.** Not less than 6

9 months from the date the child has been placed with the prospective adoptive parent, the prospective

10 adoptive parent may apply to the court for a decree of adoption. If the best interests of the adoptee are

11 served, THEN PURSUANT TO [SECTIONS 108 AND 117], the court may waive the 6-month postplacement

12 evaluation period and summarily consider an adoption petition.

13

14 **NEW SECTION. Section 128. Notice of hearing.** (1) Upon the filing of a petition for adoption,

15 notice of hearing must be served on:

- 16 (a) a person whose consent to adoption is required under [section 39];
- 17 (b) the department or agency whose consent to adoption is required;
- 18 (c) the spouse of the petitioner if the spouse has not joined in the petition;
- 19 (d) a person who has revoked a consent or relinquishment or is attempting to have a consent or
- 20 relinquishment set aside; and
- 21 (e) any other person named by the court to receive notice.
- 22 (2) The notice must direct the person to appear in court at the time specified and to show cause
- 23 why the petition should not be granted.
- 24 (3) The notice of hearing must be served in a manner appropriate under the Montana Rules of Civil
- 25 Procedure.
- 26 (4) A notice of hearing is not required to be served on any party:
- 27 (a) whose parental rights have been terminated in prior proceedings;
- 28 (b) who waives notice in a relinquishment, consent, or other document signed by the party;
- 29 (c) who has consented in writing to an adoption; or
- 30 (d) whose consent to adoption is not required under [section 40].

1 **NEW SECTION. Section 129. Content of notice.** The notice required by [section 128] must
2 contain:

- 3 (1) the caption of the petition;
4 (2) the address and telephone number of the court in which the petition is pending;
5 (3) a concise summary of the relief requested in the petition;
6 (4) the name, mailing address, and telephone number of the petitioner or the petitioner's attorney;

7 and

- 8 (5) a statement of the method of responding to the notice and the consequences of failure to
9 respond.

10

11 **NEW SECTION. Section 130. Hearing on petition for adoption.** (1) The petitioners and the child
12 shall appear at the hearing unless the presence of the child is waived by the court.

13 (2) The court shall examine the petition, the documents accompanying the petition, and the
14 petitioners and shall receive evidence in support of the petition.

15

16 **NEW SECTION. Section 131. Granting petition for adoption -- denial of petition.** (1) The court
17 shall issue a decree of adoption awarding custody of the child to the petitioners based on the evidence
18 received if it determines that:

19 (a) the child has been in the physical custody of the petitioners for at least 6 months, unless the
20 court for good cause shown waives this requirement pursuant to [section 108 or 117];

21 (b) notice of hearing on the petition for adoption was properly served or dispensed with;

22 (c) every necessary consent, relinquishment, waiver, disclaimer, or judicial order terminating
23 parental rights has been obtained and filed with the court;

24 (d) any evaluation required by [sections 1 through 156] has been filed with and considered by the
25 court; and

26 (e) the adoption is in the best interests of the child.

27 (2) If the petition for adoption is denied, the court shall dismiss the petition and enter an
28 appropriate order as to the future custody of the child according to the best interests of the child.

29

30 **NEW SECTION. Section 132. Best interests of child.** (1) In determining whether to grant a

1 petition to adopt, the court shall consider all relevant factors in determining the best interests of the child.
 2 The court shall consider factors relevant to the determination of a prospective adoptive parent's parenting
 3 ability, the future security for a child, and familial stability.

4 (2) In a contested adoption proceeding involving a child, the court shall consider the factors set
 5 out in subsection (1) and shall also consider:

6 (a) the nature and length of any relationship already established between a child and any person
 7 seeking to adopt the child;

8 (b) the nature of any family relationship between the child and any person seeking to adopt the
 9 child and whether that person has established a positive emotional relationship with the child;

10 (c) the harm that could result to the child from a change in placement;

11 (d) whether any person seeking to adopt the child has adopted a sibling or half-sibling of the child;

12 (e) which, if any, of the persons seeking to adopt the child were selected by the placing parent or
 13 the department or agency whose consent to the adoption is required.

14 (3) In an Indian child placement, the court shall determine if the requirements of the Indian Child
 15 Welfare Act, 25 U.S.C. 1901, et seq., have been met.

16
 17 **NEW SECTION. Section 133. Removal of child from state.** Before a decree of adoption is issued,
 18 a petitioner may not remove the child from the state for more than 30 consecutive days without the
 19 permission of:

20 (1) the court if the child was placed directly for adoption; or

21 (2) the department or the agency that placed the child for adoption.

22
 23 **NEW SECTION. Section 134. Decree of adoption.** A decree of adoption must state:

24 (1) the original name of the child;

25 (2) the name of the petitioner for adoption;

26 (3) whether the petitioner is married or unmarried;

27 (4) whether the petitioner is a stepparent of the child;

28 (5) the name by which the child is to be known;

29 (6) **FOR A CHILD BORN IN MONTANA,** a direction to the vital statistics bureau to issue a new birth
 30 certificate unless the adoptee is 12 years of age or older and requests that a new certificate not be issued;

1 (7) the child's date and place of birth, if known;

2 (8) the effect of the decree of adoption as stated in [section 136];

3 (9) that the adoption is in the best interests of the child; and

4 (10) whether the birth mother objects to the release of the original birth certificate information upon
5 the adoptee reaching 18 years of age.

6
7 **NEW SECTION. Section 135. Communication of decree to department.** (1) Within 30 days after
8 a decree of adoption becomes final, the clerk of court shall send a report of the adoption to the department.

9 (2) If petitioners have requested it, the court shall order the vital statistics bureau to issue a new
10 birth certificate to the child.

11
12 **NEW SECTION. Section 136. Effect of decree.** (1) After the decree of adoption is entered:

13 (a) the relationship of parent and child and all the rights, duties, and other legal consequences of
14 the relation of parent and child exist between the adoptee and the adoptive parent and the kindred of the
15 adoptive parent;

16 (b) the former parents and the kindred of the former parents of the adoptee, unless they are the
17 adoptive parents or the spouse of an adoptive parent, are relieved of all parental responsibilities for the
18 adoptee and have no rights over the adoptee except for a former parent's duty to pay arrearages for child
19 support.

20 ~~(2) A decree of adoption is not subject to a challenge after the decree is issued.~~

21 ~~(3)~~(2) A decree of adoption should include a notice to the vital statistics bureau as to the birth
22 mother's consent to release of the information on the original birth certificate upon the adoptee reaching
23 18 years of age.

24 ~~(4)~~(3) The relationship of parent and child for the purposes of intestate succession is governed by
25 Title 72.

26
27 **NEW SECTION. Section 137. Finality of decree -- expediency.** (1) For purposes of appeal, the
28 decree of adoption is a final order when it is issued.

29 (2) A person may appeal from the order in the manner and form provided for appeals from a
30 judgment in civil actions.

1 (3) An appeal from a decree of adoption must be heard expeditiously pursuant to the provisions
2 of [section 78].

3
4 **NEW SECTION. Section 138. Rights of adoptee.** A decree of adoption does not affect any right
5 or benefit vested in the adoptee before the decree became final.

6
7 **NEW SECTION. Section 139. Foreign adoption decrees.** When the relationship of parent and child
8 has been created by a decree of adoption of a court of any other state or country, the rights and obligations
9 of the parties as to matters within the jurisdiction of this state must be determined pursuant to [sections
10 1 through 156].

11
12 **NEW SECTION. Section 140. Visitation and communication agreements.** (1) Except as otherwise
13 provided in [sections 1 through 156], a decree of adoption terminates any existing order or written or oral
14 agreement for contact or communication between the adoptee and the birth parents or family.

15 (2) Any express written agreement entered into between the placing parent and the prospective
16 adoptive parent after the execution of a relinquishment and consent to adoption is independent of the
17 adoption proceedings, and any relinquishment and consent to adopt remains valid whether or not the
18 agreement for contact or communication is later performed. Failure to perform an agreement is not grounds
19 for setting aside an adoption decree.

20 (3) A court may order that an agreement for contact or communication entered into under this
21 section may not be enforced upon a finding that:

22 (a) enforcement is detrimental to the child;

23 (b) enforcement undermines the adoptive parent's parental authority; or

24 (c) due to a change in circumstances, compliance with the agreement would be unduly burdensome
25 to one or more of the parties.

26
27 **NEW SECTION. Section 141. Confidentiality of records and proceedings.** (1) Unless the court
28 orders otherwise, all hearings held in proceedings under [sections 1 through 156] are confidential and must
29 be held in closed court without admittance of any person other than interested parties and their counsel.

30 (2) All papers and records pertaining to the adoption must be kept as a permanent record of the

1 court and must be withheld from inspection. A person may not have access to the records, except:

2 (a) for good cause shown on order of the judge of the court in which the decree of adoption was
3 entered;

4 (b) as provided in [sections 141 through 146];

5 (c) as provided in 50-15-121 and 50-15-122; OR

6 (D) THE DEPARTMENT'S CHILD SUPPORT ENFORCEMENT DIVISION PROVIDING SERVICES
7 UNDER 42 U.S.C. 651, ET SEQ.

8 (3) All files and records pertaining to adoption proceedings retained by the department, a licensed
9 child-placing agency, a lawyer, or any authorized agency are confidential and must be withheld from
10 inspection, except as provided in 50-15-121, 50-15-122, and [sections 141 through 146].

11

12 NEW SECTION. Section 142. Disclosure of records -- nonidentifying information -- consensual
13 release. (1) The department or authorized person or agency may disclose:

14 (a) nonidentifying information to an adoptee, an adoptive or birth parent, or an extended family
15 member of an adoptee or birth parent; and

16 (b) identifying information to a court-appointed confidential intermediary upon order of the court
17 or as provided in 50-15-121 and 50-15-122.

18 (2) Information may be disclosed to any person who consents in writing to the release of
19 confidential information to other interested persons who have also consented. Identifying information
20 pertaining to an adoption involving an adoptee who is still a child may not be disclosed based upon a
21 consensual exchange of information unless the adoptee's adoptive parent consents in writing.

22

23 NEW SECTION. Section 143. Petition for appointment of confidential intermediary. (1) An adult
24 adoptee, an adoptive or birth parent, or an adult extended family member of the adoptee or birth parent
25 may petition the court for disclosure of identifying information regarding the adoptee, a birth child, a birth
26 parent, or an extended family member.

27 (2) A petition for disclosure must contain:

28 (a) as much of the following information as is known by the petitioner:

29 (i) the name, address, and identification of the petitioner;

30 (ii) the date of the adoptee's birth;

- 1 (iii) the county and state where the adoption occurred;
- 2 (iv) the date of the adoption; and
- 3 (v) any other information known to the petitioner concerning the birth parents, the adoptive parent,
- 4 and the adoptee that could assist in locating the person being sought;
- 5 (b) written documentation from a certified confidential intermediary agreeing to conduct the search;
- 6 and
- 7 (c) if the petitioner is not the adoptee or birth parent, the reason the petitioner is requesting the
- 8 appointment of a confidential intermediary.

9

10 **NEW SECTION. Section 144. Appointment of confidential intermediary -- duties -- payment.** (1)

11 After a petition for disclosure has been filed under [section 143], the court shall appoint a confidential

12 intermediary who shall:

- 13 (a) conduct a confidential search for the person sought as requested in the petition for disclosure;
- 14 (b) refrain from disclosing directly or indirectly any identifying information to the petitioner, unless
- 15 ordered to do so by the court; and
- 16 (c) make a written report of the results of the search to the court not later than 6 months after
- 17 appointment.

18 (2) Upon appointment, a confidential intermediary is entitled to be paid a reasonable fee plus actual

19 expenses incurred in conducting the search. The fee and expenses must be paid by the petitioner.

20 (3) A confidential intermediary may inspect otherwise confidential records of the court, the

21 department, or an authorized agency for use in the search. The confidential intermediary may not disclose

22 identifying information from the records or any results of a search unless authorized by the court or unless

23 the parties have executed written consent to the confidential intermediary. Nonidentifying information from

24 any source may be disclosed without further order from the court.

25 (4) If a confidential intermediary locates the person being sought, a confidential inquiry must be

26 made as to whether the located person consents to having that person's present identity disclosed to the

27 petitioner. The court may request that the confidential intermediary assist in arranging contact between the

28 petitioner and the located person.

29 (5) If a confidential intermediary locates the person being sought and the located person does not

30 consent to having that person's identity disclosed, identifying information regarding that person may be

1 disclosed only upon order of the court for good cause shown.

2 (6) If the person being sought is found to be deceased, the court may order disclosure of identifying
3 information regarding the deceased to the petitioner.

4

5 **NEW SECTION. Section 145. Disclosure authorized in course of employment.** [Sections 1 through
6 156] do not preclude an employee or agent of a court, department, or agency from:

7 (1) inspecting permanent, confidential, or sealed records for the purpose of discharging any
8 obligation under [sections 1 through 156];

9 (2) disclosing the name of the court in which a proceeding for adoption occurred or the name of
10 an agency that placed an adoptee to an individual described in [section 143(1)] who can verify the
11 individual's identity; or

12 (3) disclosing nonidentifying information contained in confidential or sealed records in accordance
13 with any other applicable state or federal law.

14

15 **NEW SECTION. Section 146. Release of original birth certificate -- certificate of adoption.** (1) For
16 a person adopted on or before July 1, 1967, in addition to any copy of an adoptee's original birth certificate
17 authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall
18 furnish a copy of the original birth certificate upon the written request of an adoptee.

19 (2) For a person adopted between July 1, 1967, and September 30, 1997, in addition to any copy
20 of an adoptee's original birth certificate authorized for release by a court order issued pursuant to
21 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate upon a court
22 order.

23 (3) For a person adopted on or after [the effective date of this section], in addition to any copy of
24 an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121
25 or 50-15-122, the department shall furnish a copy of the original birth certificate upon:

26 (a) the written request of an adoptee who has attained 18 years of age unless the birth parent has
27 requested in writing that the original birth certificate not be automatically released; or

28 (b) a court order.

29 (4) For a person adopted on or after [the effective date of this section] and subject to subsection
30 (5), upon the request of an adoptive parent or an adoptee who has attained 18 years of age, ~~the clerk of~~

1 ~~the court that entered a decree of adoption~~ THE DEPARTMENT shall issue a certificate of adoption that
2 states the date and place of adoption, the date of birth of the adoptee, the name of each adoptive parent,
3 and the name of the adoptee as provided in the decree.

4 (5) A birth parent may request in writing to the vital statistics bureau that the birth certificate for
5 an adoptee not be released without a court order.

6

7 NEW SECTION. Section 147. Fees related to placement for adoption by parent. (1) Reasonable
8 adoption fees may be paid by the adoptive parent for the actual cost of services. The cost of services must
9 relate to:

10 (a) a petition for adoption;

11 (b) placement of a child;

12 (c) medical care or services;

13 (d) prenatal care;

14 (e) foster care;

15 (f) a preplacement evaluation;

16 (g) counseling related to providing information necessary to make an informed decision to
17 voluntarily relinquish a child;

18 (h) travel or temporary living costs for the birth mother;

19 (i) legal fees incurred for services on behalf of the placing parent;

20 (j) the reasonable costs incurred by a placing parent in a direct parental placement adoption to
21 document the disclosures of medical and social history required by [section 81]; and

22 (k) other reasonable costs related to adoption that do not include education, vehicles, salary or
23 wages, vacations, or permanent housing for the birth parent.

24 (2) A birth parent or a provider of a service listed in subsection (1) may receive or accept a
25 payment authorized by subsection (1). The payment may not be made contingent on the placement of a
26 child for adoption or upon relinquishment of and consent to adoption of the child. If the adoption is not
27 completed, a person who is authorized by subsection (1) to make a specific payment is not liable for that
28 payment unless the person has agreed in a signed writing with a birth parent or a provider of a service to
29 make the payment regardless of the outcome of the proceeding for adoption.

30

1 **NEW SECTION. Section 148. Limitations on payment of counseling and legal fees.** (1) A
2 prospective adoptive parent may pay counseling expenses for a maximum of 10 hours of counseling.

3 (2) A prospective adoptive parent may pay for legal costs entailed for providing legal counsel for
4 one birth parent unless the birth parents elect joint representation. The right of a relinquishing parent to
5 legal counsel paid by the prospective adoptive parent continues only until the relinquishment becomes
6 irrevocable. An attorney may not represent both a birth parent and a prospective adoptive parent.

7
8 **NEW SECTION. Section 149. Prohibited activities -- violations -- penalties.** (1) A person, other
9 than the department or a licensed child-placing agency, may not:

10 (a) advertise in any public medium that the person:

11 (i) knows of a child who is available for adoption; or

12 (ii) is willing to accept a child for adoption or knows of prospective adoptive parents for a child;

13 or

14 (b) engage in placement activities as defined in [section 151].

15 (2) An individual other than an extended family member or stepparent of a child may not obtain
16 legal or physical custody of a child for purposes of adoption unless the individual has a favorable
17 preplacement evaluation or a court-ordered waiver of the evaluation.

18 (3) A person who, as a condition for placement, relinquishment, or consent to the adoption of a
19 child, knowingly offers, gives, agrees to give, solicits, accepts, or agrees to accept from another person,
20 either directly or indirectly, anything other than the fees allowed under [section 147] commits the offense
21 of paying or charging excessive adoption process fees.

22 (4) It is illegal to require repayment or reimbursement of anything provided to a birth parent under
23 [section 147]. All payments by the adoptive parent made on behalf of a birth parent pursuant to this
24 section are considered a gift to the birth parent.

25 (5) A person convicted of the offense of paying or charging excessive adoption process fees,
26 attempting to recover expenses incurred from an adoption process, or otherwise violating [sections 1
27 through 156] may be fined an amount not to exceed \$10,000 in an action brought by the appropriate city
28 or county attorney. The court may also enjoin from further violations any person who violates [sections
29 1 through 156].

30

1 **NEW SECTION. Section 150. Action by department.** The department may review and investigate
2 compliance with [sections 1 through 156] and may maintain an action in court to compel compliance.

3
4 **NEW SECTION. Section 151. Definitions.** As used in [sections 151 through 156], the following
5 definitions apply:

6 (1) "Person" includes any individual, partnership, voluntary association, or corporation.

7 (2) "Placement activities" means any of the following:

8 (a) placement of a child for adoption;

9 (b) arranging or providing short-term foster care for a child pending an adoptive placement; or

10 (c) facilitating placement of a child by maintaining a list in any form of birth parents or prospective
11 adoptive parents.

12 (3) "Soliciting" means to request, offer, promote, refer, or entice, either directly or indirectly
13 through correspondence, advertising, or other method, a potential adoptive parent or couple, birth parent
14 or parents, or placement of a child by a birth parent.

15

16 **NEW SECTION. Section 152. General duties of department.** The department shall:

17 (1) issue licenses to entities engaged in child placement activities on [the effective date of this
18 section] if the licensed applicant has met the requirements established by the department by rule;

19 (2) prescribe the conditions upon which child-placing licenses are issued and revoked; and

20 (3) adopt rules for the conduct of the affairs of child-placing agencies that are consistent with the
21 welfare of children.

22

23 **NEW SECTION. Section 153. License required -- term of license -- no fee charged.** (1) Only an
24 entity holding a current child-placing agency license issued by the department may act as an agency for
25 the purpose of:

26 (a) procuring or selecting proposed adoptive homes;

27 (b) placing children in proposed adoptive homes;

28 (c) soliciting persons to adopt children or arranging for persons to adopt children;

29 (d) soliciting persons to relinquish children or place children in potential adoptive homes; or

30 (e) engaging in placement activities.

1 (2) Licenses are valid for 1 year after issuance. A fee may not be charged for a license.

2

3 **NEW SECTION. Section 154. Requirements for licensure.** The department may issue licenses to
4 agencies meeting the following minimum requirements:

5 (1) The chief function of the agency or a specific program within the agency must be the care and
6 placement of children.

7 (2) The agency operates on a nonprofit basis and is financially responsible in and for its operation.

8 (3) The agency meets the requirements as designated by the department by rule.

9 (4) The directing or managing personnel of the agency must be qualified both on the basis of
10 professional educational experience and character.

11 (5) Complete records must be kept of both the children and adopting parents with which the
12 agency deals, and the records must be maintained in accordance with [section 141].

13 (6) The agency shall maintain and use an in-state office for making a social study of the child and
14 proposed adoptive parent before placement of the child, particularly with regard to:

15 (a) the physical and mental health, emotional stability, and personal integrity of the adoptive parent
16 and the parent's ability to promote the child's welfare; and

17 (b) the physical and mental condition of the child and the child's family background.

18 (7) The agency must have the ability to provide education for adoptive parents and counseling for
19 placing parents as required in [section 48] and department rules.

20 (8) The agency shall agree to cooperate with courts having jurisdiction in adoptive matters and with
21 other public agencies having to deal with the welfare of children.

22 (9) The agency shall, annually, submit a full, complete, and true financial statement to the
23 department, and the statement must contain a full accounting of the operations of the agency during the
24 preceding year.

25

26 **NEW SECTION. Section 155. Investigation of agencies -- cancellation of licenses.** (1) The
27 department may, through its authorized representative, investigate the operations of licensed agencies and
28 may cancel licenses for failure to observe prescribed rules or to maintain minimum requirements. An
29 agency shall give to representatives of the department all information requested and allow them to observe
30 the operation of the agency.

1 (2) When the department finds, upon the basis of the statement required by [section 154(9)] or
2 upon its own investigation, that an agency has not conducted or is financially incapable of conducting its
3 operations according to the established standards, the department may suspend, revoke, or deny a license
4 for the agency.

5
6 **NEW SECTION. Section 156. Violation a misdemeanor -- penalty.** (1) Any person who maintains
7 or conducts an agency for procuring the adoption of children or assists in the maintaining or conducting
8 of an agency without first obtaining a child-placing license is guilty of a misdemeanor and upon conviction
9 of a first offense shall be punished by a fine not exceeding \$1,000 or imprisonment for up to 1 year in jail
10 and shall be enjoined from further engaging in agency activities.

11 (2) Upon the second conviction of a person for violation of [sections 153 through 155], the person
12 is guilty of a felony and may be punished by a fine not exceeding \$10,000 or imprisonment for up to 5
13 years in prison and shall be enjoined from further engaging in agency activities.

14
15 **Section 157.** Section 2-6-104, MCA, is amended to read:
16 "2-6-104. **Records of officers open to public inspection.** Except as provided in ~~40-8-126 and~~
17 ~~27-18-111 and [section 141]~~, the public records and other matters in the office of any officer are at all
18 times during office hours open to the inspection of any person."

19
20 **Section 158.** Section 2-18-606, MCA, is amended to read:
21 "2-18-606. **Parental leave for state employees.** (1) The department of administration shall develop
22 a parental leave policy for permanent state employees. The policy must permit an employee to take a
23 reasonable leave of absence and permit the employee to use sick leave, immediately following the birth or
24 placement of a child, for a period not to exceed 15 working days if:

- 25 (a) the employee is adopting a child; or
26 (b) the employee is a birth father.

27 (2) As used in this section, "placement" means placement for adoption as defined in ~~40-8-103~~
28 33-22-130."

29
30 **Section 159.** Section 17-7-502, MCA, is amended to read:

1 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
2 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
3 without the need for a biennial legislative appropriation or budget amendment.

4 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply
5 with both of the following provisions:

6 (a) The law containing the statutory authority must be listed in subsection (3).

7 (b) The law or portion of the law making a statutory appropriation must specifically state that a
8 statutory appropriation is made as provided in this section.

9 (3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;
10 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;
11 15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;
12 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304;
13 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205;
14 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306; 23-5-409;
15 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503;
16 39-71-907; 39-71-2321; 39-71-2504; [section 16]; 44-12-206; 44-13-102; 50-4-623; 50-5-232;
17 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214;
18 75-11-313; 76-12-123; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220;
19 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

20 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
21 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
22 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
23 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as
24 determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the
25 bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec.
26 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for
27 supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates
28 July 1, 2001.)"

29
30 **Section 160.** Section 25-1-201, MCA, is amended to read:

1 **"25-1-201. Fees of clerk of district court.** (1) The clerk of the district court shall collect the
2 following fees:

3 (a) at the commencement of each action or proceeding, except a petition for dissolution of
4 marriage, from the plaintiff or petitioner, \$80; for filing a complaint in intervention, from the intervenor,
5 \$80; for filing a petition for dissolution of marriage, a fee of \$120; and for filing a petition for legal
6 separation, a fee of \$120;

7 (b) from each defendant or respondent, on appearance, \$60;

8 (c) on the entry of judgment, from the prevailing party, \$45;

9 (d) for preparing copies of papers on file in the clerk's office, 50 cents per page for the first five
10 pages of each file, per request, and 25 cents per additional page;

11 (e) for each certificate, with seal, \$2;

12 (f) for oath and jurat, with seal, \$1;

13 (g) for search of court records, 50 cents for each year searched, not to exceed a total of \$25;

14 (h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts,
15 the fee for entry of judgment provided for in subsection (1)(c);

16 (i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;

17 (j) for transmission of records or files or transfer of a case to another court, \$5;

18 (k) for filing and entering papers received by transfer from other courts, \$10;

19 (l) for issuing a marriage license, \$30;

20 (m) on the filing of an application for informal, formal, or supervised probate or for the appointment
21 of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from
22 the applicant or petitioner, \$70, which includes the fee for filing a will for probate;

23 (n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative
24 of the estate of a nonresident decedent, \$55;

25 (o) for filing a declaration of marriage without solemnization, \$30;

26 (p) for filing a motion for substitution of a judge, \$100;

27 (q) for filing a petition for adoption, \$75.

28 (2) Except as provided in subsections (3) through (8), 32% of all fees collected by the clerk of the
29 district court must be deposited in and credited to the district court fund. If no district court fund exists,
30 that portion of the fees must be deposited in the general fund for district court operations. The remaining

1 portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

2 (3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage
3 without solemnization, \$14 must be deposited in and credited to the state general fund, \$6.40 must be
4 deposited in and credited to the county general fund, and \$9.60 must be remitted to the state to be
5 deposited as provided in 19-5-404.

6 (4) Of the fee for filing a petition for dissolution of marriage or legal separation, \$40 must be
7 deposited in the state general fund, \$35 must be remitted to the state to be deposited as provided in
8 19-5-404, \$5 must be deposited in the children's trust fund account established by 41-3-702, and \$20
9 must be deposited in and credited to the district court fund. If no district court fund exists, the \$20 must
10 be deposited in the general fund for district court operations.

11 (5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the
12 district court fund or the county general fund or remitted to the state, the clerk of the district court shall
13 deduct from the following fees the amounts indicated:

14 (i) at the commencement of each action or proceeding and for filing a complaint in intervention as
15 provided in subsection (1)(a), \$35;

16 (ii) from each defendant or respondent, on appearance, as provided in subsection (1)(b), \$25;

17 (iii) on the entry of judgment as provided in subsection (1)(c), \$15; and

18 (iv) from the applicant or petitioner, on the filing of an application for probate or for the appointment
19 of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as
20 provided in subsection (1)(m), \$15.

21 (b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the
22 county general fund for district court operations unless the county has a district court fund. If the county
23 has a district court fund, the money must be deposited in that fund.

24 (6) The fee for filing a motion for substitution of a judge as provided in subsection (1)(p) must be
25 remitted to the state to be deposited as provided in 19-5-404.

26 (7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court
27 fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

28 (8) The clerk of the district court shall remit to the credit of the state general fund \$20 of each fee
29 collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion of
30 judicial salaries.

1 (9) The clerk of district court shall remit to the credit of the special revenue account established
 2 in [section 16] \$70 of the filing fee required in subsection (1)(g), AND \$5 OF THE FILING FEE MUST BE
 3 DEPOSITED IN THE DISTRICT COURT FUND. IF NO DISTRICT COURT FUND EXISTS, FEES MUST BE
 4 DEPOSITED IN THE GENERAL FUND FOR DISTRICT COURT OPERATIONS."

5
 6 **Section 161.** Section 33-22-130, MCA, is amended to read:

7 **"33-22-130. Coverage for adopted children from time of placement -- preexisting conditions. (1)**

8 Each group and individual disability policy, certificate of insurance, or membership contract that is delivered,
 9 issued for delivery, renewed, extended, or modified in this state must provide coverage for an adopted child
 10 of the insured or subscriber to the same extent as for natural children of the insured or subscriber.

11 (2) The coverage required by this section must be effective from the date of placement for the
 12 purpose of adoption and must continue unless the placement is disrupted prior to legal adoption and the
 13 child is removed from placement. Coverage at the time of placement must include the necessary care and
 14 treatment of medical conditions existing prior to the date of placement.

15 (3) As used in this section, "placement" means ~~placement for adoption as defined in 40-8-103~~ the
 16 transfer of physical custody of a child who is legally free for adoption to a person who intends to adopt the
 17 child."

18
 19 **Section 162.** Section 33-30-1016, MCA, is amended to read:

20 **"33-30-1016. Coverage for adopted children from time of placement -- preexisting conditions. (1)**

21 Each individual or group membership contract issued or amended by a health service corporation in this
 22 state that provides coverage of dependent children of a member must provide coverage for an adopted child
 23 of the member to the same extent as for natural children of the member.

24 (2) The coverage required by this section must be effective from the date of placement for the
 25 purpose of adoption and must continue unless the placement is disrupted prior to legal adoption and the
 26 child is removed from placement. Coverage at the time of placement must include the necessary care and
 27 treatment of medical conditions existing prior to the date of placement.

28 (3) As used in this section, "placement" ~~means placement for adoption~~ has the meaning as defined
 29 in 40-8-103 33-22-130."

1 **Section 163.** Section 33-31-114, MCA, is amended to read:

2 "**33-31-114. Coverage for adopted children from time of placement -- preexisting conditions.** (1)

3 Each health maintenance contract regulated under this chapter must provide coverage for an adopted child
4 of the enrollee to the same extent as for natural children of the enrollee.

5 (2) The coverage required by this section must be effective from the date of placement for the
6 purpose of adoption and must continue unless the placement is disrupted prior to legal adoption and the
7 child is removed from placement. Coverage at the time of placement must include the necessary care and
8 treatment of medical conditions existing prior to the date of placement.

9 (3) As used in this section, "placement" ~~means placement for adoption~~ has the meaning as defined
10 in ~~40-8-103~~ 33-22-130."

11

12 **Section 164.** Section 37-60-301, MCA, is amended to read:

13 "**37-60-301. License required.** (1) Except as provided in 37-60-105, it is unlawful for any person
14 to act as or perform the duties as defined in 37-60-101 of a contract security company or proprietary
15 security organization, a private investigator, or a private security guard without having first obtained a
16 license from the board. Those persons licensed on April 18, 1983, shall retain their current licensure status
17 and shall renew their licenses on the renewal date as prescribed by the department.

18 (2) It is unlawful for any unlicensed person to act as, pretend to be, or represent to the public that
19 the person is licensed as a private investigator, a contract security company, a proprietary security
20 organization, or a private security guard.

21 (3) A person appointed by the court as a confidential intermediary under [section 144] is not
22 required to be licensed under this chapter. A person who is licensed under this chapter is not authorized
23 to act as a confidential intermediary, as defined in [section 3], without meeting the requirements of [section
24 144].

25 ~~(3)(4)~~ (4) A person who knowingly engages an unlicensed private investigator, private security guard,
26 or contract security company is guilty of a misdemeanor punishable under 37-60-411."

27

28 **Section 165.** Section 40-6-108, MCA, is amended to read:

29 "**40-6-108. Statute of limitations.** (1) An action may be commenced at any time for the purpose
30 of declaring the existence or nonexistence of the father and child relationship presumed under ~~subsection~~

1 ~~(a), (b), or (c)~~ of 40-6-105(1)(a), (1)(b), or (1)(c).

2 (2) After the presumption has been rebutted, paternity of the child by another ~~man~~ individual may
3 be determined in the same action if the other ~~man~~ individual has been made a party.

4 (3) An action to determine the existence or nonexistence of the father and child relationship as to
5 a child who has no presumed father under 40-6-105:

6 (a) may not be brought by the child later than 2 years after the child attains the age of majority;

7 (b) may be brought by a state agency at any time after the first application is made under Title IV-D
8 of the Social Security Act for services to the child and before the child attains the age of majority. This
9 subsection is intended to apply retroactively, within the meaning of 1-2-109, to any child for whom a
10 paternity action was barred or could have been barred by a shorter limitation period. However, in previously
11 barred actions that are revived by this subsection, the father is not liable to the state agency for support
12 of the child.

13 (4) The father's liability for a statutory debt created by the payment of public assistance is limited
14 to the amount of assistance paid during the 2-year period preceding commencement of the action. This
15 subsection does not limit the subsequent accrual of a statutory debt.

16 (5) Section 40-6-107 and this section do not extend the time within which a right of inheritance
17 or a right to a succession may be asserted beyond the time provided by law relating to distribution and
18 closing of decedents' estates or to the determination of heirship or otherwise.

19 (6) After the conclusion of an adoption proceeding under ~~Title 40, chapter 8~~ sections 1 through
20 156, a further action to declare the existence or nonexistence of the father and child relationship of the
21 adopted child may not be commenced, except as provided in 40-8-112."

22

23 **Section 166.** Section 41-3-609, MCA, is amended to read:

24 **"41-3-609. Criteria for termination.** (1) The court may order a termination of the parent-child legal
25 relationship upon a finding that any of the following circumstances exist:

26 (a) the parents have relinquished the child pursuant to ~~40-6-135~~ sections 43 and 51;

27 (b) the child has been abandoned by the parents as set forth in 41-3-102(7)(e);

28 (c) the child is an adjudicated youth in need of care and both of the following exist:

29 (i) an appropriate treatment plan that has been approved by the court has not been complied with
30 by the parents or has not been successful; and

1 (ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a
2 reasonable time; or

3 (d) the parent has failed to successfully complete a treatment plan approved by the court within
4 the time periods allowed for the child to be in foster care under 41-3-410 unless it orders other permanent
5 legal custody under 41-3-410.

6 (2) In determining whether the conduct or condition of the parents is unlikely to change within a
7 reasonable time, the court ~~must~~ shall enter a finding that continuation of the parent-child legal relationship
8 will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders
9 the parents unfit, unable, or unwilling to give the child adequate parental care. In making the
10 determinations, the court shall consider but is not limited to the following:

11 (a) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature
12 as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child
13 within a reasonable time;

14 (b) a history of violent behavior by the parent;

15 (c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child
16 caused by the parent;

17 (d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's
18 ability to care and provide for the child;

19 (e) present judicially ordered long-term confinement of the parent;

20 (f) the injury or death of a sibling due to proven parental abuse or neglect; and

21 (g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the
22 parent.

23 (3) In considering any of the factors in subsection (2) in terminating the parent-child relationship,
24 the court shall give primary consideration to the physical, mental, and emotional conditions and needs of
25 the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's
26 physical, mental, and emotional conditions.

27 (4) A treatment plan is not required under this part upon a finding by the court following hearing
28 if:

29 (a) two medical doctors submit testimony that the parent is so severely mentally ill that the parent
30 cannot assume the role of parent;

1 (b) the parent is incarcerated for more than 1 year and a treatment plan is not practical considering
2 the incarceration; or

3 (c) the death of a sibling caused by abuse or neglect by the parent has occurred.

4 (5) If a person is convicted of a felony in which sexual intercourse occurred or if a minor is
5 adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which
6 sexual intercourse occurred and, as a result of the sexual intercourse, a child is born, the court may
7 terminate the offender's parental rights to the child at any time after the conviction or adjudication."

8

9 **Section 167.** Section 41-5-603, MCA, is amended to read:

10 **"41-5-603. Youth court and department records.** (1) Except as provided in subsection (2), all
11 youth court records on file with the clerk of court, including reports of preliminary inquiries, petitions,
12 motions, other filed pleadings, court findings, verdicts, orders, and decrees, are open to public inspection
13 until the records are sealed under 41-5-604.

14 (2) Social, medical, and psychological records, predispositional studies, supervision records of
15 probationers, and any report, charge, or allegation that is not adjudicated pursuant to this chapter are open
16 only to the following:

17 (a) the youth court and its professional staff;

18 (b) representatives of any agency providing supervision and having legal custody of a youth;

19 (c) any other person, by order of the court, having a legitimate interest in the case or in the work
20 of the court;

21 (d) any court and its probation and other professional staff or the attorney for a convicted party
22 who had been a party to proceedings in the youth court when considering the sentence to be imposed upon
23 the party;

24 (e) the county attorney;

25 (f) the youth who is the subject of the report or record, after emancipation or reaching the age of
26 majority;

27 (g) a member of a county interdisciplinary child information team formed under 52-2-211 who is
28 not listed in this subsection (2);

29 (h) members of a local interagency staffing group provided for in 52-2-203; ~~and~~

30 (i) persons allowed access to the records under 45-5-624(7); and

1 (j) persons allowed access under [section 85].

2 (3) Any part of records information secured from records listed in subsection (2), when presented
3 to and used by the court in a proceeding under this chapter, must also be made available to the counsel
4 for the parties to the proceedings.

5 (4) After youth court and department records, reports of preliminary inquiries, predispositional
6 studies, and supervision records of probationers are sealed, they are not open to inspection except, upon
7 order of the youth court, for good cause to:

8 (a) those persons and agencies listed in subsection (2); and

9 (b) adult probation professional staff preparing a presentence report on a youth who has reached
10 the age of majority."

11

12 **Section 168.** Section 41-5-604, MCA, is amended to read:

13 **"41-5-604. Disposition of records.** (1) Except as provided in subsections (2) and (5), youth court
14 records and law enforcement records pertaining to a youth covered by this chapter must be physically
15 sealed 3 years after supervision for an offense ends. The records may be unsealed if a new offense is
16 committed.

17 (2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's
18 18th birthday, the records and files not exempt from sealing under subsection (5) must be physically sealed
19 upon termination of the extended jurisdiction.

20 (3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, an
21 agency or department that has in its possession copies of the sealed records shall also seal or destroy the
22 copies of the records. Anyone violating the provisions of this subsection is subject to contempt of court.

23 (4) This section does not prohibit the destruction of records with the consent of the youth court
24 judge or county attorney after 10 years from the date of sealing.

25 (5) The requirements for sealed records in this section do not apply to fingerprints, DNA records,
26 photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements
27 of the court's judgment or disposition, or records referred to in 45-5-624(7) or [section 85]."

28

29 **Section 169.** Section 50-15-223, MCA, is amended to read:

30 **"50-15-223. Certificates of birth following adoption, legitimation, or determination or**

1 **acknowledgment of paternity.** (1) The department shall establish a new certificate of birth for a person born
2 in this state when the department receives the following:

3 (a) a certificate of adoption, as provided in 50-15-311, a certificate of adoption prepared and filed
4 in accordance with the laws of another state or foreign country, or a certified copy of the decree of
5 adoption, together with the information necessary to identify the original certificate of birth and to establish
6 a new certificate of birth; or

7 (b) a request that a new certificate be established if the request shows that:

8 (i) a district court has determined the paternity of the person; or

9 (ii) both parents have acknowledged the paternity of the person and request that the surname be
10 changed from that shown on the original certificate.

11 (2) The date of birth and the city and county of birth must be stated in the newly established
12 certificate of birth. The department shall substitute the new certificate of birth for the original certificate
13 of birth in the files. The original certificate of birth and the evidence of adoption, legitimation, court
14 determination of paternity, or paternity acknowledgment ~~may not be~~ are only subject to inspection, except
15 upon order of a district court, as provided by rule, as provided in [sections 141 through 146], or as
16 otherwise provided by state law.

17 (3) Upon receipt of a report of an amended decree of adoption, the department shall amend the
18 certificate of birth as provided in rules adopted by the department.

19 (4) Upon receipt of a report or decree of annulment of adoption, the department shall restore the
20 original certificate of birth issued before the adoption to its place in the files and the certificate of birth
21 issued upon adoption and evidence pertaining to the adoption proceeding may not be open to inspection,
22 except upon order of a district court or as provided by rule adopted by the department.

23 (5) Upon written request of both parents and receipt of a sworn acknowledgment and other
24 credible evidence of paternity signed by both parents of a child born outside of marriage, the department
25 shall reflect the paternity on the child's certificate of birth if paternity is not already shown on the certificate
26 of birth.

27 (6) If a certificate of birth is not on file for the adopted child for whom a new certificate of birth
28 is to be established under this section and the date and place of birth have not been determined in the
29 adoption or paternity proceedings pertaining to the child, a delayed certificate of birth must be filed with
30 the department, as provided in 50-15-204, before a new certificate of birth may be established. The new

1 certificate of birth must be prepared on a form prescribed by the department.

2 (7) When a new certificate of birth is established by the department, the department may direct
3 that all copies of the original certificate of birth in the custody of any other custodian of vital records in this
4 state either be sealed from inspection or be forwarded to the department for sealing from inspection.

5 (8) (a) The department shall, upon request of the adopting parents, prepare and register a
6 certificate of birth in this state for a person born in a foreign country who is not a citizen of the United
7 States and who was adopted through a district court in this state.

8 (b) The certificate of birth must be established by the department upon receipt of a certificate of
9 adoption, conforming to the requirements of 50-15-311, from the court that reflects entry of an order of
10 adoption, proof of the date and place of the child's birth, and a request for the establishment of a certificate
11 of birth from the court, the adopting parents, or the adopted person, if the person is 18 years of age or
12 older.

13 (c) The certificate of birth must be labeled "Certificate of Foreign Birth" and must contain the actual
14 country of birth. A statement must be included on the certificate indicating that it is not evidence of United
15 States citizenship for the child for whom it is issued.

16 (d) After registration of the certificate of birth in the new name of the adopted person, the
17 department shall seal and file the certificate of adoption, which is not subject to inspection, except upon
18 order of the district court, as provided by rule, or as otherwise provided by state law.

19 (9) The department may promulgate rules necessary to implement this section."
20

21 **Section 170.** Section 52-2-505, MCA, is amended to read:

22 "**52-2-505. Records to be confidential.** All records regarding subsidized adoption are confidential
23 and may be disclosed only in accordance with the provisions of ~~40-8-126~~ section 141."
24

25 **NEW SECTION. Section 171. Repealer.** Sections 40-6-125, 40-6-126, 40-6-127, 40-6-128,
26 40-6-129, 40-6-130, 40-6-135, 40-8-101, 40-8-102, 40-8-103, 40-8-104, 40-8-105, 40-8-106, 40-8-107,
27 40-8-108, 40-8-109, 40-8-110, 40-8-111, 40-8-112, 40-8-113, 40-8-114, 40-8-115, 40-8-116, 40-8-117,
28 40-8-121, 40-8-122, 40-8-123, 40-8-124, 40-8-125, 40-8-126, 40-8-127, 40-8-128, 40-8-135, 40-8-136,
29 40-8-201, ~~and 40-8-202,~~ 52-2-401, 52-2-402, 52-2-403, 52-2-404, 52-2-405, 52-2-406, AND 52-2-407,
30 MCA, are repealed.

